

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of        )  
Brian T. McGonigle    )  
PH237158                )

Docket No. PHA-2013-0175

**SECOND POST SURRENDER CONSENT AGREEMENT FOR PROBATION**

The Massachusetts Board of Registration in Pharmacy ("Board") and Brian T. McGonigle ("Licensee"), a pharmacist licensed by the Board, Registration No. PH237158, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Licensee's record maintained by the Board:

1. The Licensee agrees that this Second Post Surrender Consent Agreement for Probation ("Agreement") will supersede the Consent Agreement for Voluntary Surrender dated May 14, 2014 and the Post Surrender Consent Agreement for Probation dated September 29, 2015. Further, the Licensee agrees that this Agreement has been executed as a result of the following:
  - a. the Board's receipt and investigation of a complaint filed against him, Docket PHA-2013-0175, which resulted in the surrender of his pharmacy intern license, pursuant to a Consent Agreement for Voluntary Surrender with the Board effective May 14, 2014 in resolution of the complaint;
  - b. the execution of the Post Surrender Consent Agreement for Probation, effective September 29, 2015, pertaining to Licensee's pharmacy intern license, PI56405; and
  - c. the Board's consideration of the Licensee's application for a Massachusetts pharmacist license and documentation he passed the NAPLEX and MPJE examinations.
2. The Licensee admits that while employed as a pharmacy intern at Rite Aid Pharmacy #10185, in Waltham, MA, on or about July 6, 2013 he consumed approximately four beers and returned to the pharmacy two and one half hours later and attempted to work as a pharmacy intern while under the influence of alcohol. On or about September 17, 2013, he was arrested and charged for driving under the influence of alcohol. The Licensee acknowledges that the foregoing facts warranted disciplinary action by the Board under M.G.L. c. 112, §§ 42A & 61, 247 CMR 9.01 (1), and 247 CMR 10.03(g).
3. The Licensee agrees that his Pharmacist licensee shall be placed on PROBATION until January 1, 2020 ("Probationary Period").

Brian T. McGonigle  
PH237158  
PHA-2013-0175

*Second Post Surrender Consent Agreement for Probation*

4. The Board and the Licensee acknowledge and agree the Board's approval of Licensee's application for a Massachusetts pharmacist license was conditioned upon the execution of this Second Post Surrender Consent Agreement for Probation.
5. During the Probationary Period, the Licensee further agrees that he shall comply with all of the following requirements to the Board's satisfaction:
  - a. Comply with all laws and regulations governing the practice of pharmacy and not engage in any continued or further conduct such as that set forth in Paragraph 2.
  - b. Notify the Board in writing within ten (10) days of each change in his name and/or address.
  - c. Timely renew his registration.
  - d. Submit directly to the Board, according to the conditions and procedures outlined in **Exhibit A** of this Agreement, the results of random, supervised urine tests for substances of abuse, collected from the Licensee no less than fifteen (15) times per year during the Probationary Period, all of which are required to be negative.
  - f. Abstain from the use of alcohol, all substances of abuse, and substances with potential for abuse.
  - g. If prescribed any controlled substance, notify the Board within three (3) days and arrange for the prescriber to submit immediately thereafter and directly to the Board a written statement of the kind and amount of each controlled substance prescribed with medical necessity for each such prescription.
6. If and when the Board determines that the Licensee has complied to the Board's satisfaction with all the requirements contained in this Agreement the Probationary Period will terminate upon written notice to the Licensee from the Board<sup>1</sup>.
7. If the Licensee does not comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint<sup>2</sup> during the Probation Period, the Licensee agrees to the following:
  - a. The Board may upon written notice to the Licensee, as warranted to protect the public health, safety, or welfare:
    - i. **EXTEND** the Probationary Period; and/or

---

<sup>1</sup> In all instances where this Agreement specifies written notice to the Licensee from the Board, such notice shall be sent to the Licensee's address of record.

<sup>2</sup> The term "Subsequent Complaint" applies to a complaint opened after the Effective Date, which (1) alleges that the Licensee engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation during which the Licensee shall have an opportunity to respond.

- ii. MODIFY the Probation Agreement requirements; and/or
  - iii. IMMEDIATELY SUSPEND the Licensee's pharmacist license.
- b. If the Board suspends the Licensee's pharmacist license pursuant to Paragraph 7(a)(iii), the suspension shall remain in effect until:
- i. the Board gives the Licensee written notice that the Probationary Period is to be resumed and under what terms; or
  - ii. the Board and the Licensee sign a subsequent agreement; or
  - iii. the Board issues a written Final Decision and Order following adjudication of the allegations (1) of noncompliance with this Agreement, and/or (2) contained in the Subsequent Complaint.
8. The Licensee agrees that if the Board suspends his license in accordance with Paragraph 7, he will immediately return his current Massachusetts license to practice as pharmacist to the Board, by hand or certified mail. The Licensee further agrees that upon suspension, he will no longer be authorized to engage in practice as a pharmacist in the Commonwealth of Massachusetts and shall not in any way represent himself as a pharmacist until such time as the Board reinstates his license<sup>3</sup>.
9. The Licensee agrees that when he entered into the original Consent Agreement for Surrender in final resolution of the above-captioned complaint, Docket No. PHA-2013-0175 effective on May 14, 2014, he knowingly and voluntarily waived his right to a formal adjudication concerning the allegations against him in the complaints, the rights that he would have possessed during such adjudication to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, to appeal to the courts, and to all other rights as set forth in the Massachusetts Administrative Procedures Act, M.G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* The Licensee further understands and agrees that in executing this Second Post-Surrender Consent Agreement for Probation, he is knowingly and voluntarily waiving any rights he has to a formal adjudication concerning the Board's action on his application for a Massachusetts pharmacist license, the rights that he would possess during such an adjudication, and to those other rights listed above.
10. The Licensee acknowledges that he has been at all times free to seek and use legal counsel in connection with the Complaint and this Agreement.

---

<sup>3</sup>Any evidence of unlicensed practice or misrepresentation as a Pharmacy Intern after the Board has notified the Registrant of his registration suspension shall be grounds for further disciplinary action by the Board and the Board's referral of the matter to the appropriate law enforcement authorities for prosecution.

11. The Licensee acknowledges that after the Effective Date, the Agreement constitutes a public record subject to the Commonwealth of Massachusetts' Public Records Law, M.G.L. c. 4, § 7.
12. The Licensee certifies that he has read this Agreement. The Licensee understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.

Wynn 12-9-16  
Witness (sign and date)

Brian T. McGonigle 12-09-2016  
Brian T. McGonigle  
Registrant (sign and date)

David Sencabaugh  
David Sencabaugh, R. Ph.  
Executive Director  
Board of Registration in Pharmacy

12-9-16  
Effective Date of Probation Agreement

Fully Signed Agreement Sent to Registrant on 12/9/16 by Certified Mail  
No. 7016 0340 0600 4975 9669