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DEPT. OF COMMERCE
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Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
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Honolulu, Hawaii 96813
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2012 JUN 22 A 9:50

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
STATE OF HAWAII

HEARINGS OFFICE

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DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

Attorney for Department of Commerce
and Consumer Affairs

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

In the Matter of the Pharmacy)	PHA 2010-39-L
Miscellaneous Permits of)	
NEXTRX, INC.,)	SETTLEMENT AGREEMENT AFTER
fka PRECISION RX,)	FILING OF PETITION FOR DISCIPLINARY
)	ACTION AND BOARD'S FINAL ORDER;
Respondent.)	APPENDIX "1"
)	
)	
)	

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SETTLEMENT AGREEMENT AFTER 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 attorney, and NEXTRX, INC., fka PRECISION RX, (hereinafter
"Respondent"), enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. The Respondent was at all times relevant herein issued pharmacy miscellaneous
permits nos. 233, 648 and 643. Respondent's permit no. 233 was originally issued on August 16,
2001 and is due to expire on December 31, 2011. Respondent's permit no. 648 was originally
issued on May 10, 2010 and is due to expire on December 31, 2011. Respondent's permit no.

643 was originally issued on April 15, 2010 and is due to expire on December 31, 2013. On May 11, 2011, Respondent's name was changed to "ESI Mail Ordering Processing, Inc., dba Express Scripts", hereinafter ("ESI").

2. Respondent's mailing address is 5450 N. Riverside Drive, Fort Worth, Texas, 76137. Respondent is represented by Mark M. Murakami, Esq., 1003 Bishop Street, Suite 1600, Honolulu, Hawaii 96813.

3. On or about June 27, 2011, RICO filed a Petition for Disciplinary Action alleging that Respondent violated the following statute(s): Hawaii Revised Statutes ("HRS") § 436B-19 (13) (Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section).

4. The Board of Pharmacy (hereinafter "Board") has jurisdiction to hear and resolve this matter pursuant to HRS §§ 461-4.5 and 461-21.

5. On or about February 10, 2010, the Texas State Board of Pharmacy ("Texas Board") issued an Agreed Board Order wherein Respondent agreed to pay an administrative penalty of \$1,500.00 and agreed to develop and implement procedures for a Continuous Quality Improvement Program for purposes of preventing and handling dispensing errors. The program includes a pharmacist peer review committee and its reports shall be maintained for 2 years and made available for inspection by the Texas Board's employees. A true and accurate copy of Agreed Board Order #H-08-002-B, Re: In the Matter of Next RX, Inc., (License #20805), Before the Texas State Board of Pharmacy, is attached hereto as Appendix "1".

6. The incident that gave rise to the Texas disciplinary order occurred prior to the time that Respondent was owned by ESI, its current owner. ESI was therefore not privy to the events leading up to the incident and the negotiations resulting in the Agreed Board Order with

the Texas Board of Pharmacy by Respondent.

7. The aforementioned incident and Agreed Board Order occurred solely in Texas and did not involve any residents of the State of Hawaii. The Texas Board Order provides the sole basis for the Petition for Disciplinary Action filed in this matter.

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

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is fully aware that it has the right to be represented by an attorney of its choosing in this matter and is represented by Mark M. Murakami, Esq.

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 admits to a violation of the following:

- a. HRS § 436B-19 (13) (Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section).

6. Respondent has engaged in no conduct in the State of Hawaii that has put any Hawaii resident at risk of harm.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. PHA 2010-39-L.

8. Respondent understands that this settlement agreement is public record pursuant to HRS Chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative Costs. Respondent agrees to pay administrative costs of ONE THOUSAND AND NO/100 (\$1,000.00). Said 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: Diane Corn, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the administrative costs shall be due at the time this settlement is returned to RICO.

2. Compliance with Texas Order. Respondent agrees to comply with the terms set forth in the Agreed Board Order #H-08-002-B issued by the Texas State Board of Pharmacy, attached hereto as Appendix "I".

3. 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 through C.2 above, Respondent's pharmacy miscellaneous 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 its pharmacy miscellaneous 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 pharmacy

miscellaneous permit until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to be issued pharmacy miscellaneous permits again, Respondent must apply to the Board for new pharmacy miscellaneous permits pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

4. Possible Further Sanction. 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 pharmacists and pharmacies in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

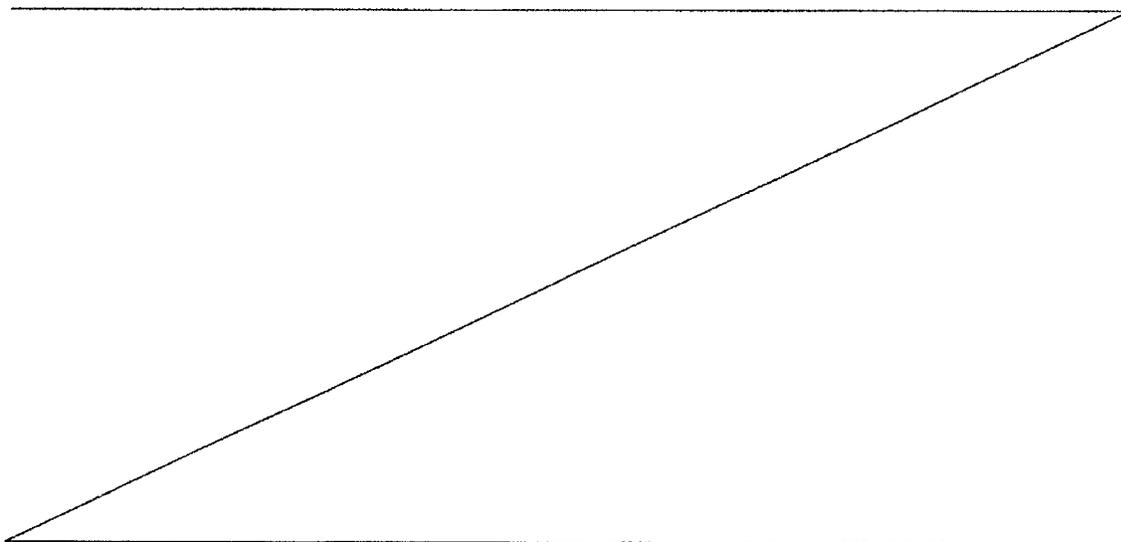
5. Approval of the Board. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.6, C.7, C.8 and C.9 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

6. 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.

7. 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.

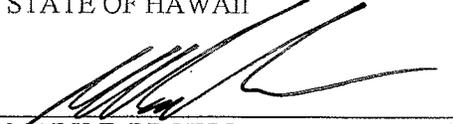
8. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not 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.

9. 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 THE MATTER OF THE PHARMACY MISCELLANEOUS PERMITS OF NEXTRX, INC.,
fka PRECISION RX; SETTLEMENT AGREEMENT AFTER FILING OF PETITION FOR
DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; APPENDIX "1"; CASE NO.
PHA 2010-39-L.

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII



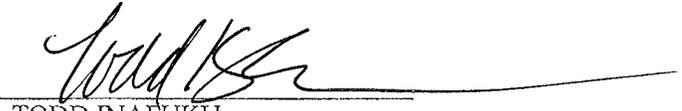
MARK E. BROWN
Chairperson

July 12, 2012

DATE

excused

PATRICK ADAMS
Vice Chairperson



TODD INAFUKU

excused

GARRETT A. LAU

excused

CAROLYN S. J. MA



JILL OLIVEIRA GRAY



LYDIA KUMASAKA

PVL 07/15/11

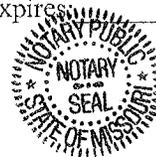
STATE OF Missouri)
) SS.
COUNTY OF St Louis)

On this 15th day of June, 2012, before me personally appeared Celeste Player, to me known to be the person described, and who executed the foregoing instrument on behalf of NextRx, Inc as its VP Pharmacy operations, and acknowledged that he/she executed the same as his/her free act and deed.

This 9th page PHA 2010-39-L document dated 6/15/12, 2012 was acknowledged before me by Christopher Fisher this 15th day of June, 2012, in the City of St Louis, in the County of St Louis, in the State of Missouri.

Christopher P Fisher
Name: Christopher P Fisher
Notary Public, State of Missouri

My Commission expires:



CHRISTOPHER P. FISHER
My Commission Expires
October 24, 2012
St. Louis City
Commission #08408984

AGREED BOARD ORDER #H-08-002-B

RE: IN THE MATTER OF BEFORE THE TEXAS STATE
NEXT RX, INC BOARD OF PHARMACY
(PHARMACY LICENSE #20805)

On this day came on to be considered by the Texas State Board of Pharmacy the matter of pharmacy license number 20805 issued to Next Rx, Inc., 5450 N. Riverside Dr., Fort Worth, Texas 76137.

By letter dated October 28, 2009, the Texas State Board of Pharmacy gave preliminary notice to Next Rx, Inc. of its intent to take disciplinary action with respect to pharmacy license number 20805 held by Next Rx, Inc. as a result of an investigation which produced evidence indicating that Next Rx, Inc. may have violated:

Section 551.003(19); Section 565.001(a)(1), (2), (12) and (13); and Section 565.002(a)(3) of the Texas Pharmacy Act, TEX. OCC. CODE ANN. Subtitle J (2005);

Section 281.7(a)(3), (12) and (13); Section 291.31(1), (14), (15) and (18); Section 291.32(c)(1)(E) and (F); Section 291.32(c)(2)(B), (C), (D) and (H); Section 291.33(c)(2)(A); and Section 295.3(b) of the Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2007); and

Section 431.021(r) of the Texas Food, Drug, and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. (2005), in that, allegedly:

PREVIOUS HISTORY

On or about February 4, 2004, the Texas State Board of Pharmacy entered Agreed Board Order #K-03-030-B in the matter of Precision RX (now licensed as Next Rx, Inc.). The Order was based on allegations that Thioridazine 100 mg tablets were dispensed on a prescription calling for Thioridazine 10 mg tablets. The Order imposed a reprimand and required the pharmacy implement a Continuous Quality Improvement Plan.

COUNTS

- (1) On or about May 21, 2007, David Lee Markham, while acting as an employee (staff pharmacist) of Next Rx, Inc., 5450 N. Riverside Dr., Fort Worth, Texas 76137, dispensed 180 warfarin 10 mg tablets to patient J.C., an eighty-four year old man, on a new written prescription calling for 180 warfarin 1mg tablets. The

APPENDIX "1"

patient identified the error before ingesting the incorrectly dispensed medication. The prescription was assigned prescription number 3240016.

- (2) On or about May 21, 2007, David Lee Markham, while acting as an employee (staff pharmacist) of Next Rx, Inc., 5450 N. Riverside Dr., Fort Worth, Texas 76137, failed to evaluate and identify the reasonable dose of the dispensed prescription described above in Count (1), in that previously, on March 5, 2007, the patient had received a prescription for warfarin 1mg tablets.

By letter dated October 28, 2009, Next Rx, Inc. was notified that the matters previously set out in this Order could be disposed of without the scheduling of an informal conference or administrative hearing. By his signature on this Order, Renwyck Elder, on behalf of Next Rx, Inc. neither admits nor denies the truth of the matters previously set out in this Order, agrees that the Texas State Board of Pharmacy has jurisdiction in this matter and waives the pharmacy's right to informal conference, to notice of hearing, to a formal administrative hearing, and to judicial review of this Order.

Renwyck Elder understands that any failure to comply with the terms of this Order is a basis for discipline under the Texas Pharmacy Act.

Should this Order not be accepted by the Board, it is agreed that neither the presentation of the Order to the Board nor the Board's consideration of the Order, will be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, will not be grounds for precluding the Board or any individual member of the Board from further participation in proceedings related to the matters set forth in the Order.

Renwyck Elder, on behalf of Next Rx, Inc., agrees to the entry of an Order disposing of the need for further disciplinary action in this matter and agrees to comply with the terms and conditions set forth in the ORDER OF THE BOARD below.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Texas State Board of Pharmacy does hereby ORDER that pharmacy license number 20805 held by Next Rx, Inc. (hereinafter referred to as "Respondent") shall be, and such license is hereby Reprimanded.

It is further ORDERED that Respondent shall pay an administrative penalty of one thousand five hundred dollars (\$1,500) due ninety (90) days after the entry of this Order.

It is further ORDERED that Respondent shall develop and implement policies and procedures for a Continuous Quality Improvement Program for purposes of preventing and handling dispensing errors. The Continuous Quality Improvement Program shall include pharmacist peer review in compliance with guidelines approved by the Texas State Board of Pharmacy. In addition, the policies and procedures for pharmacist peer review shall state that:

- (1) The peer review committee will:
 - review incident reports;
 - determine what caused errors;
 - make recommendations to correct the problem that caused the errors; and
 - monitor the changes to determine if the changes have improved the operation of Respondent and reduced errors.
- (2) The peer review committee must be comprised of at least two employees of Respondent, including the pharmacist-in-charge and other pharmacist(s) or personnel who are employees of Respondent. The committee shall not be solely comprised of a district or regional manager/supervisor and the pharmacist-in-charge and shall not be used for personnel evaluation purposes.
- (3) The peer review committee will meet regularly, and no less than quarterly.
- (4) The peer review committee will make a record indicating:
 - date of meeting

- location of meeting;
- names of persons attending the meeting;
- description of activities;
- discussion of problems in Respondent's operation (e.g., work flow, dispensing process);
- findings;
- description of recommendations; and
- review of actions or changes relating to individuals, systems, or processes made as a result of previous recommendations.

Respondent shall submit a report and/or documentation of such policies and procedures to the Texas State Board of Pharmacy, Enforcement Division, within ninety (90) days after the entry of this Order. Copies of forms used by Respondent to collect the data on errors committed at the pharmacy (i.e., incident report forms) must be submitted to the Texas State Board of Pharmacy, as well as any other peer review forms that have been developed by Respondent. Additionally, records of the peer review committee, as described in subparagraph (4) above, shall be maintained for two (2) years at the location of Respondent and made available for inspection by Texas State Board of Pharmacy employees.

It is further ORDERED that Respondent shall allow the staff of the Texas State Board of Pharmacy, Enforcement Division, to directly contact Respondent on any matter regarding the enforcement of this Order.

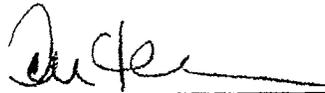
It is finally ORDERED that failure to comply with any of the terms and conditions in this Order constitutes a violation and shall be grounds for further disciplinary action against the Texas pharmacy license held by Respondent.

Agreed Board Order # 08-002-B
Next Rx, Inc.
Page 5

And it is so ORDERED.

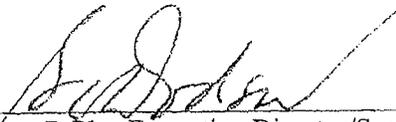
THIS ORDER IS A PUBLIC RECORD.

SIGNED AND DATED THIS 10th day of February, 2010.



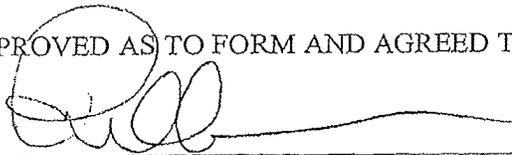
MEMBER, TEXAS STATE BOARD OF PHARMACY

ATTEST:



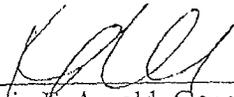
Gay Dodson, R.Ph., Executive Director/Secretary
Texas State Board of Pharmacy

APPROVED AS TO FORM AND AGREED TO:



Renwyck Elder, R.Ph., for and on behalf of Next Rx, Inc.

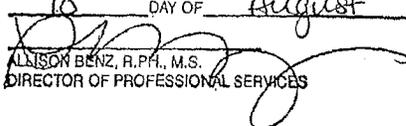
APPROVED AS TO FORM:



Kerstin E. Arnold, General Counsel
Texas State Board of Pharmacy

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THE STATE OF TEXAS
COUNTY OF TRAVIS
I, ALLISON BENZ, R.PH., M.S., DIRECTOR OF PROFESSIONAL SERVICES OF
THE TEXAS STATE BOARD OF PHARMACY, DO HEREBY CERTIFY THAT I AM
AN OFFICIAL CUSTODIAN OF THE RECORDS OF SAID BOARD, AND THAT THE
FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS THE
SAME APPEARS ON FILE IN THE RECORDS OF THE TEXAS STATE BOARD OF
PHARMACY. WITNESS MY OFFICIAL HAND AND SEAL OF OFFICE, THIS THE
10 DAY OF August A.D. 20 10


ALLISON BENZ, R.PH., M.S.
DIRECTOR OF PROFESSIONAL SERVICES