

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

\_\_\_\_\_  
In the Matter of )  
Kevin A. Merk, R.Ph. )  
License No. PH27156 )  
Expires December 31, 2018 )  
\_\_\_\_\_ )

Docket No. PHA-2016-0231

CONSENT AGREEMENT FOR REPRIMAND

The Massachusetts Board of Registration in Pharmacy ("Board") and Kevin A. Merk ("Licensee"), a pharmacist licensed by the Board, license number PH27156 ("License"), 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 License related to the conduct set forth in Paragraph 2, identified as docket number PHA-2016-0231 (the "Complaint").
2. The Board and the Licensee acknowledge and agree to the following facts:
  - a. On or about April 13, 2016, Office of Public Protection investigators and federal Drug Enforcement Administration ("DEA") diversion investigators conducted a site visit at Family Pharmacy at Heywood Hospital in Gardner, Massachusetts ("Pharmacy").
  - b. Licensee was Manager of Record ("MOR") of the Pharmacy between January 2013 and May 2015 and then from May 4, 2016 until September 22, 2016.
  - c. As a result of the site visit, the following deficiencies were observed:
    - i. Pharmacy failed to maintain prescription records for two years and stored prescription records off site without DEA approval in violation 21 CFR 1304.04(a) and 247 CMR 6.07(1)(b), as evidenced by the prescriptions stored at the Pharmacy only went back to June 2014;

- ii. Pharmacy failed to transfer Schedule II controlled substances without corresponding DEA 222 forms and failed to maintain complete and accurate records in violation of 21 CFR 1305.03, 21 CFR 1304.22(c) and 247 CMR 6.07(1)(b);
  - iii. Licensee failed to maintain adequate security controls by posting his CSOS agreement on a bulletin board and providing his credentials to other pharmacists in violation of 21 CFR 1311.30(c) and 247 CMR 6.07(1)(c);
  - iv. Licensee failed to maintain security of Schedule II controlled substances by leaving safe combination available to other pharmacy staff and failing to keep safe locked in violation of 247 CMR 6.07(1)(c) and 247 CMR 9.01(5); and
  - v. Licensee failed to establish, monitor and enforce policies and procedures governing the security of the Pharmacy by permitting non-pharmacists to possess keys and alarm codes in violation of 247 CMR 6.07(1)(c) and (e).
3. The Licensee acknowledges that the foregoing facts warrant disciplinary action by the Board under M.G.L. c. 112, §§ 42A and 61 and under 247 CMR 10.03(1)(a) and (v).
4. The Licensee agrees that the Board shall impose a REPRIMAND on his License based on the facts admitted in Paragraph 2, effective as of the date on which the Board signs this Agreement ("Effective Date").
5. The Board agrees that in return for the Licensee's execution of this Agreement, the Board will not prosecute the Complaint.
6. The 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 Complaint.

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7. 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.
8. The Licensee acknowledges that after the Effective Date, the Agreement constitutes a public record of disciplinary action by the Board subject to the Commonwealth of Massachusetts' Public Records Law, M.G.L. c. 4, § 7. 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.
9. 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.

Shelley Lab 6-15-17  
Witness (sign and date)

[Signature] 6/15/17  
Kevin A. Merk, R.Ph. (sign and date)

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

6-21-2017  
Effective Date of Reprimand Agreement

Fully Signed Agreement Sent to Registrant on 6/21/17 by

Certified Mail No. 7015 1730 0000 7974 1202

Kevin A. Merk  
PH27156  
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