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FILED

JUL 19 2012

BOARD OF PHARMACY

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF PHARMACY

IN THE MATTER OF THE APPLICATION OF:

Randall Higgins

TO BE LICENSED AS A PHARMACIST
IN THE STATE OF NEW JERSEY

: Administrative Action
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: CONSENT ORDER
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:

This matter was opened to the Board of Pharmacy (Board) upon receipt of an application for a license to practice pharmacy by Randall Higgins (Applicant). Applicant completed an application on September 26, 2011 in which he disclosed having engaged in the illegal use of controlled dangerous substances within the last two years and having pled guilty to or having been arrested and/or convicted of a crime or offense.

Applicant explained that he was the subject of two criminal matters in 2008. Specifically, on or about April 22, 2008 Applicant was charged with violation of N.J.S.A. 2C:35-10B,

being under the influence of a CDS, and violation of N.J.S.A. 2C:36-6, possession/use of a hypodermic needle to inject CDS. On or about February 20, 2009, based on an offense occurring between May 1, 2007 and June 24, 2008, Applicant pled guilty in Superior Court of New Jersey, Monmouth County, to one count of Theft of Movable Property, 3rd degree, in violation of N.J.S.A. 2C:20-3a, was sentenced to two (2) years probation, and ordered to pay fines and restitution. Applicant submitted evidence of rehabilitation including a document dated April 6, 2010 from the Monmouth Probation Division, Ocean, New Jersey, stating that he successfully completed all conditions of his probation, submitted negative drug screens, and paid his fines in full.

Applicant represented that aside from the two incidents, he has had an impeccable record, has sought treatment at the Endeavour House Intensive Outpatient treatment facility, has voluntarily enrolled in the Professional Assistance Program of New Jersey (PAP) monitoring plan, is attending Alcoholics Anonymous (AA) and Caduceus meetings, and is committed recovery from opiate dependence.

In support of his Application for Licensure, Applicant provided a letter dated August 21, 2008 from Kathleen Henrich, MA, Assistant Clinical Coordinator, Endeavor House on the Bay, Keyport, New Jersey, stating that Applicant was admitted to the Intensive Outpatient treatment on July 7, 2008, was attentive in

his therapy sessions and was encouraged to attend support group meetings. Applicant also provided a letter dated February 1, 2012, in which Dr. Edward G. Reading, Assistant Director PAP, states that Applicant enrolled in the PAP in June 2011 and has eight (8) months of documented compliance. Dr. Reading recommends that upon licensure, Applicant should attend group therapy sessions with Dr. Washton, or an alternative therapist approved by the PAP, at a minimum of once per week for the first year of practice. Dr. Reading states that Applicant's current treatment and monitoring plan consists of random, twice weekly urine screen monitoring, with results to date being negative for any non-prescribed psychoactive substances for eight months. Dr. Reading states that Applicant participates weekly in two to four on-line self-help meetings of Smart Recovery through www.smartrecovery.org, as an alternative to 12-Step Recovery, as well as a weekly Caduceus meeting, is seen in monthly face to face follow-up with a clinical member of the PAP staff, and is in progressive recovery. The PAP supports Applicant's request for licensure with the monitoring requirements as set forth below in this Consent Order.

Having reviewed the entire record, the Board has determined that the public health, safety and welfare will be sufficiently protected by granting Applicant's application for licensure to practice as a pharmacist subject to the conditions outlined in

this Order. Although the Applicant appears to have made substantial rehabilitation efforts, the Board is keenly aware of his history of substance abuse and of the Board's responsibility to protect the public's health, safety and welfare. Therefore, any deviation from or violation of the terms of this Order will result in the immediate and automatic suspension of Applicant's licensure.

Applicant consenting and agreeing to the terms of this Consent Order and the Board finding the within disposition is adequately protective of the public health, safety and welfare,

IT IS THEREFORE ON THIS 1 DAY OF May, 2012
ORDERED:

1. Applicant shall submit to the Executive Director of the Board the following which shall be to the satisfaction of the Board:

- a. Documentation of successful completion of all application requirements including a Criminal History Background Check and payment of all fees.
- b. Documentation of successful completion of the NAPLEX licensing examination.
- c. Documentation of successful completion of the Multi-state Pharmacy Jurisprudence Examination (MPJE).

- d. Documentation of successful completion of three (3) hours of continuing education in substance abuse and three (3) hours of continuing education in drug diversion. These courses shall be approved by the Board in writing prior to attendance and shall not count toward future continuing education requirements pursuant to N.J.A.C. 13:39-3A.1. All costs associated with this course work shall be the responsibility of, and paid directly by, Applicant.
- e. Documentation of full compliance with the monitoring program set up for him by the PAP, which shall, at minimum comply with the requirements outlined in paragraph seven (7) of this Order.
- f. A copy of this Order shall be provided to all employers where Applicant has access to medication, prescriptions or patient profiles. Applicant shall ensure that each employer notifies the Board in writing that he or she has received this Order prior to Applicant beginning employment. Applicant shall inform the Board in writing of any employment changes within 10 days after their occurrence, including periods of unemployment, and shall also provide a detailed description of his job, role and responsibilities.

2. After Applicant has complied with all of the requirements of paragraph one and all other licensing requirements to the satisfaction of the Board, Applicant's license to practice pharmacy shall be granted subject to the conditions in paragraphs three through nine of this Order.

3. Applicant shall be placed on probation for a period of two (2) years, commencing from the date of initial licensure. The probation period is tolled for any length of time that Applicant is not practicing as a pharmacist for a minimum of 20 hours per week in the State of New Jersey.

4. During the period of probation, Applicant shall be directly supervised at all professional settings by a supervisor pre-approved by the Board. Prior to beginning any employment, Respondent shall ensure that his supervisor confirms with the Board, in writing, that he/she has seen this consent order and agrees to supervise respondent.

5. Until further order of the Board, a copy of this Order shall be provided to all employers where a pharmacy license is required for employment or where Applicant has access to medication, prescriptions or patient profiles. Applicant shall ensure that each employer notifies the Board in writing that he or she has received this Order prior to Applicant beginning employment. Applicant shall inform the Board in writing of any employment changes within 10 days of their occurrence, including periods of unemployment, and shall also provide a detailed description of his job, role and responsibilities.

6. Until further Order of the Board, Applicant shall not act as a preceptor or a pharmacist-in-charge (RPIC) at any pharmacy and shall not own or have an ownership interest in any pharmacy.

7. Until further Order of the Board, Applicant shall comply fully with the monitoring program established for him by the PAP. Such monitoring program shall include but not be limited to:

- a. Absolute abstinence from all non-prescribed psychoactive substances including alcohol unless prescribed by a treating health care professional for a documented medical condition and with notification from the treating health care professional to the executive medical director of the PAP of the medications prescribed, diagnosis and treatment regime within five days of issuing the prescription. Applicant shall advise all of his treating health care practitioners, who prescribe medications, of his addiction history and shall be responsible to ensure that the treating health care professional notifies the PAP of any prescription for a psychoactive substance within five days of issuance of the prescription. Applicant shall also personally notify the PAP of any prescription for psychoactive substance within five days of issuance of the prescription.
- b. Applicant shall attend self-help meetings of Smart Recovery through www.smartrecovery.org at a frequency of not less than three meetings per week and a face-to-face Caduceus meeting or other 12-Step group meeting at a frequency of not less than once a week.
- c. Applicant shall participate in weekly professional group or individual therapy sessions with a therapist who is approved by the PAP and experienced in addiction therapy. Applicant shall provide evidence of attendance at such groups and compliance with all recommendations of the therapist directly to the PAP

on a form or in a manner as required by the PAP. Applicant shall ensure that the therapist provides the PAP with written reports on a quarterly basis regarding Applicant's ability to practice pharmacy in a manner protective of the public health, safety and welfare.

- c. Applicant shall undergo random witnessed urine monitoring under the supervision of the PAP on an unannounced basis, at a frequency of no less than 2 times per week prior to becoming licensed as a pharmacist and for a minimum of 12 months following Applicant's employment as a pharmacist. The 12 month period is tolled for any length of time that Applicant is not practicing as a pharmacist for a minimum of 20 hours per week in the State of New Jersey. Subsequent reductions in the frequency of urine screens shall be at the direction of the executive medical director of the PAP consistent with Applicant's duration in recovery with prior notification to the State Board of Pharmacy. All test results shall be provided in the first instance directly to the PAP and any positive result shall be reported immediately by the PAP to the Executive Director of the Board.
- d. The Board reserves the right to require a modification of the manner of the random witnessed urine testing by the PAP in the event technical developments or individual requirements indicate that a different methodology or approach is required to guarantee the accuracy and reliability of the testing.
- e. Applicant's failure to submit to or provide a urine sample within twenty-four hours of a request shall be deemed to be the equivalent of a confirmed positive urine test and shall be deemed a violation of this order unless Applicant is unable to appear for a scheduled urine test due to illness or other impossibility. Applicant must advise the Board in writing within two (2) days, and cause the PAP to so advise the Board in writing within (2) days, of a claimed illness or impossibility. If Applicant fails to appear for a scheduled urine test due to illness, Applicant shall provide to the Board, written substantiation of the illness in the form of a physician's report, within two (2) days. "Impossibility" means an obstacle beyond the control

of Applicant that is insurmountable or that makes his appearance for the urine test so infeasible that a reasonable person would waive Applicant's requirement to give the urine sample that day.

- f. All random witnessed alcohol and drug screens shall be negative for the presence of alcohol or drugs, unless the drugs detected by screening were taken for a documented illness pursuant to a valid prescription from a health care practitioner aware of Applicant's substance abuse history. All positive results shall be confirmed by the Gas Chromatography Mass Spectrometry (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.
- g. Any urine test result showing creatinine levels below 20 mg/dl and a specific gravity below 1.003 shall create a rebuttable presumption of a confirmed positive urine test, and shall be followed by a confirming test. The method of the confirming test shall be determined by the PAP.
- h. Applicant shall become familiar with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Applicant specifically agrees that ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.
- i. Applicant shall submit to continued monitoring by the PAP and shall meet with a clinical representative of the PAP on a face-to-face basis at least once a month prior to becoming licensed as a pharmacist and for a minimum of one year following Applicant's employment as a pharmacist. Subsequent reductions of appointments shall be at the direction of the executive medical director of the PAP consistent with Applicant's duration in recovery and with prior notification to the State Board of Pharmacy.

- j. Applicant shall be responsible to ensure that the PAP shall supply reports every ninety (90) days beginning on the "filed" date of this Order to the Board regarding his progress with the monitoring program.
- k. Applicant shall obtain the agreement of the PAP via a signature of its representative on this Order to notify the Board within 24 hours of its receipt of information of any noncompliant behavior, slip or relapse of impairment, including but not limited to any positive urine screen or failure to appear for urine monitoring or any scheduled appointment or any discontinuance of the PAP rehabilitation program whether initiated by Applicant or by the PAP.
- l. Applicant expressly waives any claim to privilege or confidentiality that he may have concerning reports and disclosures to the Board, and use by the Board of that information in any license proceedings, including reports and disclosures by the urine monitoring program, or the PAP, or any other person or entity involved in his rehabilitation program.
- m. All costs associated with the monitoring outlined above shall be the responsibility of, and paid directly by, Applicant.

8. Applicant hereby consents to the entry of an Order of automatic suspension of license without notice, upon the Board's receipt of any information which the Board in its sole discretion deems reliable that Applicant has failed to comply with any of the conditions set forth above, any other provision of this Order, any report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of the use of alcohol or a psychoactive substance which is not prescribed by a treating health care professional with notification to the PAP as described above.

9. Applicant shall have the right to apply for removal of the automatic suspension on five (5) days notice but in such event shall be limited to a showing that the urine tested was not his or was a false positive in the case of urine testing, or that other information submitted was false.

NEW JERSEY STATE BOARD OF PHARMACY

By: _____
Edward McGinley, R.P.,
President

I have read the within Order and understand its terms. I consent to the entry of this Order by the New Jersey Board of Pharmacy.

Randall T. Higgins 4/20/12
Randall Higgins Date

Consent as to form and entry:

Angelo J. Cifaldi Date
Attorney for Randall Higgins

Agreed as to the monitoring and reporting requirements of this Order on behalf of the Professional Assistance Program:

Louis E. Baxter, Sr., M.D., FASAM Date
Medical Director
Physicians Assistance Program

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