

Received

COMMONWEALTH OF MASSACHUSETTS

JUL 31 2015

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

BOARD OF
PHARMACY

_____)
In the Matter of)
Paul Guarino)
License No. PH21657)
License Expires 12/31/16)
_____)

Docket No. PHA-2014-0140

CONSENT AGREEMENT FOR SUSPENSION
FOLLOWED BY PROBATION

The Massachusetts Board of Registration in Pharmacy ("Board") and Paul Guarino (Registrant), a Pharmacist licensed by the Board, Registration No. PH21657, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Registrant's record maintained by the Board:

1. The Registrant acknowledges that a complaint was filed with the Board against his Massachusetts Pharmacist registration (Registration) related to the conduct set forth in paragraph 2, identified as Docket No. PHA-2014-0140 (the Complaint).¹
2. The Board and Registrant acknowledge and agree that substantial evidence exists which, if proven at hearing, would demonstrate the following:
 - a. Registrant worked as a pharmacist for the Cambridge Health Commission d/b/a the Cambridge Health Alliance at Whidden Memorial Hospital's pharmacy department from February 4, 2002 until May 29, 2012 and was "interim" Manager of Record from March 3, 2009 until May 29, 2012;
 - b. Between June, 2009 and May, 2012, the Registrant ordered approximately 1,600 tablets of Oxycodone 5mg and 2,000 tablets of Oxycodone/Acetaminophen 5/325 from the pharmacy department's wholesaler and thereafter received and diverted same on approximately 36 separate occasions;
 - c. Registrant kept a 10mg/ml (50 ml) vial of Hydromorphone in his unlocked desk drawer. It was signed into the CII safe as Fentanyl 2500/50ml but was never signed out by anyone;

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

- d. As "interim" Manager of Record, the Registrant rarely performed Schedule II perpetual inventories in the 10 day time frame required by law, if at all. He knew about long standing discrepancies in the CII safe and did not resolve those discrepancies but instead perpetuated same by confirming incorrect counts as correct. Furthermore, two "Copy 2" DEA Form 222s, dated December 17, 2010 and March 8, 2011, were likewise located in the Registrant's desk drawer. The Registrant never mailed either to the Drug Enforcement Administration;
 - e. The Registrant was prosecuted in the Malden District Court (Docket No. [REDACTED] and on September 16, 2014 he admitted to sufficient facts to 2 counts of Larceny over \$250 (each a felony), violations of G.L. c. 266, § 30. The allegations stem from the allegations contained in subparagraph b, above. The Registrant received a Continuance Without a Finding from the Court and was placed on probation for 5 years; and
 - f. Registrant acknowledges that his conduct constituted a failure to comply with the Board'd regulations at 247 CMR Code of Massachusetts Regulation ("CMR") 9.01 (1), (2), (5), (14) as well as Massachusetts General Laws (M.G.L.) c. 94C, § 34 and warrants disciplinary action by the Board under M.G.L. c. 112, §§ 42A and 61 and Board regulations at 247 CMR 10.03(1)(a), (b), (c), (k), (l), (n), (r), (u), (v), (w), and (x).
3. The Board and Registrant agree that his license shall be suspended for one year. Recognizing, however, that the Registrant has participated in MPRS since July 9, 2013, and by all accounts, has remained engaged and fully compliant with the terms and conditions thereof, this term is fulfilled. upon receipt of the following:
 - a. evidence that the Registrant has not practiced in the profession of pharmacy as a pharmacist since July 9, 2013;
 - b. acknowledgement from the Registrant that he has re-read and understands the provisions of 247 CMR: Board of Registration in Pharmacy and M.G.L. c. 94C;
 - c. evidence that the Registrant is current with his continuing education requirements; and
 - d. evidence that the Registrant has successfully completed a Board recognized three-module pharmacy refresher course.
 4. The Registrant agrees that upon satisfaction of the provisions of Paragraph 3, his license shall be placed on probation for no less than 4 years.
 5. During the Probationary Period, the Registrant further agrees that he shall:

- a. comply in all material respects with all laws and regulations governing the practice of pharmacy and the United States Pharmacopeia as well as all federal and Massachusetts laws and regulations, generally;
 - b. comply with the terms set by the Malden District Court and the Department of Probation relative to Docket No. [REDACTED];
 - c. continue to stay engaged in, comply with, and successfully complete MPRS;²
 - d. refrain from undertaking the role or responsibilities of a Manager of Record for any pharmacy for the term of his probation;
 - e. not maintain employment as a pharmacist unless the (prospective) Manager of Record agrees to provide and actually provides, quarterly progress reports to the Board with respect to the Registrant;
 - f. be subject to the provisions of Paragraph 8 if these quarterly reports are not provided or if provided, evidence non-compliance with any of the terms set forth in this Consent Agreement;
 - g. notify the Board in writing within 10 days of each change in his name or address; and
 - h. timely renew his Registration.
6. The Board agrees that in return for the Registrant's execution and successful compliance with all the requirements of this Agreement, the Board will not prosecute the Complaint.
 7. If and when the Board determines that the Registrant has complied to the Board's satisfaction with all the requirements contained in this Agreement, the Probationary Period will terminate no earlier than four (4) years after his Probationary Period begins, upon written notice to the Registrant from the Board.³

² The Registrant must abide by the terms of MPRS, including but not limited to: he must abstain from the use of alcohol and all substances of abuse or substances with potential for abuse and if he is prescribed a controlled substance, the Registrant must notify the Board within 3 days and arrange for his subscriber 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. Furthermore, the Registrant must submit to urine screens, attend Alcoholics and/or Narcotics Anonymous as well as individual and/or group therapy, as recommended by MPRS.

³ In all instances where this Agreement specifies written notice to the Registrant from the Board, such notice shall be sent to the Registrant's address of record.

8. If the Registrant does not comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint during the Probationary Period, the Registrant agrees to the following:⁴
- a. The Board may upon written notice to the Registrant, as warranted to protect the public health, safety, or welfare:
 - i. EXTEND the Probationary Period; and/or
 - ii. MODIFY the Agreement requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Registrant's registration.
 - b. If the Board suspends the Registrant's registration pursuant to Paragraph 8(a)(iii), the suspension shall remain in effect until:
 - i. the Board gives the Registrant written notice that the Probationary Period is to be resumed and under what terms; or
 - ii. the Board and the Registrant 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.
9. The Registrant agrees that if the Board suspends his registration in accordance with Paragraph 8, he will immediately return his current Registration to the Board, by hand or certified mail. The Registrant further agrees that upon suspension, he will no longer be authorized to engage in practice as a Pharmacist in the Commonwealth of Massachusetts and shall not in any way represent himself as a Pharmacist until such time as the Board reinstates his registration.⁵
10. The Registrant 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, G.L. c. 30A, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* The

⁴ The term "Subsequent Complaint" applies to a complaint opened after the Effective Date of this Consent Agreement, which (1) alleges that the Registrant engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation, during which the Registrant shall have an opportunity to respond.

⁵ Any evidence of unlicensed practice or misrepresentation as a Pharmacist after the Board has notified the Registrant of his registration 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.

Registrant further understands that by executing this Agreement he is knowingly and voluntarily waiving his right to a formal adjudication of the Complaint.

11. The Registrant acknowledges that he has been represented by legal counsel in connection with the Complaint and this Agreement.
12. The Registrant acknowledges that after the Effective Date, the Agreement constitutes a public record subject to the Commonwealth of Massachusetts' Public Records Law, G.L. c. 4, §7.
13. The Registrant certifies that he has read this Agreement. The Registrant understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.

Arlene Guarino 7/29/15
Witness (sign and date)

Paul Guarino 7/29/2015
Paul Guarino
Registrant (sign and date)

Arlene Guarino
Witness (print name)

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

8/7/15
Effective Date of Agreement

Fully Signed Agreement Sent to Registrant on 8/7/15 by Certified Mail
No. 7014 2120 0002 1353 5466

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

Received
DEC 24 2015

In the Matter of)
Paul Guarino)
License No. PH21657)
License Expires 12/31/16)
_____)

BOARD OF
Docket No. PHA-2014-0140 PHARMACY

MODIFIED CONSENT AGREEMENT FOR SUSPENSION
FOLLOWED BY PROBATION

The Massachusetts Board of Registration in Pharmacy ("Board") and Paul Guarino ("Registrant"), a Pharmacist licensed by the Board, Registration No. PH21657, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Registrant's record maintained by the Board:

1. The Registrant acknowledges that a complaint was filed with the Board against his Massachusetts Pharmacist registration ("Registration") related to the conduct set forth in paragraph 2, identified as Docket No. PHA-2014-0140 (the Complaint).¹
2. The Board and Registrant acknowledge and agree that substantial evidence exists which, if proven at hearing, would demonstrate the following:
 - a. Registrant worked as a pharmacist for the Cambridge Health Commission d/b/a the Cambridge Health Alliance at Whidden Memorial Hospital's pharmacy department from February 4, 2002 until May 29, 2012 and was "interim" Manager of Record from March 3, 2009 until May 29, 2012;
 - b. Between June, 2009 and May, 2012, the Registrant ordered approximately 1,600 tablets of Oxycodone 5mg and 2,000 tablets of Oxycodone/Acetaminophen 5/325 from the pharmacy department's wholesaler and thereafter received and diverted same on approximately 36 separate occasions;
 - c. Registrant kept a 10mg/ml (50 ml) vial of Hydromorphone in his unlocked desk drawer. It was signed into the CII safe as Fentanyl 2500/50ml but was never signed out by anyone;

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

- d. As "interim" Manager of Record, the Registrant rarely performed Schedule II perpetual inventories in the 10 day time-frame required by law, if at all. He knew about long standing discrepancies in the CII safe and did not resolve those discrepancies but instead perpetuated same by confirming incorrect counts as correct. Furthermore, two "Copy 2" DEA Form 222s, dated December 17, 2010 and March 8, 2011, were likewise located in the Registrant's desk drawer. The Registrant never mailed either to the Drug Enforcement Administration;
 - e. The Registrant was prosecuted in the Malden District Court (Docket No. 1350CR003230) and on September 16, 2014 he admitted to sufficient facts to 2 counts of Larceny over \$250 (each a felony), violations of G.L. c. 266, § 30. The allegations stem from the allegations contained in subparagraph b, above. The Registrant received a Continuance Without a Finding from the Court and was placed on probation for 5 years; and
 - f. Registrant acknowledges that his conduct constituted a failure to comply with the Board's regulations at 247 CMR Code of Massachusetts Regulation ("CMR") 9.01 (1), (2), (5), (14) as well as Massachusetts General Laws (M.G.L.) c. 94C, § 34 and warrants disciplinary action by the Board under M.G.L. c. 112, §§ 42A and 61 and Board regulations at 247 CMR 10.03(1)(a), (b), (e), (k), (l), (n), (r), (u), (v), (w), and (x).
3. The Board and Registrant agree that his license shall be suspended for one year. Recognizing, however, that the Registrant has participated in MPRS since July 9, 2013, and by all accounts, has remained engaged and fully compliant with the terms and conditions thereof, this term is fulfilled, upon receipt of the following:
 - a. evidence that the Registrant has not practiced in the profession of pharmacy as a pharmacist since July 9, 2013;
 - b. acknowledgement from the Registrant that he has re-read and understands the provisions of 247 CMR: Board of Registration in Pharmacy and M.G.L. c. 94C; and
 - c. evidence that the Registrant is current with his continuing education requirements.
 4. The Registrant agrees that upon satisfaction of the provisions of Paragraph 3, his license shall be placed on probation for no less than 4 years.
 5. During the Probationary Period, the Registrant further agrees that he shall:

- a. comply in all material respects with all laws and regulations governing the practice of pharmacy and the United States Pharmacopeia as well as all federal and Massachusetts laws and regulations, generally;
 - b. comply with the terms set by the Malden District Court and the Department of Probation relative to Docket No. 1350CR003230;
 - c. continue to stay engaged in, comply with, and successfully complete MPRS;²
 - d. refrain from undertaking the role or responsibilities of a Manager of Record for any pharmacy for the term of his probation;
 - e. not maintain employment as a pharmacist unless the (prospective) Manager of Record agrees to provide and actually provides, quarterly progress reports to the Board with respect to the Registrant;
 - f. be subject to the provisions of Paragraph 8 if these quarterly reports are not provided or if provided, evidence non-compliance with any of the terms set forth in this Consent Agreement;
 - g. notify the Board in writing within 10 days of each change in his name or address;
 - h. timely renew his Registration;
 - i. submit evidence that the Registrant has successfully completed a Board recognized three-module pharmacy refresher course, within 90 days of the Effective Date; and
 - j. notify the Probation Monitor upon each change in employment.
6. The Board agrees that in return for the Registrant's execution and successful compliance with all the requirements of this Agreement, the Board will not prosecute the Complaint.

² The Registrant must abide by the terms of MPRS, including but not limited to: he must abstain from the use of alcohol and all substances of abuse or substances with potential for abuse and if he is prescribed a controlled substance, the Registrant must notify the Board within 3 days and arrange for his subscriber 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. Furthermore, the Registrant must submit to urine screens, attend Alcoholics and/or Narcotics Anonymous as well as individual and/or group therapy, as recommended by MPRS.

7. If and when the Board determines that the Registrant has complied to the Board's satisfaction with all the requirements contained in this Agreement, the Probationary Period will terminate no earlier than four (4) years after his Probationary Period begins, upon written notice to the Registrant from the Board.³
8. If the Registrant does not comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint during the Probationary Period, the Registrant agrees to the following:
 - a. The Board may upon written notice to the Registrant, as warranted to protect the public health, safety, or welfare:
 - i. EXTEND the Probationary Period; and/or
 - ii. MODIFY the Agreement requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Registrant's registration.
 - b. If the Board suspends the Registrant's registration pursuant to Paragraph 8(a)(iii), the suspension shall remain in effect until:
 - i. the Board gives the Registrant written notice that the Probationary Period is to be resumed and under what terms; or
 - ii. the Board and the Registrant 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.
9. The Registrant agrees that if the Board suspends his registration in accordance with Paragraph 8, he will immediately return his current Registration to the Board, by hand or certified mail. The Registrant further agrees that upon suspension, he will no longer be authorized to engage in practice as a Pharmacist in the Commonwealth of Massachusetts and shall not in any way represent himself as a Pharmacist until such time as the Board reinstates his registration.⁵

³ In all instances where this Agreement specifies written notice to the Registrant from the Board, such notice shall be sent to the Registrant's address of record.

⁴ The term "Subsequent Complaint" applies to a complaint opened after the Effective Date of this Consent Agreement, which (1) alleges that the Registrant engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation, during which the Registrant shall have an opportunity to respond.

⁵ Any evidence of unlicensed practice or misrepresentation as a Pharmacist after the Board has notified the Registrant of his registration 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.

10. The Registrant 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, G.L. c. 30A; and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* The Registrant further understands that by executing this Agreement he is knowingly and voluntarily waiving his right to a formal adjudication of the Complaint.
11. The Registrant acknowledges that he has been represented by legal counsel in connection with the Complaint and this Agreement.
12. The Registrant acknowledges that after the Effective Date, the Agreement constitutes a public record subject to the Commonwealth of Massachusetts' Public Records Law, G.L. c. 4, §7.
13. The Registrant certifies that he has read this Agreement. The Registrant understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.
14. This Modified Consent Agreement for Suspension followed by Probation supercedes all prior agreements, including the Consent Agreement for Suspension followed by Probation, August 7, 2015.

Adeline Guarino 12/22/15
 Witness (sign and date)

Paul Guarino 12/22/2015
 Paul Guarino
 Registrant (sign and date)

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

12-22-15
 Effective Date of Agreement

Fully Signed Agreement Sent to Registrant on 1/19/16 by Certified Mail
 No. 7015 3610 0001 7079 9956

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 - b. comply with the terms set by the Malden District Court and the Department of Probation relative to Docket No. 1350CR003230;
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⁴ The term "Subsequent Complaint" applies to a complaint opened after the Effective Date of this Consent Agreement, which (1) alleges that the Registrant engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation, during which the Registrant shall have an opportunity to respond.

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13. The Registrant certifies that he has read this Agreement. The Registrant understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal or judicial review.

Adeline Guarino 7/29/15
Witness (sign and date)

Paul Guarino 7/29/2015
Paul Guarino
Registrant (sign and date)

Adeline GUARINO
Witness (print name)

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

8/7/15
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Fully Signed Agreement Sent to Registrant on 8/7/15 by Certified Mail
No. 7014 2120 0002 1353 5466