

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Sheldon Rubin, RPh)
PH16113)

PHA-2016-0149

CONSENT AGREEMENT FOR PROBATION

The Massachusetts Board of Registration in Pharmacy ("Board") and Sheldon Rubin ("Licensee"), PH16113, 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. Licensee acknowledges that a complaint has been opened by the Board against his Massachusetts pharmacy license related to the conduct set forth in Paragraph 2, identified as Docket No. PHA-2016-0149.¹
2. The Board and Licensee acknowledge and agree to the following facts:
 - a. Licensee was the Manager of Record of the Medical Center Pharmacy ("Pharmacy"), DS1451, located in North Billerica, Massachusetts, on March 30, 2016 and at all relevant times.
 - 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. During a Board inspection on or about March 30, 2016, as well as the subsequent investigation, Board Investigators observed the following violations:
 - i. The Pharmacy failed to monitor and log refrigerator and freezer temperatures, in violation of 247 CMR 9.01(5) and Board Policy No. 2011-01.

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

Sheldon Rubin
PH16113
PHA-2016-0149

- ii. The Pharmacy failed to maintain an accurate perpetual inventory of Schedule II controlled substances, in violation of 247 CMR 9.01(14).
 - iii. The Pharmacy failed to conduct and/or maintain a biennial inventory, in violation of 9.01(1) and 21 CFR 1304.11.
 - iv. The Pharmacy failed to maintain adequate security for controlled substances, in violation of 247 CMR 6.02(6). Specifically, the Pharmacy lost at least 18,920 ml promethazine-codeine 6.25-10 mg/ml oral syrup to employee diversion.
3. The Board and Licensee acknowledge and agree that the facts described in Paragraph 2 warrant disciplinary action by the Board under M.G.L. c. 12, §§ 42A and 61 and 247 CMR 10.03(1)(a), (b), and (v).
4. Licensee agrees that his pharmacist license shall be placed on PROBATION for one (1) year ("Probationary Period"), commencing with the date on which the Board signs this Agreement ("Effective Date").
5. During the Probationary Period, the Licensee agrees that he shall comply in all material respects with all laws and regulations governing the practice of pharmacy and the United States Pharmacopeia.
6. During the Probationary Period, the Licensee agrees that he will not serve as the Manager of Record of the Pharmacy.
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 one (1) year after the Effective Date upon written notice to the Licensee from the Board².

² In all instances where this Agreement specifies written notice to the Licensee from the Board, such notice shall be sent to the Licensee's address of record.

Sheldon Rubin
PH16113
PHA-2016-0149

9. If the Licensee does not materially comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint³ during 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 Probationary Period; and/or
 - ii. MODIFY the Probation Agreement requirements; and/or
 - iii. IMMEDIATELY SUSPEND the Licensee's pharmacist 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 provides Licensee written notice that the Probationary Period is to be resumed and under what terms; or
 - ii. the Board and 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. Licensee agrees that if the Board suspends his pharmacist license in accordance with Paragraph 9, he will immediately return his current Massachusetts pharmacist license to the Board, by hand or certified mail. Licensee further agrees that upon said suspension, he will no longer be authorized to 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 pharmacist license or right to renew such license.
11. 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

³ The term "Subsequent Complaint" applies to a complaint opened after the Effective Date concerning acts, omissions, or events occurring 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.

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 Registrant 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.
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.

David DiCaro 7/25/17 [Signature] 7/25/17
Witness (sign and date) Signature and Date

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

8-8-17
Effective Date of Probation Agreement

Fully Signed Agreement Sent to Licensee on 8/9/17 by
Certified
Mail No. 7015 3010 0001 7080 3417

Sheldon Rubin
PH16113
PHA-2016-0149