

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of )  
CVS Caremark )  
Registration No. DS3416 )  
Expires December 31, 2015 )

PHA-2013-0166

**CONSENT AGREEMENT FOR PROBATION**

The Massachusetts Board of Registration in Pharmacy ("Board") and CVS Caremark ("Licensee" or "Pharmacy"), DS3416, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Pharmacy's record maintained by the Board:

1. The Pharmacy acknowledges that the Board opened a complaint against its Massachusetts pharmacy registration related to the conduct set forth in Paragraph 2, identified as Docket No. PHA-2013-0166.<sup>1</sup>
2. The Board and the Pharmacy acknowledge and agree to the following facts:
  - a. On or about August 28, 2013, the Pharmacy incorrectly dispensed Exjade 500 mg rather than Xeloda 500 mg to a patient. Following this error, the patient was hospitalized and subsequently died.
  - b. The foregoing facts warrant disciplinary action by the Board under G.L. c. 112, §§42A & 61 and 247 CMR 10.03(1)(v).
3. The Board concluded the error described in Paragraph 2 constituted the improper dispensing of a prescription drug and required reporting in accordance with G.L. c. 112, §39D and 247 CMR 6.14.
4. The Pharmacy agrees that its registration shall be placed on PROBATION for three (3) years ("Probationary Period"), commencing with the date on which the Board signs this Agreement ("Effective Date").

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<sup>1</sup> The term "registration" applies to both a current registration and the right to renew an expired registration.

5. During the Probationary Period, the Pharmacy further agrees that it shall comply with all of the following requirements to the Board's satisfaction:
  - a. Pharmacy agrees to comply in all material respects with all laws and regulations governing the practice of pharmacy in Massachusetts and the applicable United States Pharmacopeia;
  - b. Pharmacy agrees to undergo a comprehensive evaluation by a medication safety consultant that includes an assessment of the Pharmacy's technology and a root cause evaluation of incident described in Paragraph 2. Pharmacy agrees to submit a written report from the consultant to the Board on or before August 20, 2015.
  - c. Pharmacy agrees not to employ, hire, or utilize any pharmacy intern on an IPPE or APPE rotation.
6. The Board acknowledges receipt of the Pharmacy's plan of correction pertaining to the Pharmacy's use of technology to prevent medication errors.
7. The Board agrees that in return for the Pharmacy's execution and successful compliance with the requirements of this Agreement it will not prosecute the Complaint.
8. If the Pharmacy has complied to the Board's satisfaction with all the requirements contained in this Agreement, the Probationary Period will terminate **three (3) years** after the Effective Date upon written notice to the Pharmacy from the Board<sup>2</sup>.
9. If the Pharmacy does not materially comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint<sup>3</sup> during the Probationary Period, the Pharmacy agrees to the following:
  - a. The Board may upon written notice to the Pharmacy, as warranted to protect the public health, safety, or welfare:

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<sup>2</sup> In all instances where this Agreement specifies written notice to the Pharmacy from the Board, such notice shall be sent to the Pharmacy's address of record.

<sup>3</sup> The term "Subsequent Complaint" applies to a complaint opened after the Effective Date concerning acts, omissions, or events occurring after the Effective Date, which (1) alleges that the Pharmacy engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation during which the Pharmacy shall have an opportunity to respond.

- i. EXTEND the Probationary Period; and/or
    - ii. MODIFY the Probation Agreement requirements; and/or
    - iii. IMMEDIATELY SUSPEND the Pharmacy's registration.
  - b. If the Board suspends the Pharmacy's registration pursuant to Paragraph 9(a)(iii), the suspension shall remain in effect until:
    - i. the Board provides the Pharmacy written notice that the Probationary Period is to be resumed and under what terms; or
    - ii. the Board and the Pharmacy 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.
10. The Pharmacy agrees that if the Board suspends its registration in accordance with Paragraph 9, it will immediately return its current Massachusetts registration to the Board, by hand or certified mail. The Pharmacy further agrees that upon said suspension, it will no longer be authorized to operate as a pharmacy in the Commonwealth of Massachusetts and shall not in any way represent itself as a pharmacy until such time as the Board reinstates registration or right to renew such registration.
11. The Pharmacy understands that it has a right to formal adjudicatory hearing concerning the Complaint and that during said adjudication it would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on its own behalf, to contest the allegations, to present oral argument, to appeal to the courts, and all other rights as set forth in the Massachusetts Administrative Procedures Act, G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* The Pharmacy further understands that by executing this Agreement it is knowingly and voluntarily waiving its right to a formal adjudication of the Complaints.
12. The Pharmacy acknowledges that it has been at all times free to seek and use legal counsel in connection with the Complaint and this Agreement.

13. The Pharmacy acknowledges that after the Effective Date, the Agreement constitutes a public record of disciplinary action by the Board. The Board may forward a copy of this Agreement to other licensing boards, law enforcement entities, and other individuals or entities as required or permitted by law.
14. The Pharmacy understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.
15. The individual signing this Agreement certifies that he/she is authorized to enter into this Agreement on behalf of the Pharmacy, and that he/she has read this Agreement.

Michael D. Johnson 5/21/15  
Witness (sign and date)

Kim Morese 5/21/15  
Signature and Date

Kim Morese  
Print Name  
CVS Caremark

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

May 22, 2015  
Effective Date of Probation Agreement

Fully Signed Agreement Sent to Registrant on 5/22/15 by  
Certified Mail No. 7012 3460 0003 3582 3131