



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

DEVALL. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JOHN W. POLANOWICZ
SECRETARY

LAUREN A. SMITH, MD, MPH
INTERIM COMMISSIONER

Board of Registration in Pharmacy
239 Causeway Street, Suite 500, 5th Floor
Boston, MA 02114
617-973-0954

May 13, 2013

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7010 2780 0001 8675 9937

Stacey (Driscoll) Lopez

[redacted]

**RE: In the Matter of Stacey (Driscoll) Lopez, PT License No. PT9581
Board of Registration in Pharmacy Docket No. PHA-2012-0104**

Dear Ms. Lopez:

Enclosed is the Final Decision and Order by Default ("Final Order") issued by the Board of Registration in Pharmacy (Board) in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 5 of the Final Order ("Date Issued"). Your appeal rights are noted on page 5 of the Final Order.

Sincerely,

Margaret Cittadino
Associate Director
Board of Registration in Pharmacy

Enc.

cc: James Lavery, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
STACEY (DRISCOLL) LOPEZ)
PH-PT Registration No. 9581)
Reg. Expired: 10/15/2012)
Reg. Summarily Suspended: 9/14/12)

Docket No. PHA-2012-0104

FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01 (7)(g)(2), the failure of Stacey Lopez ("Respondent"), after due notice, to appear and defend in this matter, the Board of Registration in Pharmacy ("Board") issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On September 25, 2012, the Board issued an Order to Show Cause ("OTSC")¹ ordering Respondent to show cause why the Board should not suspend, revoke, or otherwise take action against her registration to practice nursing as a pharmacy technician in the Commonwealth of Massachusetts ("Commonwealth") based on the allegations² in the OTSC. In the OTSC, Respondent was advised: "Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default". Respondent filed an Answer to the Order to Show Cause on October 9, 2012.

By letter dated January 29, 2013, the Administrative Hearings Counsel ("AHC") issued a Scheduling Order³ notifying Respondent and Prosecuting Counsel of the following

¹ Sent by First Class and Certified Mail No. 7011 1570 0000 8180 2780 to Respondent at her address of record. Neither the first class nor certified mail was returned and both are presumed received.

² In the OTSC, the Board alleged that while employed as a pharmacy technician at a CVS pharmacy, Respondent accessed and divulged protected health information of a co-worker/customer.

³ Sent to Respondent at the [redacted] address by First Class and Certified Mail No. 7009 2250 0001 8154 8626. The certified return card was signed as received. The first class mail was not returned and is presumed received.

scheduled conferences and hearing dates: a status conference scheduled for Tuesday, Respondent failed to appear at the March 19, 2013 status conference and failed to request a continuance of the status conference. By letter dated March 19, 2013 the AHC notified March 19, 2013 in Room 419; a formal adjudicatory hearing scheduled for June 4 and 6, 2013 in Room 421; and a pre-hearing conference scheduled for May 6, 2013 in Room 421. In that Scheduling Order the AHC reminded Respondent "that failure to appear for any scheduled conferences or hearing dates shall result in the entry of default at which time the Board may issue a Final Decision and Order by Default with appropriate sanctions". Respondent that default had been entered against her based on her failure to attend the March 19, 2013 status conference. Respondent was also advised that she could file a motion to remove the default by March 26, 2013 and that the motion must include demonstrated good cause for her failure to attend the conference. Respondent was also informed that if she failed to file said motion by March 26, 2013 or if she filed such a motion but failed to provide demonstrated good cause for her failure to attend the conference, the entry of default would remain in effect and the Board would issue a Final Decision and Order by Default with appropriate sanctions. Respondent failed to file a motion to remove the default by March 26, 2013.

The Board takes administrative notice of the following exhibits that are a part of the administrative record. The OTSC is incorporated herein by reference and attached hereto:

EXHIBITS

1. Order to Show Cause, September 25, 2012
2. Respondent's Answer to Order to Show Cause, filed October 9, 2012
3. Scheduling Order, January 29, 2013
4. Letter re: Entry of Default, March 19, 2013

DISCUSSION

By reason of Respondent's failure to appear and defend as required by the Board and her failure to respond to notices and directives, the Board enters default against Respondent and issues this Final Decision and Order. *University Hospital v. MCAD*, 396 Mass. 533, 539 (1986) (approving administrative agency's imposition of default where it provided reasonable procedural safeguards for notice of consequences of failure to

answer and opportunity to object and where judicial review of entire proceeding was available if sought); *Wang v. Board of Registration in Medicine*, 405 Mass. 15, 19-20 (1989) (where professional lacked current license to practice in the Commonwealth, board had jurisdiction based on professional's inchoate right to renew license).

The Board finds that the allegations in the OTSC and the violations of statutes and regulations stated therein are deemed admitted and established. *Productora e Importadora de Papel S.A. de C.V. v. Fleming*, 376 Mass. 826, 833-835 (1978) (default establishes truth of allegations; *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990) (upon default, allegations of complaint are accepted as true); Respondent was afforded an opportunity for a full and fair hearing as required by G.L. c. 30A) § 10 and 11 (1); G.L. c. 112, 62, and 801 CMR 1.01 (4)(c). Wherefore, in accordance with the Board's authority and statutory mandate, the Board orders as follows:⁴

On May 7, 2013, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and REVOKE Massachusetts Pharmacy Technician Registration No. 9581 (expired 10/15/12); summarily suspended by the Board effective 9/14/12) by the following vote, effective as of the date issued: In favor:

The Board will not review any petition for pharmacy technician registration in the Commonwealth filed sooner than five (5) years from the Effective Date of this Final Decision and Order by Default. While Respondent's pharmacy technician registration is REVOKED, Respondent may not: (1) be employed in any capacity to provide any services in any pharmacy setting in the Commonwealth; or (2) have any ownership, management or other interest or involvement in any pharmacy related business in any setting. If at any time in the future Respondent seeks licensure or registration by the Board, Respondent will be required to meet all current requirements for licensure or registration at the time of any such application, including but not limited to, re-application, re-examination, and re-training. The Board does not envision any terms or conditions pursuant to which Respondent would be considered appropriate for licensure or registration in the future.

⁴ In that the evidence in this default proceeding, consisting of the above-referenced exhibits, was before the Board no tentative decision is required. 801 CMR 1.01 (11).

EFFECTIVE DATE OF ORDER

The Order of the Board shall be effective ten days from the date issued, specified below.

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court, pursuant to G.L. c. 112, § 64 and G. L. c. 30A, §§ 14 and 15, within thirty days of receipt of notice of this Final Decision and Order by Default.

BOARD OF REGISTRATION
IN PHARMACY

Margaret Cittadino
Associate Director

Date issued: May 13, 2013

Notice to:

BY FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7010 2790 0001 8675 9937

Stacey (Driscoll) Lopez
[redacted]

BY HAND

James Lavery, Esq.
Office of Prosecutions
Department of Public Health
Division of Health Professions Licensure
230 Causeway Street
Boston, MA 02114



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
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239 Causeway Street, Suite 500, 5th Floor
Boston, MA 02114
617-973-0954

Office of the General Counsel
(617) 973 0865
(617) 973-0895 TTY

September 25, 2012

Stacey (Driscoll) Lopez
[redacted]

RE: In the Matter of Stacey (Driscoll) Lopez, PT Reg. No. 9581
Board of Registration in Pharmacy, Docket No. PHA-2012-0104

Dear Ms. Lopez:

The Massachusetts Board of Registration in Pharmacy within the Department of Public Health, Division of Health Professions Licensure (“Division”), has completed its investigation of the above-referenced complaints against your registration to practice as a pharmacy technician. For the reasons set forth in the attached Order to Show Cause, the Board is proposing to suspend, revoke, or impose other discipline against your registration (PT Reg. No. 9581).

The Order to Show Cause and any subsequent hearing are governed by Massachusetts General Laws Chapter 30A, the State Administrative Procedure Act, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* You must submit an Answer to the Order to Show Cause and you have a right to request a hearing by filing a written request for a hearing, as specified in the Order to Show Cause.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the above referenced matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of the Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations therein and on any Board disciplinary action. Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status

conference, pre-hearing conference, or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew your registration.

You Answer to the Order to Show Cause and its request for a hearing must be filed with James G. Lavery, Prosecuting Counsel at the following address:

James Lavery, Esq.
Chief Board Prosecutor
Department of Public Health
Office of the General Counsel
230 Causeway Street, 4th Floor
Boston, MA 02114

You may contact me at (617) 973-0822 if you have any questions regarding this matter.

Sincerely,

James G. Lavery
Chief Board Prosecutor

JGL/tbm
Encl.
Order to Show Cause
Certificate of Service

Certified Mail No. 7011 1570 0000 8180 2780

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

0104

In the Matter of)
STACEY (DRISCOLL) LOPEZ) Docket No. PHA-2012-
PH-PT Registration No. 9581)
Reg. Expires: 10/15/2012)

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ORDER TO SHOW CAUSE

Stacey (Driscoll) Lopez, (hereinafter “you” or “Respondent”), you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Pharmacy (“Board”) should not suspend, revoke or otherwise take action against your pharmacy technician registration, Registration No. 9581, or your right to renew such registration, pursuant to Massachusetts General Laws (G.L.) Chapter 112, §§ 42A and 61 and Board regulations 247 CMR 2.00 *et seq.* based upon the following facts and allegations.

1. On or about April 9, 2008, the Board issued you a pharmacy technician registration, Registration No. 9581.
2. On or about September 11, 2012, the Board issued a Temporary Order of Summary Suspension of your Registration. You failed to timely request a hearing on the necessity of a continuance of the Temporary Order of Summary Suspension and a Final Order of Summary Suspension was issued on or about September 14, 2012. Your Registration remains suspended.
3. On diverse dates during 2011 and 2012, while employed as a pharmacy technician at CVS Pharmacy #291 located at 800 Lexington Street, Waltham, Massachusetts, you accessed protected health information of a co-worker/customer then divulged that information to a mutual friend in violation of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) regulations.
4. Your conduct as alleged above warrants disciplinary action by the Board against your pharmacy technician registration pursuant to G.L. c. 112, §§ 42A and 61, and 247 CMR 2.00 *et seq.*, for deceit, malpractice, gross misconduct, in the practice of the profession, and offenses against the laws of the Commonwealth relating thereto.
5. Your conduct as described above constitutes failure to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, of the Board and therefore warrant disciplinary action by the Board pursuant to M.G.L. c. 112, §§ 27, 28, and 42A, and 247 CMR 2.00 *et seq.*, and

10.03 (1)(a), (b), (e), (k), (q), (r), (u), and (w).

6. Your conduct as described also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing (“hearing”) on the allegations contained in the Order to Show Cause before the Board acts to suspend, revoke, or impose other discipline against your registration. G.L. c. 112, §§ 42A and 61. Your right to a hearing may be claimed by submitting a written request for a hearing within *twenty-one days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a “proper record” of the proceeding, which may include a transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at your own expense. Pursuant to 801 CMR 1.01(1)(i)(I), upon motion, you “may be allowed to provide a public stenographer to transcribe the proceedings at [your] own expense upon terms ordered by the Presiding Officer.” Those terms may include a requirement that any copy of the transcript produced must be sent promptly upon completion and on an ongoing basis directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including, but not limited to, the written transcript of the hearing is a public record and subject to the provisions of G.L. c. 4 § 7 and G.L. c. 66, § 10.

Your failure to submit a written request for a hearing within *twenty-one (21) days of receipt of this Order to Show Cause shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action. Your failure to submit an Answer to the Order to Show Cause *within twenty-one (21) days of receipt of the Order to Show Cause shall result in the entry of default* in the captioned matter.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to appear for any scheduled status conference, pre-hearing conference, or hearing dates, or failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew your registration.

Your answer to the Order to Show Cause and your written request for a hearing must be filed with James G. Lavery, Chief Board Prosecutor at the following address:

James Lavery, Esq.
Chief Board Prosecutor
Department of Public Health
Office of the General Counsel
230 Causeway Street, 4th Floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Chief Board Prosecutor. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0822 to schedule a time that is mutually convenient.

Board of Registration in Pharmacy,

Karen M. Ryle, R.Ph., Secy.

By: James G. Lavery, Esq.
Chief Prosecutor
Department of Public Health

Dated: September 25, 2012

CERTIFICATE OF SERVICE

I, James G. Lavery, hereby certify that a copy of the foregoing Cover Letter, Order to Show Cause, and Certificate of Service were served upon the Respondent:

Stacey (Driscoll) Lopez
[redacted]

by first class mail, postage prepaid, and Certified Mail No. 7011 1570 0000 8180 2780
this 25th day of September, 2012.

James G. Lavery
Chief Board Prosecutor