

DARIA A. LOY-GOTO 6175
 DENISE P. BALANAY 5526
 Regulated Industries Complaints Office
 Department of Commerce and Consumer Affairs
 State of Hawaii
 Leiopapa A Kamehameha Building
 235 South Beretania Street, Suite 900
 Honolulu, Hawaii 96813
 Telephone: 586-2660

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DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

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DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS
 STATE OF HAWAII

HEARING OFFICE

Attorneys for Department of Commerce
 and Consumer Affairs

BOARD OF PHARMACY
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 STATE OF HAWAII

In the Matter of the Miscellaneous Permit of)	PHA 2010-33-L
))
NMHCRCX MAIL ORDER, INC., doing)	SETTLEMENT AGREEMENT PRIOR TO
business as INFORMEDMAIL,)	FILING OF PETITION FOR DISCIPLINARY
)	ACTION AND BOARD'S FINAL ORDER;
Respondent.)	EXHIBIT "1"
))

248040108

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
 FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'
 REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),
 through its undersigned attorneys, and Respondent NMHCRCX MAIL ORDER, INC., doing
 business as INFORMEDMAIL (hereinafter "Respondent"), enter into this Settlement Agreement
 on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent was permitted by the Board of Pharmacy
 (hereinafter the "Board") as a pharmacy under Miscellaneous Permit Number PMP 486.

The permit was issued on or about September 21, 2006. The permit will expire on or about December 31, 2011.

2. Respondent's mailing address for purposes of this action is c/o Cynthia S. Nakamura, Esquire, 1001 Bishop Street, American Savings Bank Tower 2817, Honolulu, Hawaii 96813.

3. RICO received information Respondent entered into a Stipulation and Final Agency Order with the State of Colorado in In the Matter of the Disciplinary Proceeding Regarding The Non-Resident Prescription Drug Outlet Registration of NMHCRX Mail Order, Inc., Registration No. OSP 5494, (Case No. 2009-001112). The Stipulation and Final Agency Order is attached hereto as Exhibit "1".

4. RICO alleges although Respondent disclosed the Colorado action on a November 4, 2009 Renewal Application submitted to the Hawaii Board, Respondent failed to report the Stipulation and Final Agency Order with the State of Colorado within thirty days as required by law.

5. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 436B-19(15) (failure to report disciplinary decision within thirty days) and § 436B-19(17) (violating applicable licensing laws).

6. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is represented by Cynthia S. Nakamura, Esquire, herein.

2. Respondent enters into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondent is aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondent freely, knowingly, and voluntarily waives the right to a hearing and agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein permitted as a pharmacy by the Board acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the permit and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondent does not admit to violating any law or rule, but acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent's permit.

6. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. PHA 2010-33-L.

8. Respondent understands that this Settlement Agreement is public record pursuant to Hawaii Revised Statutes Chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative assessment. Respondent agrees to pay an assessment of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00). Payment shall be made by cashier's check or money order made payable to "DCCA – Compliance Resolution Fund" and mailed to the

Regulated Industries Complaints Office, Attn: Denise Balanay, Esq. 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment shall be due at the time this fully executed Settlement Agreement is returned to RICO.

2. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph(s) C.1 above, Respondent's permit shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of the permit to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new permit until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become permitted again, Respondent must apply to the Board for a new permit pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible further sanctions. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of pharmacies in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondent on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

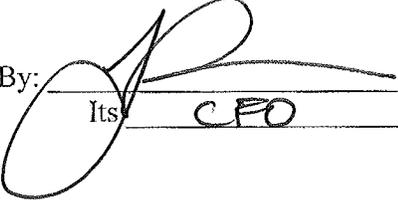
7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Lisle, ILLINOIS, February 13, 2012.
(CITY) (STATE) (DATE)

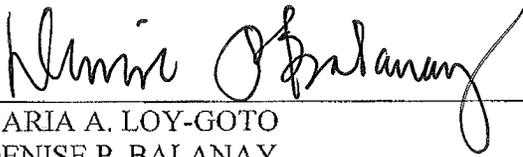
NMHCRX MAIL ORDER, INC.

By:  JEFF PACK
Its CFO

APPROVED AS TO FORM:


CYNTHIA S. NAKAMURA
Attorney for Respondent

DATED: Honolulu, Hawaii, FEB 21 2012.


DARIA A. LOY-GOTO
DENISE P. BALANAY
Attorneys for Department of Commerce
and Consumer Affairs

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF NMHCRX MAIL ORDER, INC.,
DOING BUSINESS AS INFORMEDMAIL; SETTLEMENT AGREEMENT PRIOR TO
FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
EXHIBIT "1"; CASE NO. PHA 2010-33-L

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII



MARK E. BROWN
Chairperson

March 15, 2012

DATE

PATRICK ADAMS
Vice Chairperson

TODD INAFUKU

GARRETT A. LAU

CAROLYN S. J. MA

JILL OLIVEIRA GRAY

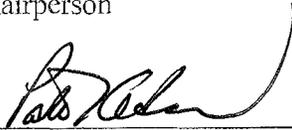
LYDIA KUMASAKA

PVL 07/15/11

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STATE OF HAWAII

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March 15, 2012
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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

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STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

On this 13th day of February, 2012, before me personally appeared JEFF PARKS, to me known to be the person described, and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

This 7 -page SETTLEMENT AGREEMENT document dated February 13, 2012 was acknowledged before me by _____ this 13th day of February, 2012, in the City of Liste, in the County of DuPage, in the State of Illinois.

Carmelita Sinkler Pugh
Name:
Notary Public, State of ILLINOIS

My Commission expires: 2/8/2014



**BEFORE THE STATE BOARD OF PHARMACY
STATE OF COLORADO**

Case No. 2009-001112

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE NON-RESIDENT PRESCRIPTION DRUG OUTLET REGISTRATION OF NMHCRX MAIL ORDER, INC., REGISTRATION NO. OSP 5494,

RESPONDENT PHARMACY.

IT IS HEREBY STIPULATED by and between the Colorado State Board of Pharmacy ("Board") and NMHCRX Mail Order, Inc. ("Respondent Pharmacy"), to resolve all matters pertaining to Board Case Number 2009-001112 as follows:

1. The Board has jurisdiction over Respondent Pharmacy, its registration as an out-of-state/non-resident prescription drug outlet, and the subject matter of this Stipulation and Final Agency Order ("Final Agency Order") pursuant to the provisions of title 12, article 22, C.R.S. (2008), otherwise known as the Pharmaceuticals and Pharmacists Act.
2. Respondent Pharmacy has been registered by the Board as a non-resident prescription drug outlet in the State of Colorado at all times relevant to this disciplinary action.
3. Respondent Pharmacy's address of record with the Board and current location is 9994 Premiere Parkway, Miramar, Florida 33025.
4. Respondent Pharmacy does not contest these findings and hereby waives any further proof in this proceeding before the Board regarding the following facts.
5. On or about July 10, 2008, Respondent Pharmacy entered into a Stipulation and Final Agency Order ("Order") in case number 2008-002681 for its failure to comply with the data submission requirements of Colorado's Electronic Prescription Drug Monitoring Program ("PDMP"). Disposition included a \$5,000.00 fine and an agreement to at all times be in compliance with the data submission requirements of the PDMP.
6. Following the effective date of the Order, Respondent Pharmacy failed to timely submit data into the PDMP for the required submission periods of September 1, 2008 to September 10, 2008 as well as September 16, 2008 to September 25, 2008.

EXHIBIT 1

7. On October 6, 2008, the Board initiated a complaint against Respondent Pharmacy because Respondent Pharmacy failed to comply with the data submission requirements of Colorado's Electronic Prescription Drug Monitoring Program (PDMP).
8. Respondent Pharmacy does not contest that the conduct described above constitutes a violation of §12-22-708, C.R.S. and that such conduct provides grounds for disciplinary action against Respondent Pharmacy's out-of-state/non-resident prescription drug outlet registration.

DISPOSITION

Future \$500.00 Per Day Fine with Surcharge and Terms

9. **Fine with Surcharge.** Respondent Pharmacy accepts the following discipline: Pursuant to §12-22-125.2(5), C.R.S., future instances of non-PDMP compliance will result in a significant fine being levied against Respondent Pharmacy. For each day Respondent Pharmacy is late in submitting its data, it shall be fined at the rate of Five Hundred Dollars and No Cents (\$500.00) per day. Respondent Pharmacy understands and acknowledges that, pursuant to §24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 15% of this fine. Respondent Pharmacy shall therefore pay a total amount of Five Hundred Seventy Five Dollars and No Cents (\$575.00) for each day it is noncompliant with the PDMP data submission requirements, effective upon the execution of this Order. The total amount shall be payable to the State of Colorado and shall be remitted in one lump sum. This provision will be in effect for two years from the effective date of the Stipulation.
10. **Other Requirements.** Within thirty (30) days of the effective date of this Stipulation and Final Agency Order, Respondent Pharmacy must submit a plan of action demonstrating future compliance with the PDMP, for Board approval.
11. **Probation.** Respondent Pharmacy is hereby placed on probation until it submits the action plan outlined in paragraph number 11 above to the Board and it is Board approved.
12. **Compliance.** Respondent Pharmacy shall at all times be registered with the Board, and shall comply with the data submission requirements of the PDMP.
13. **Advisements and Waivers.** Respondent Pharmacy enters into this Final Agency Order freely and voluntarily, whether or not Respondent Pharmacy has consulted with legal counsel. Respondent Pharmacy acknowledges its understanding that it has the following rights:
 - a. To have a formal notice of hearing and charges served upon it;
 - b. To respond to said formal notice of charges;

- c. To have a formal disciplinary hearing pursuant to §12-22-125, C.R.S.;
and
- d. To appeal this Board order.

Respondent Pharmacy freely waives these rights, and acknowledges that such waiver is made voluntarily in consideration for Board's limiting the action taken against it to the sanctions imposed herein.

- 14. Acknowledgments.** The undersigned authorized agent of Respondent Pharmacy has read this Final Agency Order in its entirety and acknowledges, whether or not Respondent Pharmacy has consulted with legal counsel, that Respondent Pharmacy understands the legal consequences and agrees that none of the terms or conditions herein are unconscionable. Respondent Pharmacy is not relying on any statements, promises or representations from the Board other than as may be contained in this Final Agency Order. Respondent Pharmacy further acknowledges that it is not entering into this Final Agency Order under any duress.
- 15. Violations.** Time is of the essence to this Final Agency Order. It is the responsibility of Respondent Pharmacy to take all appropriate steps to comply fully with this Final Agency Order. Respondent Pharmacy acknowledges and agrees that any violation of this Final Agency Order may be sanctioned as provided under §12-22-125.2(4), C.R.S., and may be sufficient grounds for additional discipline, including but not limited to revocation of its registration. The pendency of any suspension or disciplinary action arising out of an alleged violation of this Final Agency Order shall not affect the obligation of Respondent Pharmacy to comply with all terms and conditions of this Final Agency Order.
- 16. Integration and Severability.** Upon execution by all parties, this Final Agency Order shall represent the entire and final agreement of and between the parties in this case. In the event any provision of this Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Final Agency Order shall be given full force and effect.
- 17. Public Record.** Upon execution by all parties, this Final Agency Order shall be a public record, maintained in the custody of the Board.
- 18. Effective Date.** This Final Agency Order shall become effective upon signature of a Board member or representative.

ACCEPTED AND AGREED BY

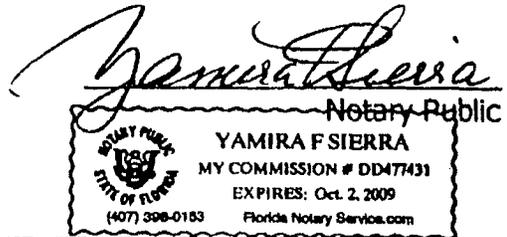
Authorized Agent of Respondent

Mark A Adkison
NMHCRX Mail Order, Inc.

Dated: 2/10/09

Subscribed and sworn to by Mark A Adkison, in his/her capacity as an authorized agent of NMHCRX Mail Order, Inc. before me in the County of Broward, State of Florida, this 10 day of February, 2009.

My commission expires: Oct 2, 2009



FINAL AGENCY ORDER

WHEREFORE, the within Stipulation and Final Agency Order is approved, accepted, and hereby made an order of the Board.

DONE AND EFFECTIVE THIS 18th DAY OF February, 2009.

State Board of Pharmacy

BY: Wendy Anderson
Wendy Anderson
Program Director