

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
John T. McNerny, R.Ph.)
PH16302)
Expires 12/31/2018)

Docket No. PHA-2016-0064

**CONSENT AGREEMENT FOR
SUSPENSION FOLLOWED BY PROBATION**

The Massachusetts Board of Registration in Pharmacy ("Board") and John T. McNerny ("Licensee"), a pharmacist licensed by the Board, License No. PH16302, 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-2016-0064 ("the Complaint").
2. The Board and the Licensee acknowledge and agree to the following facts:
 - a. During the time period 2012 through April 2016, Licensee worked as a pharmacist at Omnicare of Northern Massachusetts, DS89931, ("Pharmacy") located in Peabody, Massachusetts.
 - b. During the time period 2012 through April 2016, Licensee diverted controlled substances from the Pharmacy. Specifically, Licensee diverted Metoprolol Tartrate, Vitamin C Chewables, and Lipitor.
 - c. Licensee's removal of Metoprolol Tartrate, Vitamin C Chewables, and Lipitor from the pharmacy was unauthorized

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

and was not pursuant to a valid prescription. Licensee did not pay for said controlled substances.

3. The Licensee agrees the conditions described in Paragraph 2 constitute violations of M.G.L. c. 94C, § 34 and warrants disciplinary action by the Board under M.G.L. c. 112, §§ 42A & 61 and 247 CMR 10.03(x).
4. The Licensee agrees to SUSPENSION of his Pharmacist License for no less than thirty (30) days ("Suspension Period"), commencing with the date on which the Board signs this Agreement ("Effective Date").
5. After the Suspension Period, Licensee agrees that his license shall be placed on PROBATION for no less than eleven (11) months ("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, documentation demonstrating successful completion of at least 4 contact hours of continuing education in the area of Ethics within 90 days of the Effective Date.
7. 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.
8. If the Licensee has complied to the Board's satisfaction with all the requirements contained in this Agreement, the Probationary Period will terminate 11 months after the start of the Probationary Period.

McInerney, John T.
PH16302
PHA-2016-0064

9. 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 9(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.

10. The Licensee agrees if the Board suspends his Pharmacist license in accordance with Paragraph 9, 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

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.

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.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

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.

James J. Gardini 2-24-17
Witness (sign and date)

John T. McNerny 2/24/17
John T. McNerny, R.Ph.
Licensee (sign and date)

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

3-8-17
Effective Date of Suspension followed by Probation Agreement

Fully Signed Agreement Sent to Licensee on 3/10/17 by
Certified Mail No. 7016 1370 0001 4117 2119

McInerny, John T.
PH16302
PHA-2016-0064