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Department of Commerce and Consumer Affairs
State of Hawaii
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235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
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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 2016-18-L
)
FOOTHILLS PROFESSIONAL) SETTLEMENT AGREEMENT PRIOR TO
PHARMACY, LTD.,) FILING OF PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL ORDER;
Respondent.) EXHIBIT "1"

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 attorney(s), and Respondent FOOTHILLS PROFESSIONAL PHARMACY, LTD. (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 miscellaneous permit holder under permit number PMP 789. The permit was issued on or about June 26, 2012. The permit will expire or forfeit on or about December 31, 2017.

2. Respondent's mailing address for purposes of this action is 4545 E. Chandler Blvd., No. 100, Phoenix, Arizona 85048.

3. RICO received a request for investigation from the Board after Respondent reported disciplinary action by the State of Maine on a December 16, 2015 renewal application.

4. Respondent attached a copy of a Consent Agreement from the Maine Board of Pharmacy issued to Respondent in Complaint No. 2014 PHA 10608 (hereinafter "the Maine Agreement") (Exhibit "1"). The Maine Agreement was based on an alleged failure to timely notify the Board of a change in Pharmacist in Charge and imposed a \$500.00 fine.

5. RICO alleges that disciplinary action was taken against Respondent by the State of Maine and that Respondent failed to timely report the action.

6. 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(13) (disciplinary action by another state) and § 436B-19(15) (failure to report disciplinary action).

7. 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 miscellaneous permit holder 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 represents Exhibit "1" is a true and correct copy of the Consent Agreement from the Maine Board of Pharmacy issued to Respondent in Complaint No. 2014 PHA 10608.

6. Respondent understands that any false or untrue statement or any material misrepresentation or omission of fact by Respondent in this settlement agreement may be grounds for further disciplinary action under HRS chapters 436B and 461.

7. 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.

8. 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.

9. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. PHA 2016-18-L.

10. Respondent understands that this Settlement Agreement may be subject to reporting requirements.

11. 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: John T. Hassler, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this 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 miscellaneous permit holders 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: Phoenix, Arizona, March 7, 2016.
(CITY) (STATE)

FOOTHILLS PROFESSIONAL PHARMACY,
LTD.
Respondent

By: [Signature]
Its President

DATED: Honolulu, Hawaii, March 9, 2016.

[Signature]
DARIA A. LOY-GOTO
JOHN T. HASSLER
Attorneys for Department of Commerce and
Consumer Affairs

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF FOOTHILLS PROFESSIONAL
PHARMACY, LTD.; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR
DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; EXHIBIT "1";
RICO CASE NO(S). PHA 2016-18-L

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII

Kerri Okamura
KERRI OKAMURA
Chairperson

3/31/16
DATE

GARRETT A. LAU
Vice Chairperson

MARCELLA CHOCK

MARY JO KEEFE

Carolyn S. J. Ma
CAROLYN S. J. MA

PVL 07/01/15

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF FOOTHILLS PROFESSIONAL
PHARMACY, LTD.; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR
DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; EXHIBIT "1";
RICO CASE NO(S). PHA 2016-18-L

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII

KERRI OKAMURA
Chairperson

3/31/16
DATE

GARRETT A. LAU
Vice Chairperson

Marcella Sato Chock
MARCELLA CHOCK

Mary Jo Hirsch Keefe
MARY JO KEEFE

CAROLYN S. J. MA

PVL 07/01/15

STATE OF Arizona)
) SS.
COUNTY OF Maricopa)

On this 7 day of March 2016, before me personally appeared
Timothy Vitullo, to me known to be the person described, and who executed the
foregoing instrument on behalf of Foothills Professional Pharmacy as its
President, and acknowledged that he/she executed the same as
his/her free act and deed.

This _____-page _____
document dated _____, 20____ was acknowledged before me by
_____ this _____ day of _____, 20____, in the
City of _____, in the County of _____, in the State of
Hawaii.



Stephanie Urquijo
Name:
Notary Public, State of Hawaii

My Commission expires: 7/2/2018

STATE OF MAINE
BOARD OF PHARMACY

IN RE:)
FOOTHILLS PROFESSIONAL)
PHARMACY) CONSENT AGREEMENT
Complaint No. 2014 PHA 10608)

PARTIES

This document is a Consent Agreement regarding disciplinary action against the mail order pharmacy license of Foothills Professional Pharmacy in the State of Maine. The parties to this Consent Agreement are: Foothills Professional Pharmacy ("Foothills"), the State of Maine Board of Pharmacy ("the Board"), and the Maine Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5-A).

FACTS

1. At all times relevant to this matter, Foothills was licensed by the Board as a mail order pharmacy, license no. MC [REDACTED] located at 4545 E. Chandler [REDACTED] 100, [REDACTED] Phoenix, Arizona.
2. The Board received a change in Pharmacist in Charge application from Foothills on June 30, 2014, which disclosed that on June 11, 2014, Ashley L. Patrick took over as the Pharmacist in Charge of Foothills.
3. Board Investigator Thomas Avery filed a complaint with the Board alleging that Foothills had failed to timely notify the Board of the change in the Pharmacist in Charge as required, which the Board docketed as Complaint No. 2014 PHA 10608.

In re: Foothills Professional
Pharmacy 2014 PHA 10608

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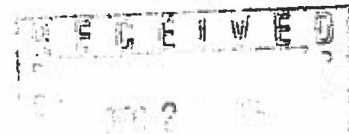
Consent Agreement

EXHIBIT "1"

4. In its response dated November 5, 2014, Foothills explained that the situation resulted from "incorrectly prioritizing notification paperwork during our PIC change," and that timely notification will occur in the future.
5. Title 32 M.R.S. § 13753(1)(C) provides that change of a Pharmacist in Charge requires notice to the Board no later than seven (7) days after the change. In addition, upon a change in Pharmacist in Charge, a mail order pharmacy shall file a new application with the Board no later than seven (7) days after the change. Board Rule Chapter 11, § 3.
6. On January 8, 2015, following a presentation of the complaint, the Board voted to offer Foothills this Consent Agreement in order to finally resolve Complaint No. 2014 PHA 10608.
7. Absent acceptance of this Consent Agreement by signing and dating it and returning it to Kelly McLaughlin, Senior Consumer Assistance Specialist, 35 State House Station, Augusta, Maine 04333-0035 by March 2, 2015, the Board will resolve this matter by holding an adjudicatory hearing.

COVENANTS

8. Foothills admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 10 M.R.S. §§ 8003(5-A)(A)(4),(5), 32 M.R.S. § 13753(1)(C), and Board Rule Chapter 11, § 3, for its failure to notify the Board of the change in Pharmacist in Charge and file the required application within seven (7) days of the change.
9. Foothills agrees to accept the following discipline:
 - a. A REPRIMAND; and



b. A CIVIL PENALTY in the amount of five hundred dollars (\$500.00), payment which shall be made by certified check or money order payable to the "Treasurer, State of Maine" and delivered to Kelly McLaughlin, Senior Consumer Assistance Specialist, Maine Department of Professional and Financial Regulation, 35 State House Station, Augusta, Maine 04333, within thirty (30) days of the execution of this Consent Agreement.

10. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto.

11. Violation of any of the terms or conditions of this Consent Agreement by Foothills shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of licensure or re-licensure.

12. The Board and the Office of the Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.

13. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

14. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

15. Foothills acknowledges by its duly authorized representative's signature hereto that it has had an opportunity to consult with an attorney before executing this Consent Agreement, that it executes this Consent Agreement voluntarily, and that it agrees to abide by all terms and conditions set forth herein.

FOOTHILLS PROFESSIONAL PHARMACY

DATED:

2/23/15

BY:

[Signature]
Authorized Representative

Tim Vitullo
Printed Name

DATED:

JOSEPH BRUNO, R.Ph., President
MAINE BOARD OF PHARMACY

DATED:

MICHAEL MILLER
Assistant Attorney General

