

DARIA A. LOY-GOTO 6175
BOBBI W.Y. LUM-MEW 6299
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

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION

MAY -8 P 2: 28

DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

DEPT. OF COMMERCE
& CONSUMER AFFAIRS

2008 MAY -5 P 2: 20

HEARDING OFFICE

2008 JUN 20 P 1: 58

DEPT. OF COMMERCE
& CONSUMER AFFAIRS

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

In the Matter of the Miscellaneous Permit of) PHA 2008-13-L
)
CAREMARK KANSAS SPECIALTY)
PHARMACY LLC, dba CAREMARK,) SETTLEMENT AGREEMENT PRIOR TO
) 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 attorneys, and Respondent CAREMARK KANSAS SPECIALTY
PHARMACY LLC dba CAREMARK (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 397. The

permit was issued on or about October 14, 2004. The permit will expire on or about December 31, 2009.

2. For purposes of this action, Respondent is represented by Thao Pham, Esq., Senior Legal Counsel, CVS Caremark, 750 W. John Carpenter Freeway, Suite 1200, Irving, Texas 75039.

3. RICO received information Respondent entered into a Consent Order with the Louisiana Board of Pharmacy in In the Matter of: Caremark KS Specialty Pharmacy (Complaint No. 07-0075). A true and correct copy of the May 10, 2007 Consent Order in that case is attached as Exhibit "1" and incorporated herein.

4. RICO alleges that Respondent failed to disclose the disciplinary action within thirty days to the Hawaii Board of Pharmacy. Respondent disclosed the disciplinary action on a Renewal Application dated December 18, 2007.

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 chapter or rules relating to profession).

6. 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 is represented by Thao Pham, 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 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 2008-13-L.

8. With respect to the Consent Order with the Louisiana Board of Pharmacy, Respondent inadvertently dispensed prescriptions into Louisiana without knowledge that its out-of-state pharmacy permit had expired. Upon submission of the renewal application, Respondent was issued a renewed permit the following day.

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: Bobbi Lum-Mew, Esq., 235 S. Beretania Street, 9th 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.

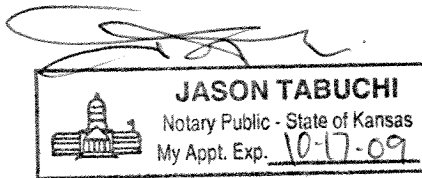
6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

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: Overland Park, Kansas, April 26, 2008
(CITY) (STATE) (DATE)



CAREMARK KANSAS SPECIALTY
PHARMACY LLC DBA CAREMARK
David Milligan

By: David Milligan
Its President and Secretary

DATED: Honolulu, Hawaii, MAY 05 2008

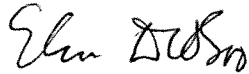
Robert W. Lummel
DARIA A. LOY-GOTO
BOBBI W.Y. LUM-MEW
Attorneys for Department of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Thao Pham
THAO PHAM
Attorney for Respondent

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF CAREMARK KANSAS
SPECIALTY PHARMACY LLC DBA CAREMARK; SETTLEMENT AGREEMENT PRIOR
TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
EXHIBIT "1"; CASE NO. PHA 2008-13-L

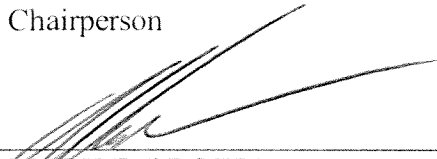
APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII



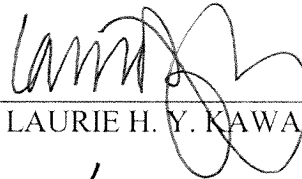
ELWIN D.H. GOO
Chairperson

JUNE 19, 2008

DATE



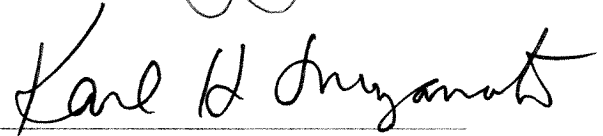
MARK E. BROWN
Vice-Chairperson



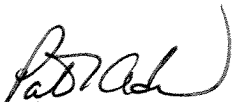
LAURIE H. Y. KAWAMURA



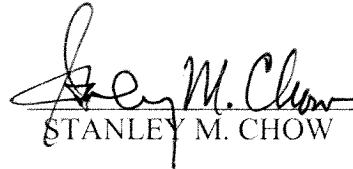
KENT KIKUCHI



KARL H. MIYAMOTO



PATRICK ADAMS

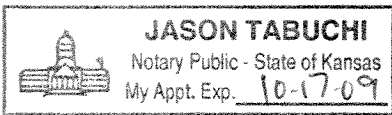



STANLEY M. CHOW

PVL 09/05/07

STATE OF Kansas)
COUNTY OF Johnson) SS.

On this 26th day of April, 2008, before me personally appeared David Milligan, to me known to be the person described, and who executed the foregoing instrument on behalf of _____ as _____, and acknowledged that he/she executed the same as his/her free act and deed.




Name: Jason Tabuchi
Notary Public, State of Kansas
My Commission expires: 10-17-09

LOUISIANA BOARD OF PHARMACY

BATON ROUGE, LOUISIANA

IN THE MATTER OF:

CONSENT ORDER

CAREMARK KS SPECIALTY PHARMACY

LOUISIANA PHARMACY PERMIT NO. 5670

Complaint No. 07-0075

CONSENT AGREEMENT

WHEREAS, CAREMARK KS SPECIALTY PHARMACY (hereinafter referred to as "Respondent"), holding Louisiana Pharmacy Permit No. 5670, 11162 Renner Blvd., Lenexa, Kansas 66219, with Catherine J. Sharp, Louisiana License No. 17895, serving as pharmacist-in-charge, dispensed approximately 234 prescriptions into Louisiana without a valid Louisiana pharmacy permit from January 1, 2007 to March 6, 2007;

WHEREAS, pursuant to information received and/or gathered by the Board which produced evidence indicating that Respondent violated the following laws and regulations by dispensing drug prescriptions to Louisiana residents without a Louisiana out-of-state pharmacy permit:

La. R.S. 37:1241(A)(1): Practiced or assisted in the practice of pharmacy, or knowingly permitted or has permitted anyone in his employ or under his supervision to practice or assist in the practice of pharmacy, in violation of the provisions of this Chapter and any rules and regulations promulgated thereto in accordance with the Administrative Procedure Act.

La. R.S. 37:1221(B): No out-of-state pharmacy providing pharmacy services to residents of this state shall operate or maintain a pharmacy located out-of-state unless the pharmacy is issued a permit by the board.

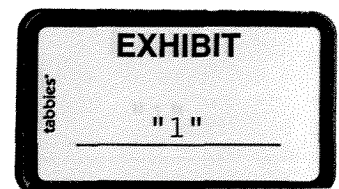
La. R.S. 37:1232(A): A pharmacy located outside this state which does business in this state within the meaning of this Chapter, shall hold a current pharmacy permit as provided in this Chapter.

LAC 46 LIII §2319(A): Out-of-state pharmacies soliciting, receiving, and dispensing and delivering prescription drugs and devices to Louisiana residents constitutes doing business in Louisiana.

To facilitate the submission of this Consent Agreement, Respondent agrees that there is sufficient evidence upon which to predicate a finding of those violations.

Respondent further understands that this Consent Agreement shall constitute a Public Record, pursuant to La. R.S. 44:1 et seq., and is considered disciplinary action by the Board.

In order to avoid further administrative and judicial proceedings, Respondent hereby consents to accept and abide by the following order of the Board:



1. A Letter of Warning is issued to Louisiana Pharmacy Permit No. 5670; and
2. Respondent is ordered to pay a fine of \$5,000.00 and to reimburse the Board \$250.00 for administrative costs, with total payment due the Board of \$ 5,250.00, to be paid simultaneously with the execution of this Consent Agreement by Respondent.

By signing this Consent Agreement, Respondent agrees that the Board has jurisdiction in this matter and waives all rights to informal conference, to Notice of Hearing, to a formal Administrative Hearing, and to judicial review of this Consent Agreement.

By signing this Consent Agreement, Respondent agrees that any failure to comply with the terms of this Agreement is a basis for discipline by the Board.

Both Respondent and the Board stipulate that this Consent Order shall not become effective and shall not become binding on the Board unless and until approved by the Board at formal meeting. However, Respondent agrees that this Consent Order shall be effective and binding upon Respondent without recourse upon its authorized representative signing said Order.

I, David Milligan, authorized to act on behalf of and acting on behalf of CAREMARK KS SPECIALTY PHARMACY, understand that this Consent Agreement is effective as a Board Order upon affirmative vote by the Board at formal hearing. It is also understood that, should the Board not approve this Consent Agreement, the agreement therein does not preclude the Louisiana Board of Pharmacy from requiring a formal hearing of this case.

It is further understood that, should this Consent Agreement not be accepted by the Board, the presentation to and consideration by the Board of this Agreement, including presented documentary evidence and information, shall not unfairly or illegally prejudice or preclude the Board or any of its members from further participation in hearings or resolution of these proceedings.

SIGNED, AGREED TO AND ENTERED ON THIS 4th DAY OF MAY, 2007.

CAREMARK KS SPECIALTY PHARMACY, Louisiana Pharmacy Permit No. 5670

David Milligan
Authorized Representative

[Signature]
WITNESS

Catherine J. Sharp
WITNESS

[Signature]
CARLOS M. FINALET, III
General Counsel, Louisiana Board of Pharmacy

ACCEPTANCE OF THE CONSENT AGREEMENT BY THE LOUISIANA BOARD OF
PHARMACY:

By a majority vote of the Board members voting in favor of the foregoing Consent Agreement at
the Board meeting on May 10, 2007, the Board hereby adopts said
Agreement as a Final Order of the Board.

FOR THE BOARD:

Carl W. Aron
Carl W. Aron
President and Hearing Officer for the Board

CERTIFIED TRUE COPY
Mark Lina
Louisiana Board of Pharmacy