

In accordance with M.G.L. c. 30A, § 14 and M.G.L. c. 6E, § 10(f), the Respondent may commence an appeal to the Superior Court within thirty (30) days to the extent allowed by law. After initiating proceedings for judicial review in Superior Court, the Respondent, or the Respondent's attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Commission, in the time and manner prescribed by Mass. R. Civ. P. 4(d).

Margaret R. Hinkle

Hon. Margaret R. Hinkle (Ret.), Chair

Notice to: Keith O'Donnell, Respondent
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Somerville Police Department, Appointing Agency
Collective Bargaining Unit
Middlesex County District Attorney's Office

**COMMONWEALTH OF MASSACHUSETTS
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of

)

Case No. PI-2022-12-13-003

)

Keith O'Donnell

)

INITIAL DECISION

I. Introduction

At issue in this matter is whether this proceeding brought by the Massachusetts Peace Officer Standards and Training Commission (“Commission”) should now terminate with a default decision in the Commission’s favor, pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01(7)(a), and 555 CMR 1.10(4). Keith O’Donnell (“Respondent”) did not answer, appear, or defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”). The Respondent also did not respond to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, the undersigned recommends that the Commission adopt this Initial Decision as its Final Decision, grant the Division’s Motion for Default and Final Decision (“Motion”), and proceed to determine what discipline should be imposed against the Respondent.

II. Procedural History

1. The Division served the Respondent with an OTSC on March 26, 2024, addressed to the Respondent’s last known home addresses. Exhibits A and B.

2. The OTSC contained the allegations against the Respondent and notification of the obligation to file an answer or otherwise respond to the allegations within 21 days. Ex. A. The OTSC stated that, if a responsive and timely answer were not filed, the Commission may act. In particular, the Respondent was notified that if an answer to the allegations in the OTSC is not filed, the Commission may enter a Final Decision and Order that assumes the truth of the

allegations in the OTSC and that the Commission may take action against the Respondent's certification, including granting, in full, the action contemplated in the OTSC.

Ex. A.

3. The Motion for Default and Final Decision was mailed by the Division to the Respondent by USPS Priority Mail on May 6, 2024, to the same last known addresses. Ex. D. The undersigned takes administrative notice that the OTSC was attached as an exhibit to the Motion.

4. By operation of law, the Commission may presume that the Respondent received both the OTSC and the Motion, as discussed below. The Respondent failed to respond to either the OTSC or the Motion.

III. Allegations Contained in the OTSC

1. On July 1, 2021, pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity, and Accountability in Law Enforcement in the Commonwealth, the Respondent was certified as a law enforcement officer. The Respondent was an active law enforcement officer employed by the Somerville Police Department ("Somerville PD") during the time of the above allegations.

2. On December 13, 2022, the Commission directed the Division to open a preliminary inquiry [REDACTED]

3. On February 2, 2023, the Respondent was terminated by Somerville PD after a Hearing Officer made numerous findings of misconduct against him, including, but not limited to, a finding that he committed "conduct unbecoming of an officer" [REDACTED]

4. [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. Exhibits

In ruling on this matter, the undersigned has considered the Motion filed by the Division and the following Exhibits:

- Exhibit A: OTSC, with a certificate of service, dated March 26, 2024.
- Exhibit B: OTSC USPS Priority Mail tracking, dated March 28, 2024.
- Exhibit C: Notice of Immediate Suspension, dated December 13, 2022.
- Exhibit D: Motion for Default and Final Decision, with certificate of service, dated May 6, 2024.
- Exhibit E: Motion for Default USPS Priority Mail tracking, dated May 8, 2024.

The undersigned takes administrative notice of all papers filed in this case, as well as Chapter 6E and Commission regulations. See M.G.L. c. 30A, § 11(5).

V. Legal Basis for Commission Disciplinary Action

1. Pursuant to M.G.L. c. 6E, § 3(a):
The [C]ommission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:
 - (1) act as the primary civil enforcement agency for violations of [Chapter 6E]; . . .
 - (4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the [C]ommission deems reasonable; . . .
 - (23) restrict, suspend or revoke certifications issued under [Chapter 6E]; [and]
 - (24) conduct adjudicatory proceedings in accordance with [C]hapter 30A; . . .

2. [REDACTED]
[REDACTED]
[REDACTED]

3. [REDACTED]
[REDACTED]
[REDACTED]

4. [REDACTED]
[REDACTED]
[REDACTED]

5. Pursuant to M.G.L. c. 6E, § 10(b)(iv), “[t]he [C]ommission may, after a hearing, revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that the officer ... was suspended or terminated by their appointing agency for disciplinary reasons.”

6. Pursuant to M.G.L. c. 6E, § 10(g), the Commission shall publish any revocation order and findings and shall provide all revocation information to the National Decertification Index (“NDI”).

7. Pursuant to M.G.L. c. 6E, § 10(h), the Commission may institute a disciplinary hearing after an officer’s appointing agency has issued a final disposition on the alleged misconduct.

VI. Notice

The Respondent was notified at his last known addresses by the OTSC that if he did not file an answer or otherwise respond to the allegations in the OTSC in a responsive and timely manner, the Commission could enter a Final Decision and Order that assumes the truth of the allegations in the OTSC. In addition, the notice informed him that the Commission may take particular action against his certification, including granting in full the relief contemplated in the

OTSC. These advisories were sufficient to place him on notice of the consequences of any default. See Lawless v. Board of Registration in Pharmacy, 466 Mass. 1010, 1010 n.1, 1011 (2013) (concluding that pharmacist had “ample notice,” where he was informed that “failure to appear at any hearing would result in entry of default and that, in the event of default, the board could enter a final decision accepting as true the allegations contained in the show cause order.”); see also University Hosp., Inc. v. Massachusetts Comm’n Against Discrimination, 396 Mass. 533, 539 (1986) (holding that default provision did not violate due process, as it “afford[ed] the [R]espondent reasonable procedural safeguards for notice and opportunity to be heard”). Despite being afforded the opportunity to do so, the Respondent has failed to file an answer, request an adjudicatory hearing, or otherwise respond.

On May 6, 2024, the Division moved for a default judgment and final decision and served the Motion, with Exhibits A and B attached, by USPS Priority Mail with tracking information to the Respondent’s last known addresses, as indicated by a CLEAR search conducted by the Division. Ex. D.

The Commission provided sufficient notice by delivering the OTSC and the Motion using USPS Priority Mail. Under Massachusetts case law, there is a presumption that the addressee receives properly deposited mail. See Espinal’s Case, 98 Mass. App. Ct. 152, 152-53, 156 (2020), citing Eveland v. Lawson, 240 Mass. 99, 103 (1921) (“The depositing of a letter in the post office, properly addressed, postage prepaid, to a person at his place of business or residence, is prima facie evidence that it was received in the ordinary course of mails.”); see also Commonwealth v. Crosscup, 369 Mass. 228, 239 (1975) (“Proper mailing of a letter is ‘prima facie evidence’ in civil cases of its receipt by the addressee.” (citations omitted)). Further, nothing in Chapter 6E required the Division to take any additional steps. Nor is the Division

prohibited from relying on the certification that it mailed the Motion via USPS Priority Mail delivery. See Espinal's Case, 98 Mass. App. Ct. at 157 (stating that “on other occasions when the Legislature intended to impose a requirement for notice by certified mail, return receipt requested, it has done so explicitly”). The undersigned may presume that the Respondent received the Motion that was sent through USPS Priority Mail at his last known addresses.

VII. Discussion

Pursuant to 801 CMR 1.01(7)(a), a party may request through a motion that a Hearing Officer “issue any order or take any action not inconsistent with [the] law or 801 CMR 1.00.” One such action is recommending the entry of a final judgment of default where a Respondent has failed to appear. Under M.G.L. c. 30A, § 10(2), an agency is specifically authorized to “make informal disposition of any adjudicatory proceeding . . . by default.” Lawless, 466 Mass. at 1011-12 (affirming that agency “ha[d] authority, in an appropriate circumstance, to dispose of an adjudicatory proceeding by default,” citing M.G.L. c. 30A, § 10; and concluding that agency’s decision to do so was not shown to be improper, where the party failed to appear after the first day of hearing). That step is warranted here. The Commission has afforded the Respondent an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10, 11(1) and 801 CMR 1.01(4)(c).

In University Hosp., 396 Mass. at 538-39, the Supreme Judicial Court rejected the notion that due process standards were violated by an agency rule that provided sanctions for a party’s default upon receiving interrogatories. The court concluded that the provisions of the agency rule “afford . . . reasonable procedural safeguards for notice and an opportunity to be heard,” noting that a Respondent is given clear notice of the consequences, and has opportunities to object, to obtain an extension of time, to petition for a default to be vacated, and to seek judicial

review of the entire proceedings. Id. at 539. In the case before the Commission, the OTSC and the Motion (both sent by USPS with tracking) provided the Respondent with notice of the consequences of a failure to appear or defend in this matter, as well as an opportunity to object. Exs. A and D. The Respondent could have sought more time to respond under 801 CMR 1.01(4)(e), (7)(a), and (7)(d). The Respondent was afforded an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10, 11(1) and 801 CMR 1.01(4)(c). Therefore, the entry of a default judgment by the Commission is both legal and proper.

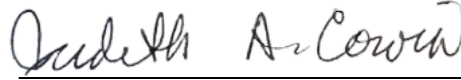
By reason of the Respondent's default, and upon consideration of the Division's Motion, the undersigned recommends that the Commission grant the Motion. See Lawless, 466 Mass. at 1010-12 & n.1; University Hosp., 396 Mass. at 538-39; Productora e Importadora de Papel, S.A. de C.V. v. Fleming, 376 Mass. 826, 833-35 (1978) (recognizing that a default establishes the truth of factual allegations). In addition, the undersigned recommends that the Commission find that the allegations in the OTSC and the violations of the statutes and regulations stated therein are deemed admitted and established. See Lawless, 466 Mass. at 1010-12 & n.1; University Hosp., 396 Mass. at 534, 538-39; Productora e Importadora de Papel, 376 Mass. at 833-35.

VIII. Conclusion

The Division's Motion should be granted for the reasons stated above. The undersigned recommends that the Commission find the allegations to be supported, make this Initial Decision final, and proceed to determine what discipline is appropriate. In accordance with the provisions of 555 CMR 1.10(4)(e)(2)(b), each of the parties has 30 days to file written objections to the Initial Decision with the Commission.

SO ORDERED.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION

A handwritten signature in cursive script that reads "Judith A. Cowin". The signature is written in black ink and is positioned above a horizontal line.

Hon. Judith A. Cowin (ret.)
Hearing Officer

Dated: June 21, 2024

Notice to: Keith O'Donnell, Respondent
Timothy D. Hartnett, Esq., Enforcement Counsel
Somerville Police Department, Agency
Collective Bargaining Unit