

Received

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BOARD OF
PHARMACY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Edward A. D'Agostino, R.Ph.)
PH14934)

PHA-2014-0228

CONSENT AGREEMENT FOR PROBATION

The Massachusetts Board of Registration in Pharmacy ("Board") and Edward A. D'Agostino ("Licensee"), PH14934, 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. Licensee acknowledges that the Board opened a complaint against his Massachusetts pharmacist license related to the conduct set forth in Paragraph 2, identified as Docket No. PHA-2014-0228.¹
2. The Board and Licensee acknowledge and agree to the following facts:
 - a. On or about July 20, 2011 to August 13, 2014, and at all relevant times, Licensee worked as the Manager of Record at Rite Aid Pharmacy #10158 ("Pharmacy") located at 1740 Massachusetts Avenue in Cambridge, Massachusetts. As described in 247 CMR 6.07, Licensee, as Manager of Record, was responsible for the operation of the Pharmacy in compliance with 247 CMR 2.00 *et seq.* and applicable state and federal laws and regulations.
 - b. On or about August 13, 2014, Board Inspectors observed that Licensee and Pharmacy performed sterile compounding without required primary or secondary engineering controls and without adherence to United States Pharmacopeia General Chapter 797 ("USP 797") standards. Specifically, the Licensee and Pharmacy compounded prescriptions for a Novolin R and dexamethasone 4 mg/mL injection.

¹ The term "license" applies to both a current license and the right to renew an expired license.

Dagostino, Edward
PH14934
PHA-2014-0228

- c. On or about August 13, 2014, Board Inspectors observed that Licensee and Pharmacy had dispensed the compounded Novolin R and dexamethasone 4 mg/mL injection to a single patient sixteen (16) times from July 20, 2011 to May 8, 2014.
 - d. The foregoing facts warrant action by the Board under M.G.L. c. 112, §§ 42A and 61, 247 CMR 6.01(5)(c), and 247 CMR 9.01(3).
3. Licensee agrees that his pharmacist license shall be placed on PROBATION for 2 years ("Probationary Period"), commencing with the date on which the Board signs this Agreement ("Effective Date").
4. 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 in all material respects with all laws and regulations governing the practice of pharmacy and the United States Pharmacopeia.
 - b. Refrain from all sterile compounding.
 - c. Refrain from serving as Manager of Record.
 - d. Submit documentation demonstrating successful completion of at least five (5) contact hours of continuing education in the area of sterile compounding, to be completed by December 31, 2015.
5. The Board agrees that in return for Licensee's execution and successful compliance with the requirements of this Agreement it will not prosecute the Complaint.
6. If the Licensee has complied to the Board's satisfaction with all the requirements contained in this Agreement, the Probationary Period will terminate **two years** after the Effective Date upon written notice to the Licensee from the Board².
7. If the Licensee does not materially comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint³ during the Probationary Period, the Licensee agrees to the following:

² 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.

³ 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 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.

- 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
 - 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 provides Licensee written notice that the Probationary Period is to be resumed and under what terms; or
 - ii. the Board and 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. Licensee agrees that if the Board suspends his pharmacist license in accordance with Paragraph 7, he will immediately return his current Massachusetts pharmacist license to the Board, by hand or certified mail. Licensee further agrees that upon said suspension, he will no longer be authorized to 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 pharmacist license or right to renew such license.
9. Licensee understands that he has a right to formal adjudicatory hearing concerning the Complaint and that during said adjudication he would possess the right 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 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 that by executing this Agreement he is knowingly and voluntarily waiving his right to a formal adjudication of the Complaints.
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.
11. The Licensee 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.

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.

Edward A. D'Agostino 9/19/15
Witness (sign and date)

Edward A. D'Agostino 9/19/15
Signature and Date

Edward A. D'Agostino
Print Name
Edward A. D'Agostino

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

10-13-15
Effective Date of Probation Agreement

Fully Signed Agreement Sent to Licensee on 10/29/15 by Certified
Mail No. 7614 0510 6001 0374 9442