

COMMONWEALTH OF MASSACHUSETTS

Received

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY JUN 06 2011

BOARD OF
PHARMACY

In the Matter of)
Patrick J. Clark, R.Ph.)
Pharmacist Registration No. 25373)

Docket Nos. PHA20090008
PHA20110096

AMENDED CONSENT AGREEMENT

The Board of Registration in Pharmacy ("Board") and Patrick J. Clark, R.Ph. ("Registrant"), a pharmacist registered by the Board (Pharmacist Registration No. 25373), do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the file of Registrant which is maintained by the Board:

1. The parties enter into this Amended Consent Agreement ("this Agreement") in resolution to of a complaint pending against Registrant before the Board as Complaint Docket No. PHA20110096.
2. Registrant acknowledges and agrees he has surrendered his Massachusetts pharmacist license No. PH25373 to the Board, effective April 19, 2011, in accordance with the requirements of Paragraph 10. of the Consent Agreement he entered into with the Board, effective September 9, 2009, and more fully described in Paragraph 4.
3. Registrant acknowledges that he admitted (April 4, 2011, statements to employer and April 15, 2011, letter to Board) to the diversion for personal use of approximately 30 does of each of Vicodin (hydrocodone Bitartrate with Acetaminophen 7.5/325 mg), Ambien (zolpidem tartrate 5 mg) and Xanax (alprazolam sustained release 1 mg) during March 2011, while employed at Preferred Pharmacy Solutions located at 35 Avco Road in Haverhill, Massachusetts.
4. Registrant acknowledges that on or about September 01, 2009, the Registrant entered into a Consent Agreement effective September 9, 2009, in resolution of Complaint Docket No. PHA20090008 (the "2009 Consent Agreement") with the Board in which Registrant agreed to the discipline of his pharmacist license (25373) a result of his admission to the diversion, for personal use, of the controlled substances Morphine Sulfate 25mg/ml, Morphine Sulfate 50mg/ml, Hydromorphone 10mg/ml and Methadone 10mg/ml, respectively, from on or about September 2008 through February 2009, while employed at New England Home Therapies located at 337 Turnpike Road in Southborough, Massachusetts, in violation of G.L. c.94C, s. 37.

5. Registrant further acknowledges that on or about May 11, 2010, the Board terminated the suspension period and placed your license on probation in accordance with the terms and conditions of the 2009 Consent Agreement.

6. Registrant has entered into a contract with the Massachusetts Professional Recovery System ("MPRS") dated May 5, 2009 ("Contract"). Registrant acknowledges that as a result of the conduct referenced in Paragraph 2. and more specifically described in Complaint Docket No. PHA20110096, the Contract term shall be extended for a five year period, commencing as of the effective date of this Agreement, with the terms of Contract, as extended and amended, being incorporated into the terms of this Agreement.

7. Accordingly, Registrant freely agrees to the following:

a. Registrant agrees that his conduct described in Paragraph 2 above constitutes additional professional misconduct warranting Board additional disciplinary action pursuant to G.L. c. 112, s. 61 and Board Regulations 247 CMR 9.01(1) and 10.03(1), subsections (a), (b), (e), (l), (u) and (w);

b. Registrant agrees to abide by all of the terms and conditions of the Contract for the five year duration of the Contract, as extended and amended ("Contract Period") unless sooner dissolved by the MPRS Committee ("Committee") and the Board;

c. Registrant agrees that during the initial twenty-four (24) months (two years) of the Contract Period, or such longer period as the Board may determine to be appropriate, Registrant shall surrender his pharmacist license to the Board (the "Surrender Period"). After the initial twenty-four (24) months (two years) of the Contract Period, Registrant may petition the Board to terminate the Surrender Period. Registrant shall be required to be in compliance with the terms and conditions of the Contract and this Agreement to petition the Board to terminate the Surrender Period. The Board may determine that the Surrender Period shall be extended for an additional twelve month period or such longer period as the Board may determine to be appropriate. At the time of any petition to terminate the Probation Period, the Board will consider all information pertaining to Registrant's fitness to resume the practice of pharmacy, including any criminal history or pending criminal matters occurring after the date of this Agreement. If the Board determines that Registrant is in compliance with all required terms of this Agreement and the Contract, the Board may terminate the Surrender Period and place Registrant's license on probationary status for a five year period or such other period determined appropriate by the Board, commencing on the date of the termination of the Surrender Period (the "Probation Period"). Termination of the Probation Period shall be governed by Paragraph 9 of this Agreement. The Registrant may be required to appear before the Board in connection with any petition to terminate the Surrender Period. The Board will not consider such a petition without a recommendation by the MPRS Committee; and

d. the Registrant agrees to return a signed copy of this Agreement to the Board within ten (10) days of receipt.

8. During the Surrender and Probation Periods as applicable, Registrant agrees:

a. to undergo monitoring by the Board which shall include random drug/alcohol screenings as required by MPRS or the Board;

b. Registrant may not act as manager of record/director of pharmacy in any pharmacy setting;

c. to refrain from the consumption of alcohol and the use of all controlled substances unless specifically prescribed by a treating physician and approved by MPRS, who has been informed of the Registrant's history, for the purpose of prescribing for a legitimate medical purpose and in the usual course of the physician's practice;

d. that he may not self prescribe controlled substances (acting under any collaborative practice agreement) or self-fill any prescriptions and shall adhere to all laws and regulations pertaining to the dispensing, administration and distribution of controlled substances; and

e. that he hereby waives any privileges concerning and all information, reports and records relating to his MPRS contract and the disclosure of such information to the Board. This release includes the Registrant's waiver of any privileges and immunities he may possess regarding all material covered by 42 CFR Part 2 and the Criminal Offender Records Information (CORI) Act (G.L. c. 6, §§ 167-178) and authorizes the Board to have access to all such information and records.

9. Registrant agrees that the termination of the Probation Period shall be granted only if he has met the following conditions:

a. Registrant must apply in writing to the Board for termination of the Probation Period. The Board will not consider such a request without a recommendation by the MPRS Committee and the Board may request a conference to discuss the merits of such request;

b. Registrant has provided documentation, satisfactory to the Board that he has successfully completed the Contract; and

c. Registrant has fully complied with all terms and conditions of this Agreement and meets all other requirements for licensure.

10. This Agreement and its contents shall be incorporated into the records maintained by the Board, are matters of public record, subject to disclosure, without limitation, to the public and equivalent state licensing boards.

11. The Board agrees that in return for the Registrant's execution of this Agreement, the Board will not advance the prosecution of the Registrant pursuant to the Complaint. Any and all other rights of the Board to take action within the scope of its authority are expressly reserved.

12. Registrant understands and agrees that his failure to comply with the terms of this Agreement shall nullify the representations contained in Paragraph 11, and permit the Board to initiate formal adjudicatory action under the State Administrative Procedure Act, G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 *et. seq.*

13. Registrant understands and agrees that, at any time during the Contract or Probation Periods, upon a determination by the Board of any violation of any of the terms and conditions of this Agreement or the Contract, as set forth in Paragraphs 8 and 15, or any violation of the applicable laws, rules and regulations governing the practice of pharmacy, Registrant shall be required to IMMEDIATELY SURRENDER his pharmacist license to the Board without the requirement of any adjudicatory proceedings pursuant to G.L. c. 30A.

14. Registrant understands and agrees that should he be found to have violated any of the statutes and/or regulations governing the practice of pharmacy for conduct occurring during the Probation Period, the Board may consider the conduct of the Registrant described in Paragraphs 2. and more fully described in Complaint Docket Nos. PHA20110096 and PHA20090008 in determining an appropriate sanction for the subsequent offense.

15. Registrant understands and agrees that any violation of this Agreement and in particular, any of the following may be considered by the Board to be a violation of this Agreement requiring Registrant to IMMEDIATELY SURRENDER his license to the Board:

- a. A sample of Registrant's blood, breath or other substance is found to contain any evidence of alcohol or any controlled substance in violation of this Agreement or the Contract;
- b. the Board or MPRS has other reliable evidence that Registrant has used alcohol or any controlled substance in violation of this Agreement or the Contract;
- c. Registrant misses, or fails to call for any random screening tests, excluding an administrative or laboratory error beyond the control of the Registrant;
- d. Registrant refuses to cooperate with MPRS in its monitoring; or
- e. Registrant withdraws any waiver or release provided and/or filed in connection with this Agreement or the Contract.

16. Registrant understands and agrees that his decision to enter into this Agreement and to accept the terms and conditions herein described is a final act and is not subject to reconsideration or judicial review.

17. Registrant states that he has used legal counsel in connection with his decision to enter into this Agreement or, if he did not, that he had an opportunity to do so and that his decision to enter into this Agreement was made of his own free will.

18. Registrant certifies that he has read this document entitled "Amended Consent Agreement". The Registrant understands that, by executing this Agreement, he is waiving his right to a formal hearing at which he would possess the rights 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 court in the event of an adverse ruling, and all other rights set forth in G.L. c. 30A and 801 CMR 1.01 *et seq.* Registrant states that he further understands that in executing this document entitled "Consent Agreement", he is knowingly and voluntarily waiving his right to a formal hearing and to all of the above listed rights.

Alan Evans
Witness (sign name)

ALAN EVANS
Witness (print name)

Patrick J. Clark
Patrick J. Clark, R.Ph.

Effective Date: 06-01-11

BOARD OF REGISTRATION
IN PHARMACY

By: Stanley B. Walczyk
Stanley B. Walczyk, R.Ph.
President

Date: 6/1/11

Decision No. 2038