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AND CONSUMER AFFAIRS

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DEPT. OF COMMERCE  
& CONSUMER AFFAIRS  
STATE OF HAWAII

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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

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 Miscellaneous Permit	)	PHA 2011-21-L
of	)	
HUMANA PHARMACY, INC., doing	)	SETTLEMENT AGREEMENT PRIOR TO
business as RIGHTSOURCE,	)	FILING OF PETITION FOR DISCIPLINARY
	)	ACTION AND BOARD'S FINAL ORDER;
	)	EXHIBIT "1"
Respondent.	)	

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 HUMANA PHARMACY, INC., doing  
business as RIGHTSOURCE (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 473.

The permit was issued on or about June 13, 2006. The permit will forfeit or expire on or about December 31, 2013.

2. Respondent's mailing address for purposes of this action is 4302 W. Buckeye Road, Phoenix, Arizona 85043.

3. RICO received information that, on or about May 9, 2011, Respondent entered into a Stipulation and Final Agency Order with the State Board of Pharmacy for the State of Colorado ("Stipulation"). A true and correct copy of the Stipulation is attached as Exhibit "1."

4. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s): Hawaii Revised Statutes ("HRS") § 436B-19(13) (disciplinary action by another state or federal agency for any reason provided by licensing laws) and § 436B-19(17) (violating applicable licensing laws).

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

**B. REPRESENTATIONS BY RESPONDENT:**

1. Respondent is fully aware that Respondent has the right to be represented by an attorney and voluntarily waives that right.

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 2011-21-L.

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

**C. TERMS OF SETTLEMENT:**

1. Administrative Fine. Respondent agrees to pay a fine in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00). 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 P. Balanay, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. Payment of the fine 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 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 pharmacies in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

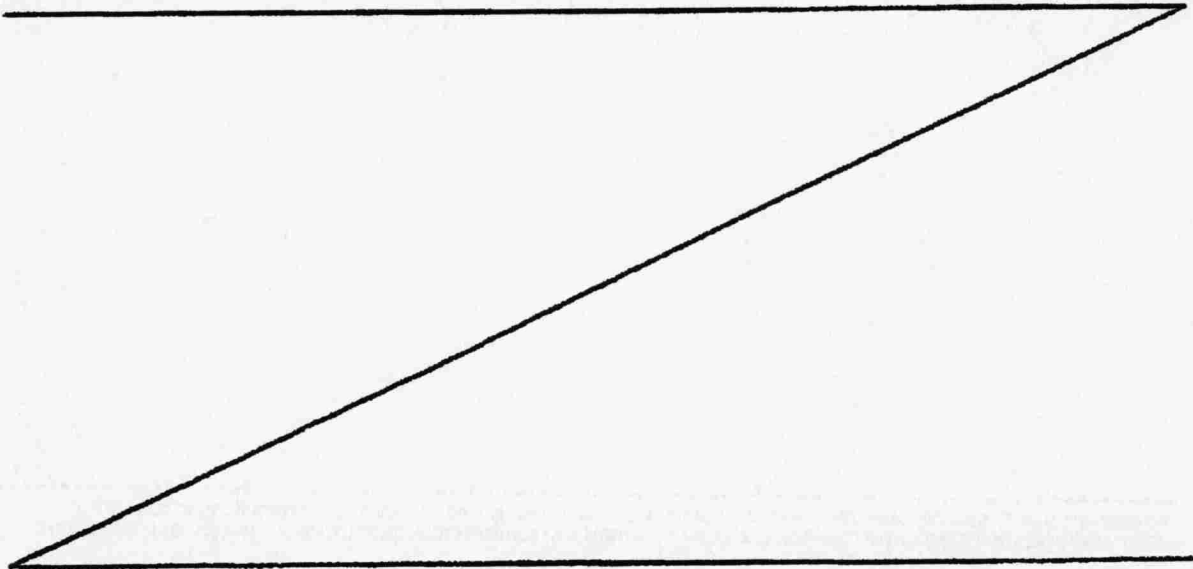
4. Approval of the Board. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

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: Louisville, Kentucky, 10.8.2012  
(CITY) (STATE) (DATE)

HUMANA PHARMACY, INC.

By: W. J. K. Foley  
Its PRESIDENT, HPS

DATED: Honolulu, Hawaii, OCT 11 2012

Denise P. Balanay  
DENISE P. BALANAY  
Attorney for Department of Commerce  
and Consumer Affairs

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IN THE MATTER OF THE MISCELLANEOUS PERMIT OF HUMANA PHARMACY, INC., DOING BUSINESS AS RIGHTSOURCE; SETTLEMENT  
AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; CASE NO. PHA 2011-21-L; EXHIBIT "1"

**IN THE MATTER OF THE MISCELLANEOUS PERMIT OF HUMANA PHARMACY, INC.,  
DOING BUSINESS AS RIGHTSOURCE; SETTLEMENT AGREEMENT PRIOR TO FILING  
OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;  
CASE NO. PHA 2011-21-L; EXHIBIT "1"**

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**APPROVED AND SO ORDERED:  
BOARD OF PHARMACY  
STATE OF HAWAII**

\_\_\_\_\_  
**MARK E. BROWN**  
Chairperson

\_\_\_\_\_  
**PATRICK ADAMS**  
Vice Chairperson

\_\_\_\_\_  
**GARRETT A. LAU**

\_\_\_\_\_  
**JILL OLIVEIRA GRAY**

11/15/2012  
\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**TODD INAFUKU**

\_\_\_\_\_  
**CAROLYN S. MA**

\_\_\_\_\_  
**LYDIA KUMASAKA**

PVL 07/15/11



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

**Case Nos. 2011-1151 and 2011-1153**

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**STIPULATION AND FINAL AGENCY ORDER**

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**IN THE MATTER OF DISCIPLINARY PROCEEDING REGARDING THE NON-RESIDENT  
PRESCRIPTION DRUG OUTLET REGISTRATION OF HUMANA PHARMACY, INC.,  
REGISTRATION NO. OSP 5672,**

**Respondent Pharmacy.**

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**IT IS HEREBY STIPULATED AND AGREED by and between the Colorado State  
Board of Pharmacy ("Board") and Humana Pharmacy, Inc. ("Respondent Pharmacy") to resolve  
all matters pertaining to Board Case Numbers 2011-1151 and 2011-1153, as follows:**

**FINDINGS AND CONCLUSIONS**

1. The Board has jurisdiction over Respondent Pharmacy, its registration as a non-resident prescription drug outlet, and the subject matter of this Stipulation and Final Agency Order ("Final Agency Order") pursuant to the provisions of the Pharmaceuticals and Pharmacists Act at Title 12, Article 22, C.R.S. (2010).
2. Respondent Pharmacy was originally registered as an non-resident prescription drug outlet in the State of Colorado on November 7, 2006, being issued registration number OSP 5672, and has been so registered at all times relevant to this disciplinary action.
3. Respondent Pharmacy admits these findings and hereby waives any further proof in this proceeding before the Board regarding the following facts.
4. Respondent Pharmacy's address of record with the Board and current location is 4302 West Buckeye Road, Phoenix, Arizona 85043.
5. On two separate occasions, Respondent Pharmacy failed to timely submit the required applications and fees to the Board detailing changes in pharmacist managers. In Board Case No. 2011-1151, a new pharmacist manager sent a letter to the Board on June 2, 2008 informing it that he had taken over as the new pharmacist manager, and asking if there was "anything further" required of him. However, the required application and fee were never submitted detailing him as the pharmacist manager during the 562-day time period that pharmacist served as manager between May 12, 2008 and February 1, 2010. In Board Case No. 2011-1153, 198 days elapsed during which time he served as pharmacist manager between February 1, 2010 and August 19, 2010 when the application and fee were received detailing him as the new pharmacist manager.

**EXHIBIT 7**

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6. Respondent Pharmacy's conduct, as set forth above, constitutes violations of the following sections of the Colorado Revised Statutes and Board Regulations:

**12-22-125. Unprofessional conduct - grounds for discipline.**

(1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

(c) Has violated:

- (I) Any of the provisions of this part 1, including but not limited to any acts in section 12-22-126;
- (II) The lawful rules of the board; or
- (III) Any state or federal law pertaining to drugs.

**12-22-130. Nonresident prescription drug outlet - registration.**

(4) (a) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration for failure to comply with any provision of this section or with any reasonable rule promulgated by the board.

\* \* \*

**Pharmacy Board Rules**

**5.00.70 Change in Pharmacist Manager.**

- b. The registration of any in-state and non-resident prescription drug outlet shall become void if the pharmacist manager in whose name the registration was issued ceases to be engaged as the manager, and the owner shall close the outlet unless such owner has employed a pharmacist manager and, within fourteen days after termination of the former manager's employment, has made application to transfer the registration to the new pharmacist manager and has paid the transfer fee therefor.

\* \* \*

7. The Board finds and concludes, and Respondent Pharmacy agrees, that based upon Respondent Pharmacy's above-described violations of the Pharmaceuticals and Pharmacists Act and relevant rules and regulations, the following discipline is just and appropriate under the circumstances.

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### TERMS OF DISCIPLINE

8. Fine with Surcharge. Pursuant to §12-22-125.2(5), C.R.S., Respondent Pharmacy shall pay a fine of Five Thousand Dollars and No Cents (\$5,000.00). 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 10% of this fine. Respondent Pharmacy shall therefore pay a total amount of Five Thousand Five Hundred Dollars and No Cents (\$5,500.00). The total amount shall be payable to the State of Colorado and shall be remitted in one lump sum to be included when Respondent Pharmacy submits this signed Final Agency Order to the Board.
9. Compliance. Respondent Pharmacy shall submit all future applications, on the form prescribed by the Board, to the Board detailing changes in pharmacist manager and fees within fourteen (14) days of the previous pharmacist manager ceasing the position.
10. Other Requirements. Respondent Pharmacy acknowledges and agrees that, as a condition of this Final Agency Order and probation, it shall:
- a. promptly pay all its own fees and costs associated with this Final Agency Order;
  - b. comply fully with this Final Agency Order; and
  - c. comply fully with the Pharmacists and Pharmaceuticals Act, all Board rules and regulations, and any other state and federal laws and regulations related to pharmacists and pharmaceuticals in the State of Colorado.
11. Advisements and Waivers. Respondent Pharmacy enters into this Final Agency Order freely and voluntarily, after having consulted with legal counsel. Respondent Pharmacy acknowledges its understanding that it has the following rights:
- a. to have 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 Sections 12-22-125 and 12-22-125.2(2)(a), C.R.S.; and
  - d. to appeal this Final Agency Order.

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

12. Acknowledgments. Respondent Pharmacy has read this Final Agency Order and its entirety and acknowledges, after having consulted with legal counsel, that Respondent Pharmacy

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understands its legal consequences and agrees that none of its terms or conditions is 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.

13. **Violations.** Time is of the essence in 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 shall constitute a willful violation of a lawful Board 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 Respondent Pharmacy's 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.

14. **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 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.

15. **Public Record.** Upon execution by all parties, this Final Agency Order shall be a public record, maintained in the custody of the Board.

**Effective Date.** This Final Agency Order shall become effective upon signature by a Board representative.

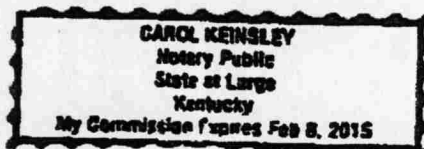
#### ACCEPTED AND AGREED BY

Respondent Pharmacy

William K. Fleming / VP      Dated: 5/9/11  
Authorized Representative      Title

Subscribed and sworn to before me in the County of Jefferson  
State of Kentucky this 9 day of May, 2011 by  
William Fleming authorized representative of Humana Pharmacy, Inc.

My commission expires:



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STATE OF KENTUCKY  
Notary Public

**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 19<sup>th</sup> day of May, 2011.

State Board of Pharmacy

BY: Wendy Anderson  
Wendy Anderson  
Program Director

**DOCUMENT APPROVED AS TO FORM**

**QUARLES & BRADY LLP**

**JOHN W. SUTHERS**  
Attorney General

Christine Cassetta  
**CHRISTINE CASSETTA\***

Joanna Lee Kaye  
**JOANNA LEE KAYE, #20436\***  
Assistant Attorney General  
Business and Licensing Section

**Attorneys for Respondent Pharmacy**

**Attorneys for State Board of Pharmacy**

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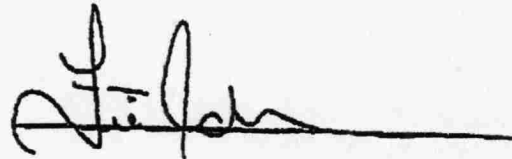
**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **STIPULATION AND FINAL AGENCY ORDER** upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, at Denver, Colorado, this 19<sup>th</sup> day of May, 2011, addressed as follows:

Christine Cassetta, Esq.  
Quirles & Brady LLP  
One Renaissance Square  
Phoenix, Arizona 85004-2391

and via interagency mail to:

Jo Kaye  
Assistant Attorney General



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