

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Frank Fritz, R.Ph.)
PH16552)
Expires 12/31/2016)

Docket No. PHA-2014-0222

**CONSENT AGREEMENT FOR
SUSPENSION FOLLOWED BY PROBATION**

The Massachusetts Board of Registration in Pharmacy ("Board") and Frank Fritz ("Licensee"), a Registered Pharmacist licensed by the Board, License No. PH16552, 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 acknowledges that the Board opened a complaint against his Massachusetts Pharmacist license¹ related to the conduct set forth in paragraph 2, identified as Docket No. PHA-2014-0222 ("the Complaint").
2. The Board and the Licensee acknowledge and agree to the following facts:
 - a. On or about July 11, 2014, Licensee was the owner and Manager of Record of Aucella Drug ("Pharmacy"), located at 705 Salem Street in Malden, MA.
 - b. 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.
 - c. On or about July 11, 2014, Investigators from Office of Public Protection ("Investigators"), on behalf of the Board, conducted an unannounced Retail Compliance Inspection ("Inspection") of the Pharmacy.

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

d. Specifically, during the Inspection, the Investigators observed the following conditions:

- i. Failure to maintain clean and sanitary conditions in Pharmacy, in violation of 247 CMR 6.02(1);
- ii. Expired medications in inventory, including at least one medication that expired in 2007, in violation of 247 CMR 9.01(10);
- iii. Failure to maintain suitable sink with running hot water, in violation of 247 CMR 6.01(5)(a)(7);
- iv. Illegible handwritten labels on prescriptions dispensed to patients, in violation of M.G.L. c. 94C, § 21;
- v. Failure to properly store medications in a refrigerator that complies with Board Policy No. 2011-11, in violation of 247 CMR 9.01(5);
- vi. Failure to maintain proper security of controlled substances, including door open to street and inside back door left unlocked, in violation of 247 CMR 6.02(6)(f);
- vii. Failure to maintain proper and secure storage of controlled substances, by storing controlled substances indates together with controlled substances outdates in a file cabinet, in violation of 247 CMR 6.02(6)(c);
- viii. Failure to store records in a manner as to maintain patient confidentiality at all times, in violation of 247 CMR 9.01(19);
- ix. Failure to locate Oxycodone 10 mg stock bottle that was recorded in perpetual inventory, in violation of 247 CMR 9.01(14);
- x. At least one attempt by Licensee to dispense prescription of Citalopram from expired stock witnessed (and stopped) by Investigators, in violation of 247 CMR 9.01(10);

Fritz, Frank
PH16552
PHA-2014-0222

- xi. Failure to properly file and maintain retrievable records, in violation of 247 CMR 9.01(14) and 247 CMR 9.05(1)-(3);
 - xii. Failure to properly document information on DEA 222 forms, in violation of 247 CMR 9.01(1);
 - xiii. Failure to comply with the appropriate standards of non-sterile compounding, in violation of 247 CMR 9.01(3);
 - xiv. Failure to maintain readily retrievable records so as to conduct prospective drug utilization review ("DUR") before each new prescription is dispensed or delivered, in violation of 247 CMR 9.07(1)(a) and (2)(a);
 - xv. Inaccessibility of Continuous Quality Improvement ("CQI") Program to pharmacy personnel so as to monitor compliance, collect data, analyze findings, and provide ongoing education, in violation of 247 CMR 15.04(1) and 247 CMR 15.02(1)(a) and (1)(d)-(f);
 - xvi. Failure to maintain QRE records, in violation of 247 CMR 15.04(2);
 - xvii. Failure to maintain a current copy or electronic version of the Massachusetts List of Interchangeable Drugs ("MLID"), including the Orange Book, Additional List, and Exception List, in violation of 247 CMR 6.01(5)(a)(1);
 - xviii. Failure to maintain a current copy or electronic version of a compendia appropriate to the practice setting with quarterly updates, in violation of 247 CMR 6.01(5)(a)(2).
3. The Licensee agrees the conditions described in Paragraph 2 constitute violations of M.G.L. c. 94C, 247 CMR 6.00, 247 CMR 9.00, and 247 CMR 15.00 and warrant disciplinary action by the Board under M.G.L. c. 112, §§ 42A & 61 and 247 CMR 10.03(1)(a), (e), (v), & (x).
4. The Licensee agrees to SUSPENSION of his Pharmacist License for no less than one (1) day ("Suspension Period"), commencing with the date on which the Board signs this Agreement ("Effective Date").

Fritz, Frank
 PH16552
 PHA-2014-0222

5. After the Suspension Period, Licensee agrees that his license shall be placed on PROBATION for no less than five (5) years ("Probationary Period").
6. 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. Notify the Board in writing within ten (10) days of each change in his name and/or address.
 - c. Timely renew his pharmacy license.
 - d. Submit, within 90 days of the Effective Date, an attestation stating that the Licensee has read and understands Section 247 of the Code of Massachusetts Regulations ("CMR"), available at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/200-299cmr/247cmr.html>.
 - e. Submit, within 90 days of the Effective Date, an attestation stating that the Licensee has read, understands, and familiarized himself with the Compliance Inspection Tool, available at <http://www.mass.gov/eohhs/docs/dph/quality/boards/pharmacy/compliance-inspection-tool.pdf>.
 - f. Submit, within 90 days of the Effective Date, documentation demonstrating that the Licensee has taken and passed the Multistate Pharmacy Jurisprudence Examination ("MPJE").
 - g. Refrain from preparing and/or dispensing any sterile compounded medication unless and until Licensee receives written approval from the Board to do so.
 - h. Refrain from preparing and/or dispensing any non-sterile compounded medication unless and until Licensee receives written approval from the Board to do so.

Fritz, Frank
PH16552
PHA-2014-0222

7. If and when the Board determines that the Licensee has complied to the Board's satisfaction with all the requirements contained in Paragraph 5, and no earlier than five (5) years after the date of Effective Date, the Board shall send written notice to the Licensee which shall terminate the Probationary Period.
8. If the Licensee does not comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint² during either the Suspension Period or 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 Suspension Period and/or the Probationary Period; and/or
 - ii. MODIFY the Suspension Period and/or the Probationary Period requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Licensee's Pharmacy license.
 - b. If the Board suspends the Licensee's Pharmacy license pursuant to Paragraph 8(a)(iii), the suspension shall remain in effect until:
 - i. the Board gives the Licensee written notice that the Probationary Period is to resume 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.

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.

9. The Licensee agrees if the Board suspends his Pharmacist license in accordance with Paragraph 8, he will immediately return his current Massachusetts license to practice as a Pharmacist to the Board, by hand or certified mail. The Licensee further agrees that during the Suspension Period and/or 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.
10. The Board agrees that in return for the Licensee's execution and successful compliance with all the requirements of this Agreement, it will not prosecute the Complaint.
11. The Licensee understands that he has a right to formal adjudicatory hearing concerning the Complaints 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.
12. 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.
13. 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.

³ Any evidence of unlicensed practice or misrepresentation as a Pharmacist during the Suspension period and/or 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.

Fritz, Frank
PH16552
PHA-2014-0222

14. 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.

Beverly Wood 4-5-15 Frank Fritz 4-5-15
Witness (sign and date) Frank Fritz, R.Ph.
Licensee (sign and date)

David Sencabaugh 4/8/15
David Sencabaugh, R. Ph.
Executive Director
Board of Registration in Pharmacy

APRIL 30, 2015
Effective Date of Suspension followed by Probation Agreement

Fully Signed Agreement Sent to Licensee on 4-15-15 by
Certified Mail No. 7012 3460 0002 3702 9181

Fritz, Frank
PH16552
PHA-2014-0222