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Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
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Honolulu, Hawaii 96813
Telephone: 586-2660

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 Pharmacist License of) PHA 2016-23-L
)
KELLIE A. SMITH,)
) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR DISCIPLINARY
Respondent.) ACTION AND BOARD'S FINAL ORDER;
) EXHIBIT "1"
)

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
2016 APR - 1 P 2: 29
HEARINGS OFFICE

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DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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 KELLIE A. SMITH (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 licensed by the BOARD OF PHARMACY (hereinafter the "Board") as a pharmacist under license number PH 3228. The license was issued on or about July 29, 2011. The license will expire or forfeit on or about December 31, 2017.

2. Respondent's mailing address for purposes of this action is 3626 N. Milton Street, Spokane, Washington 99205.

3. RICO received a request for investigation from the Board after Respondent reported disciplinary action by the State of Idaho on a December 27, 2015 renewal application.

4. Respondent attached a copy of a Final Order from the Idaho Board of Pharmacy issued to Respondent in Case No. 14-038 (hereinafter "the Idaho Order") (Exhibit "1"). The Idaho Order was based on a lapse in licensure in that state and imposed a \$200.00 fine.

5. RICO alleges that Respondent was disciplined in another state and 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 timely 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 licensed as a pharmacist by the Board acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondent represents Exhibit "1" is a true and correct copy of the Final Order from the Idaho Board of Pharmacy issued to Respondent in Case No. 14-038.

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 pharmacist license.

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 2016-23-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. Reprimand. Respondent agrees to the reprimand of the license by the Board.

2. Administrative costs. Respondent agrees to pay administrative costs in the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00). 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.

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 and C.2 above, Respondent's license 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 license 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 license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent must apply to the Board for a new license 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 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 WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED Spokane, WA, February 2nd 2016
(CITY) (STATE)

Kellie A. Smith
KELLIE A. SMITH
Respondent

DATED: Honolulu, Hawaii, March 2, 2016.

John T. Hassler
DARIA A. LOY-GOTO
JOHN T. HASSLER
Attorneys for Department of Commerce and
Consumer Affairs

IN THE MATTER OF THE PHARMACIST LICENSE OF KELLIE A. SMITH; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; EXHIBIT "1"; CASE NO(S). PHA 2016-23-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 PHARMACIST LICENSE OF KELLIE A. SMITH; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; EXHIBIT "1"; CASE NO(S). PHA 2016-23-L

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII

KERRI OKAMURA
Chairperson

3/31/16

DATE

GARRETT A. LAU
Vice Chairperson

Marcella Choek

MARCELLA CHOCK

Mary Jo Keefe

MARY JO KEEFE

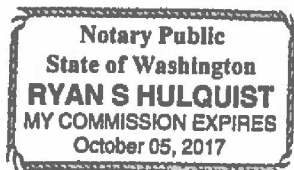
CAROLYN S. J. MA

PVL 07/01/15

STATE OF WASHINGTON)
) SS.
COUNTY OF SPOKANE)

On this 2 day of FEB, 2016, before me personally appeared
KEWIE A. SMITH, 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 6-page _____
document dated FEBRUARY 2nd, 2016 was acknowledged before me by
NORMAN PUBLIC this 2nd day of FEBRUARY, 2016, in the
City of SPOKANE, in the County of SPOKANE, in the State of
WASHINGTON.



Ryan S. Hulquist
Name: Ryan S. Hulquist
Notary Public, State of WASHINGTON

My Commission expires: 10/05/2017

BEFORE THE BOARD OF PHARMACY

STATE OF IDAHO

In the Matter of the License of:)

KELLIE ANN SMITH,)
Pharmacist License No. P5770 and)
CS Registration No. CS10077,)

Respondent.)

Case No. 14-038

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

This matter came before the Idaho Board of Pharmacy (hereinafter "Board") on May 29, 2014 for a hearing on the Administrative Complaint filed against Kelli Ann Smith (hereinafter "Respondent"). Present at the hearing were all Board members with the exception of Mr. Ed Sperry. Also present was Mark Johnston, Executive Director of the Board, Nicole McKay, Deputy Attorney General and counsel for the Board, and Colleen Zahn, Deputy Attorney General and counsel for the State of Idaho. Respondent participated in the hearing in person and was represented by counsel, Patrick K. Fannin.

At the hearing in this matter, each party made their respective arguments and presented evidence in support of and in opposition to the Administrative Complaint.

The State introduced the following exhibits:

- a. Exhibit #1 – Form Pharmacist Idaho License/Registration Renewal Card 2013;
- b. Exhibit #2 – Online Pharmacist License/Registration Test Screenshots, May 2013;

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER - 1

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STATE OF IDAHO

EXHIBIT 1

- c. Exhibit #3 – Online Pharmacist Controlled Substance License/Registration Test Screenshots, May 2013; and
- d. Exhibit #4 – Board Licensee Extended Details Screenshot for Kellie Ann Smith printed on October 23, 2013, showing the license status: “expired.”

The Respondent introduced the following exhibits:

- a. Exhibit #5 – Bulk distribution email dated June 27, 2013 from Ellen Mitchell, Idaho Board of Pharmacy, to Kellie Ann Smith (and other licensees and registrants) regarding license and registration renewal;
- b. Exhibit #6 – Board Licensee Extended Details Screenshot for Kellie Ann Smith printed on March 19, 2014, showing the license status: “pending renewal;”
- c. Exhibit #7 – Board Licensee Extended Details Screenshot for Kellie Ann Smith printed on April 30, 2014, showing the license status: “not renewed;”
- d. Exhibit #8 – Email dated March 18, 2014 from Berk Frazer, Idaho Board of Pharmacy, to Kellie Ann Smith regarding Idaho Pharmacist Registration;
- e. Exhibit #9 – Email dated May 25, 2012 from Access Idaho to Kellie Ann Smith transmitting Idaho Board of Pharmacy License/Registration Renewal Receipt; and

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 STATE OF IDAHO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER - 2

- f. Exhibit #10 - Email dated June 4, 2013 from Access Idaho to Kellie Ann Smith transmitting Idaho Board of Pharmacy License/Registration Renewal Receipt.

The State called Mr. Berk Fraser, Deputy Executive Director, who testified regarding licensing and registration procedures and documents. Counsel for Respondent called Kellie Ann Smith who testified on her own behalf.

FINDINGS OF FACT

After carefully reviewing and considering the testimony and exhibits presented by the State and Respondent, the Board finds that:

1. Respondent was licensed by the Board to practice pharmacy in the State of Idaho on July 7, 2003 and assigned pharmacy license number P5770 and controlled substance registration number CS10077.

2. Respondent's pharmacy license and controlled substance registration were set to expire on June 30, 2013 if not renewed.

3. On June 4, 2013, Respondent timely renewed her controlled substance registration for the July 1, 2013 – June 30, 2014 licensing period.

4. Respondent testified that on June 4, 2014, she made a good faith attempt but failed to renew her pharmacist license for the July 1, 2013 – June 30, 2014 license period.

5. Respondent's mistaken belief that she had renewed her pharmacist license was due to a combination of factors, including the following:

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER - 3

- a. The Board's online renewal process for controlled substance registrations and pharmacy licenses had been combined for the first time;
 - b. The electronic receipt she received after payment for the controlled substance renewal was titled "Idaho Board of Pharmacy License/Registration Renewal Receipt" and Respondent interpreted that receipt to mean her pharmacist license and controlled substance registration had been renewed; and
 - c. A prerequisite to obtaining a controlled substance registration is a pharmacist license so Respondent interpreted the renewal of her controlled substance registration to mean that she had renewed her pharmacist license.
6. Respondent's pharmacist license expired June 30, 2013.
 7. Respondent continued to work as a pharmacist at Renewal Medical Center pharmacy, for a total of sixteen (16) days, from July 2013 through March 2014.
 8. On March 18, 2014, Board staff notified Respondent that her pharmacist license was expired and as such was not authorized to practice pharmacy in Idaho.
 9. Upon receiving the March 18, 2014 notice, Respondent applied for and was granted reinstatement on May 7, 2014 with a new license number of P7002.

CONCLUSIONS OF LAW

Respondent violated her duties as a pharmacist when she failed to timely renew her pharmacist license, pursuant to IDAPA 27.01.01.17.03 and 27.01.01.17.04.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER - 4

FINAL ORDER

Having duly considered this matter and good cause appearing, it is hereby ORDERED that Respondent shall pay the Board a fine in the amount of two hundred dollars (\$200.00) within six (6) months of the effective date of this Order.

DATED this 13th day of June, 2014.

IDAHO STATE BOARD OF PHARMACY

Nicole Chopski
NICOLE CHOPSKI, Pharm D
Board Chair

NOTICE OF APPEAL RIGHTS

This is a final order of the Board. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the issuance of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5246(4) and IDAPA 04.11.01.740.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- a. A hearing was held,
- b. The final Board action was taken,
- c. The party seeking review of the order resides,
- d. The real property or personal property that was subject of the board action is located.

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STATE OF IDAHO

An appeal must be filed within twenty-eight (28) days (a) of the issuance of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER - 5

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2014, I caused to be served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER addressed as follows:

Kellie Ann Smith, Pharm D
4711 N. Hawthorne St.
Spokane, WA 99205

- U.S. Mail, postage prepaid
- Certified U.S. Mail, return receipt
- Hand Delivery
- Overnight Mail
- Facsimile:

Patrick Fannin
Fannin Litigation Group, PS
1312 N. Monroe
Spokane, WA 99201

- U.S. Mail, postage prepaid
- Certified U.S. Mail, return receipt
- Hand Delivery
- Overnight Mail
- Facsimile:

Colleen Zahn
Deputy Attorney General
P. O. Box 83720
Boise, ID 83720-0010

- U.S. Mail, postage prepaid
- Certified U.S. Mail, return receipt
- Hand Delivery
- Overnight Mail
- Facsimile:
- Email: colleen.zahn@ag.idaho.gov
sam.seevers@ag.idaho.gov



Mark Johnston, Executive Director
Idaho Board of Pharmacy

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