

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Erick J. Sousa)
PH26365)

Docket No. PHA-2014-0099

POST SURRENDER CONSENT AGREEMENT FOR PROBATION

The Massachusetts Board of Registration in Pharmacy ("Board") and Erick J. Sousa ("Licensee"), a pharmacist licensed by the Board, Registration No. PH26365, 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 Post Surrender Consent Agreement for Probation ("Agreement") will supersede the Consent Agreement for Voluntary Surrender dated May 22, 2014. Further, the Licensee agrees that this Agreement has been executed as a result of the Board's:
 - a. receipt and investigation of a complaint filed against him, Docket PHA-2014-0099, which resulted in the surrender of his pharmacist license, pursuant to a Consent Agreement for Voluntary Surrender with the Board effective May 22, 2014 in resolution of the complaint; and
 - b. consideration of the Licensee's request for license reinstatement and documentation he submitted pursuant to the requirements of the Surrender Agreement referenced in the subparagraph immediately above.
2. The Licensee admits that evidence exists which if proven at hearing could demonstrate the following:
 - a. Licensee diverted oxycodone for personal use from two pharmacies where he worked as a pharmacist. Licensee did not have a valid prescription for said oxycodone.
 - b. While working as a pharmacist, Licensee removed oxycodone tablets from new inventory shipments for his personal use and recorded incorrect quantities of oxycodone in the pharmacy's inventory log books.

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- c. The conduct described in Paragraph 2 is grounds for discipline by the Board pursuant to M.G.L. c. 112, §§ 42A & 61 and 247 CMR 10.03.
3. The Licensee agrees that his pharmacist license shall be placed on PROBATION for 4 years, beginning on the date 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 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. Provide each employer with a copy of this Consent Agreement.
 - e. Submit directly to the Board, according to the conditions and procedures outlined in Attachment 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, controlled substances, 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.
5. During the Probationary Period, the Licensee further agrees that he shall participate in and comply with the Massachusetts Professional Recovery System ("MPRS") program.

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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 and the MPRS Program, the Probationary Period will terminate upon written notice to the Licensee from the Board¹.
7. If the Licensee does not comply with each requirement of this Agreement and the MPRS Program, or if the Board opens a Subsequent Complaint² during the Probationary 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;
 - ii. MODIFY the Probation Agreement requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Licensee's registration.
 - b. If the Board suspends the Licensee's registration 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;
 - 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 the practice of pharmacy in the Commonwealth of Massachusetts and shall not in any way represent himself as a pharmacist until such time as the Board reinstates his license³.

¹ 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.

² 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.

³ Any evidence of unlicensed practice or misrepresentation as a pharmacist after the Board has notified the Licensee of his license 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.

9. The Licensee agrees that when he executed the original Consent Agreement for Voluntary Surrender, effective on May 22, 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 document entitled "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 request for termination of his surrender of his pharmacist license in connection with the above-captioned complaint, 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.
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.

Tracy Brown 12/7/2015
 Witness (sign and date)

Erick J. Sousa 12/7/2015
 Erick J. Sousa
 (sign and date)

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

12/14/15
 Effective Date

Erick J. Sousa
 PH26365
 PHA-2014-0099

Fully Signed Agreement Sent to Licensee on 12/14/15 by
Certified Mail No. 7015 1520 0000 4031 3057

Erick J. Sousa
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