

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Received

In the Matter of)
Annika M. Mitchell, R.Ph.)
Pharmacist Registration No. 25998)
_____)

Docket No. PHA20090067

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BOARD OF
PHARMACY

CONSENT AGREEMENT

The Board of Registration in Pharmacy ("Board") and Annika M. Mitchell, R.Ph. ("Registrant"), a pharmacist registered by the Board (Pharmacist Registration No. 25998), do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the file of Registrant which is maintained by the Board:

1. The parties enter into this Consent Agreement ("Agreement") to resolve disputed matters arising out of the complaint pending against Registrant before the Board as Docket No. PHA20090067 (the "Complaint").
2. The Registrant acknowledges and agrees that this Agreement has been entered into as a result of her admission to the diversion, for personal use, of the controlled substances Vicodin 7.5/500 mg (90 tablets) and Suboxone 8 mg (30 tablets) from on or about February 2009 through April 2009, while employed at Rite Aid Pharmacy located at 180 Elm Street, Pittsfield, MA in violation of G.L. c.94C s. 37.
3. The Registrant has entered into a contract with the Massachusetts Professional Recovery System ("MPRS") dated July 14, 2009 ("Contract"), the conditions of the Contract being incorporated into the terms of this Agreement.
4. Accordingly, the Registrant freely agrees to the following:
 - a. the Registrant agrees that her conduct described in Paragraph 2 above constitutes professional misconduct warranting Board disciplinary action pursuant to G.L. c. 112, § 61 and Board Regulations 247 CMR 9.01(1) and 10.03, subsections (1)(a); 10.03(1)(b); 10.03(1)(e); 10.03(1)(g); 10.03(1)(l); 10.03(1)(u); and 10.03(1)(w);
 - b. the Registrant agrees to abide by all of the terms and conditions of the Contract for the five year duration of the Contract ("Contract Period") unless sooner dissolved by the MPRS Committee ("Committee") and the Board;

- c. the Registrant agrees that during the initial twelve months of the Contract Period, or such longer period as the Board may determine to be appropriate, Registrant shall surrender her pharmacist license to the Board (the "Surrender Period"). After the first twelve months of the Contract Period, Registrant may petition the Board to terminate the Surrender Period. Registrant shall be required to be in compliance with the terms and conditions of the Contract and this Agreement to petition the Board to terminate the Surrender Period. The Board may determine that the Surrender Period shall be extended for an additional twelve month period or such longer period as the Board may determine to be appropriate. At the time of any petition to terminate the Probation Period, the Board will consider all information pertaining to Registrant's fitness to resume the practice of pharmacy, including any criminal history or pending criminal matters occurring after the date of this Agreement. If the Board determines that Registrant is in compliance with all required terms of this Agreement and the Contract, the Board may terminate the Surrender Period and place Registrant's license on probationary status for a four year period or such other period determined appropriate by the Board, commencing on the date of the termination of the Surrender Period (the "Probation Period"). Termination of the Probation Period shall be governed by Paragraph 6 of this Agreement. The Registrant may be required to appear before the Board in connection with any petition to terminate the Surrender Period. The Board will not consider such a petition without a recommendation by the MPRS Committee; and
 - d. the Registrant agrees to return a signed copy of this Agreement to the Board within ten (10) days of receipt.
5. During the Surrender and Probation Periods, the Registrant agrees:
- a. to undergo monitoring by the Board which shall include random drug/alcohol screenings as required by MPRS or the Board;
 - b. to refrain from the consumption of alcohol and the use of all controlled substances unless specifically prescribed by a treating physician and approved by MPRS, who has been informed of the Registrant's history, for the purpose of prescribing for a legitimate medical purpose and in the usual course of the physician's practice;
 - c. that she may not self prescribe controlled substances and shall adhere to all laws and regulations pertaining to the dispensing, administration and distribution of controlled substances; and
 - d. that she hereby waives any privileges concerning and all information, reports and records relating to his MPRS contract and the disclosure of such information to the Board. This release includes the Registrant's waiver of any privileges and immunities she may possess regarding all material covered by 42 CFR Part 2 and

the Criminal Offender Records Information (CORI) Act (G.L. c. 6, §§ 167-178) and authorizes the Board to have access to all such information and records.

6. Registrant agrees that the termination of the Probation Period shall be granted only if she has met the following conditions:

- a. Registrant must apply in writing to the Board for termination of the Probation Period. The Board will not consider such a request without a recommendation by the MPRS Committee and the Board may request a conference to discuss the merits of such request;
- b. Registrant has provided documentation, satisfactory to the Board that she has successfully completed the Contract; and
- c. Registrant has fully complied with all terms and conditions of this Agreement and meets all other requirements for licensure.

7. This Agreement and its contents shall be incorporated into the records maintained by the Board, are matters of public record, subject to disclosure, without limitation, to the public and equivalent state licensing boards.

8. The Board agrees that in return for the Registrant's execution of this Agreement, the Board will not advance the prosecution of the Registrant pursuant to the Complaint. Any and all other rights of the Board to take action within the scope of its authority are expressly reserved.

9. The Registrant understands and agrees that her failure to comply with the terms of this Agreement shall nullify the representations contained in Paragraph 8, and permit the Board to initiate formal adjudicatory action under the State Administrative Procedure Act, G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 *et. seq.*

10. The Registrant understands and agrees that, at any time during the Contract or Probation Periods, upon a determination by the Board of any violation of any of the terms and conditions of this Agreement or the Contract as set forth in Paragraph 12, or any violation of the applicable laws, rules and regulations governing the practice of pharmacy, Registrant shall be required to IMMEDIATELY SURRENDER her pharmacist license to the Board without the requirement of any adjudicatory proceedings pursuant to G.L. c. 30A.

11. The Registrant understands and agrees that should she be found to have violated any of the statutes and/or regulations governing the practice of pharmacy for conduct occurring during the Probation Period, the Board may consider the conduct of the Registrant described in Paragraph 2. and more fully described in Complaint Docket No. PHA20090067 in determining an appropriate sanction for the subsequent offense.

12. The Registrant understands and agrees that any of the following may be considered by the Board to be a violation of this Agreement requiring Registrant to IMMEDIATELY SURRENDER her license to the Board:

- a. A sample of the Registrant's blood, breath or other substance is found to contain any evidence of alcohol or any controlled substance in violation of this Agreement or the Contract;
- b. the Board or MPRS has other reliable evidence that the Registrant has used alcohol or any controlled substance in violation of this Agreement or the Contract;
- c. the Registrant misses, or fails to call for any random screening tests, excluding an administrative or laboratory error beyond the control of the Registrant;
- d. the Registrant refuses to cooperate with MPRS in its monitoring; or
- e. the Registrant withdraws any waiver or release provided and/or filed in connection with this Agreement or the Contract.

13. The Registrant understands and agrees that her decision to enter into this Agreement and to accept the terms and conditions herein described is a final act and is not subject to reconsideration or judicial review.

14. The Registrant states that she has used legal counsel in connection with her decision to enter into this Agreement or, if she did not, that she had an opportunity to do so and that her decision to enter into this Agreement was made of her own free will.

15. The Registrant certifies that she has read this document entitled "Consent Agreement". The Registrant understands that, by executing this Agreement, she is waiving his right to a formal hearing at which she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, to appeal to court in the event of an adverse ruling, and all other rights set forth in G.L. c. 30A and 801 CMR 1.01 *et seq.* Registrant states that she further understands that in executing this document entitled "Consent Agreement", she is knowingly and voluntarily waiving her right to a formal hearing and to all of the above listed rights.

Buadon

Witness (sign name)

Bunnie Valais

Witness (print name)

Annika M. Mitchell R.Ph.

Annika M. Mitchell, R.Ph.

Effective Date: 9/7/09

BOARD OF REGISTRATION
IN PHARMACY

By:

James T. DeVita

James T. DeVita, R.Ph.

President

Date:

9/11/09

Decision No. 2149