

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Walgreens # 4393)
DS2882)

PHA-2020-0051

CONSENT AGREEMENT FOR PROBATION

The Massachusetts Board of Registration in Pharmacy ("Board") and Walgreens # 4393 ("Licensee" or "Pharmacy"), a pharmacy licensed by the Board, DS2882, do hereby stipulate and agree that the following information shall be entered into and become a permanent part of the Pharmacy's records maintained by the Board:

1. The Pharmacy acknowledges the Board opened a complaint against its pharmacy license related to the conduct set forth in Paragraph 2, identified as Docket No. PHA-2020-0051 ("the Complaint").¹
2. The Board and the Licensee acknowledge and agree to the following facts:
 - a. On or about July 8, 2020, the Pharmacy discovered it lost # 100 methylphenidate 10 mg tablets.
 - b. The Pharmacy's investigation did not determine the cause of the loss of said diazepam.
3. The facts described in Paragraph 2 warrant disciplinary action by the Board under M.G.L. c. 112, §§ 42A and 61 and under 247 CMR 10.03(1)(v).
4. The loss of # 100 methylphenidate 10 mg tablets described in Paragraph 2 represents the Pharmacy's second unknown loss of Schedule II controlled substances in an 18 month time period.
 - a. The Pharmacy lost # 108 oxycodone 5 mg tablets in or about May 2019, resulting in Complaint PHA-2019-0074.

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

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- b. Complaint PHA-2019-0074 was resolved with a Consent Agreement for Reprimand.
5. The Pharmacy agrees that its 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").
6. During the Probationary Period, the Pharmacy further agrees that it shall comply with all of the following requirements to the Board's satisfaction:
 - a. Comply with all laws and regulations governing the practice of pharmacy in Massachusetts.
 - b. Within 30 days from Effective Date, conduct an exact count of all controlled substances in Schedules II - V. The Pharmacy shall maintain documentation of the exact counts. Said documentation shall be available for review by Board investigators during the Probationary Period.
 - c. Maintain a perpetual inventory of each controlled substance in Schedule II and reconcile each perpetual inventory at least once every seven (7) days. The perpetual inventories shall be available for review by Board investigators during the Probationary Period.
 - d. Submit documentation demonstrating all staff were retrained in areas of inventory management, prescription production, and waiting bin management within 30 days from the Effective Date.
 - e. Maintain documentation demonstrating the area pharmacy supervisor or loss prevention manager reviewed the Pharmacy's Schedule II perpetual inventories at least once per month during the Probationary Period. Said documentation shall be available for review by Board investigators during the Probationary Period.
7. The Board agrees that in return for the Pharmacy's execution and its successful compliance with all the requirements of this Agreement, the Board will not prosecute the Complaint.
8. If and when the Board determines that the Pharmacy has complied to the Board's satisfaction with all the requirements contained in this Agreement,

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the Probationary Period will terminate one (1) year after the Effective Date upon written notice to the Licensee from the Board.²

9. If the Pharmacy does not materially comply with each requirement of this Agreement, or if the Board opens a Subsequent Complaint³ during the Probationary Period, the Pharmacy agrees to the following:
- a. The Board may upon written notice to the Pharmacy, as warranted to protect the public health, safety, or welfare:
 - i. EXTEND the Probationary Period;
 - ii. MODIFY the Probation Agreement requirements; or
 - iii. IMMEDIATELY SUSPEND the Pharmacy's license.
 - b. If the Board suspends the Pharmacy's license pursuant to Paragraph 9(a)(iii), the suspension shall remain in effect until:
 - i. the Board provides the Pharmacy written notice that the Probationary Period is to be resumed and under what terms;
 - ii. the Board and the Pharmacy 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 Pharmacy agrees that if the Board suspends its license in accordance with Paragraph 9, it will immediately return its current Massachusetts license to the Board, by hand or certified mail. The Pharmacy further agrees that upon said suspension, it will no longer be authorized to operate as a pharmacy in the Commonwealth of Massachusetts and shall not in any way represent itself as a pharmacy until such time as the Board reinstates license or right to renew such license.
11. The Pharmacy understands that it has a right to formal adjudicatory hearing concerning the Complaint and that during said adjudication it would possess

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.

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 Pharmacy engaged in conduct that violates Board statutes or regulations, and (2) is substantiated by evidence, as determined following the complaint investigation during which the Pharmacy shall have an opportunity to respond.

the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on its 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 Pharmacy further understands that by executing this Agreement it is knowingly and voluntarily waiving its right to a formal adjudication of the Complaints.

12. The Pharmacy acknowledges that it has been at all times free to seek and use legal counsel in connection with the Complaint and this Agreement.
13. The Pharmacy acknowledges that after the Effective Date, the Agreement constitutes a public record. 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 Pharmacy understands and agrees that entering into this Agreement is a voluntary and final act and not subject to reconsideration, appeal, or judicial review.
15. The individual signing this Agreement certifies that he/she is authorized to enter into this Agreement on behalf of the Pharmacy, and that he/she has read this Agreement.

Dan Scherman 10/21/20
Witness (sign and date)

[Signature] 10/21/20
(sign and date)

RINA SHAH
(print name)

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

11-20-20
Effective Date

Fully Signed Agreement Sent to Licensee on 12/3/2020 by
Certified Mail No. 7020 1810 0002 3137 5365

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