

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of )  
Denise M. Smigielski )  
PH22896 )

Docket No. PH-05-094

**POST SURRENDER CONSENT AGREEMENT FOR PROBATION**

The Massachusetts Board of Registration in Pharmacy ("Board") and Denise M. Smigielski ("Registrant"), a Pharmacist licensed by the Board, Registration No. PH22896, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Registrant's record maintained by the Board:

1. The Registrant agrees that this Post Surrender Consent Agreement for Probation ("Agreement") will supersede the Consent Agreement for Voluntary Surrender dated June 22, 2006. Further, the Registrant agrees that this Agreement has been executed as a result of the Board's:
  - a. receipt and investigation of a complaint filed against her, Docket PH-05-094, which resulted in the surrender of her pharmacist license, pursuant to a Consent Agreement for Voluntary Surrender with the Board effective June 22, 2006 in resolution of the complaint; and
  - b. consideration of the Registrant's request for license reinstatement and documentation she submitted pursuant to the requirements of the Surrender Agreement referenced in the subparagraph immediately above.
2. The Registrant acknowledges and admits the following facts: (a) From approximately 2003 to 2004, Registrant worked as a pharmacist at Wal-Mart Pharmacy in Raynham Massachusetts and from approximately 2003 to 2004 Registrant worked as a pharmacist at Walgreen's Pharmacy in Randolph Massachusetts (b) Registrant diverted controlled substances from both Pharmacies. Registrant did not have a prescription for said controlled substances and (c) Registrant pled guilty to criminal charges of Uttering a False Prescription and Larceny (over \$250) in Quincy District Court in Quincy, MA on June 12, 2006. The Registrant 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 9.01 (2), (6), (9), 247 CMR 9.06 (1), (2) .
3. The Registrant agrees that her Pharmacist registration shall be placed on PROBATION for an indefinite period of time, commencing with the date on which the Board signs this Agreement ("Effective Date").
4. During the Probationary Period, the Registrant further agrees that she 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 her name and/or address.
  - c. Timely renew her registration.
  - d. Work under the direct supervision of a Registered Pharmacist for at least 488 hours.
    - i. The Registered Pharmacist supervising the Registrant must be registered as a pharmacist in Massachusetts and his or her registration must be in good standing;
    - ii. The Registrant must arrange for the supervising pharmacist to submit a letter directly to the Board within 90 days of the Effective Date or within five business days of obtaining employment as a pharmacist. The supervising pharmacist must verify that he or she (1) holds a registration as a pharmacist in Massachusetts that is in good standing, (2) that he or she has read this Agreement, and (3) that he or she agrees to supervise the Registrant's practice as specified in this Agreement.
    - iii. The Registrant must arrange for the supervising pharmacist to submit a second letter directly to the Board within 100 days of the date of the letter provided pursuant to paragraph 4(d)(ii). In the second letter, the supervising pharmacist must describe the Registrant's practice during the supervisory period, including any violations of standards of practice that may have occurred during that time.
    - iv. The Registrant must arrange for the supervising pharmacist to submit a letter and documentation directly to the Board demonstrating that Registrant completed at least 488 hours of supervised practice.
    - v. The Registrant may not practice without the direct supervision of a registered pharmacist until the supervising pharmacist submits to the Board a letter and documentation directly to the Board demonstrating that Registrant completed at least 488 hours of supervised practice.
5. The Board acknowledges receipt of documentation demonstrating that Registrant passed the NAPLEX and MPJE examinations. The Board and the Registrant acknowledge that receipt of said documentation was a precondition to be met before the Board entered into this Agreement.
6. If and when the Board determines that the Registrant 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 Registrant from the Board<sup>1</sup>.

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

7. If the Registrant 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 Registrant agrees to the following:
- a. The Board may upon written notice to the Registrant, as warranted to protect the public health, safety, or welfare:
    - i. EXTEND the Probationary Period; and/or
    - ii. MODIFY the Probation Agreement requirements; and/or
    - iii. IMMEDIATELY SUSPEND the Registrant's registration.
  - b. If the Board suspends the Registrant's registration pursuant to Paragraph 7(a)(iii), the suspension shall remain in effect until:
    - i. the Board gives the Registrant written notice that the Probationary Period is to be resumed and under what terms; or
    - ii. the Board and the Registrant 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 Registrant agrees that if the Board suspends her registration in accordance with Paragraph 7, she will immediately return her current Massachusetts registration to practice as Pharmacist to the Board, by hand or certified mail. The Registrant further agrees that upon suspension, she will no longer be authorized to engage in practice as a Pharmacist in the Commonwealth of Massachusetts and shall not in any way represent herself as a Pharmacist until such time as the Board reinstates her registration<sup>3</sup>.
9. The Registrant agrees that when she executed the original Consent Agreement for Surrender that she entered into with the Board in final resolution of the above-captioned complaint, Docket No. PH-05-094 effective on June 22, 2006, she knowingly and voluntarily waived her right to a formal adjudication concerning the allegations against her in the complaints, the rights that she would have possessed during such adjudication 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 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 document entitled "Post-Surrender Consent Agreement for Probation," she is knowingly

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

<sup>3</sup> Any evidence of unlicensed practice or misrepresentation as a Pharmacist after the Board has notified the Registrant of her 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.

and voluntarily waiving any rights she has to a formal adjudication concerning the Board's action on her request for termination of her surrender of her pharmacy license in connection with the above-captioned complaint, the rights that she would possess during such an adjudication and to those other rights listed above.

10. The Registrant acknowledges that she has been at all times free to seek and use legal counsel in connection with the Complaint and this Agreement.
11. The Registrant 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 Registrant certifies that she has read this Agreement. The Registrant understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.

*Antt/leson* 8/3/15  
Witness (sign and date)

*Denise M Smigielski* 8/3/15  
Denise M. Smigielski  
Registrant (sign and date)

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

August 5, 2015  
Effective Date of Probation Agreement

Fully Signed Agreement Sent to Registrant on 8/5/15 by Certified Mail  
No. 7014 1820 0000 6749 5295