

BOBBI W.Y. LUM-MEW 6299 DEPT. OF COMMERCE  
 Regulated Industries Complaints Office AND CONSUMER AFFAIRS  
 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

DEPT. OF COMMERCE  
 PROFESSIONAL  
 LICENSING DIVISION  
 2012 JAN -4 A 9:59  
 DEPT. OF COMMERCE  
 & CONSUMER AFFAIRS  
 STATE OF HAWAII

2012 JAN 24 P 12:59  
 HEARINGS OFFICE

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 Pharmacist License of ) PHA 2010-14-L  
 )  
 DAVID A. COOPER, ) SETTLEMENT AGREEMENT PRIOR TO  
 ) FILING OF PETITION FOR DISCIPLINARY  
 Respondent. ) ACTION AND BOARD'S FINAL ORDER  
 )

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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, and Respondent DAVID A. COOPER (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 2701. The license was  
 issued on or about November 14, 2007. The permit will expire on or about December 31, 2011.

2. Respondent's mailing address for purposes of this action is [REDACTED]

3. RICO received a complaint that Respondent improperly filled a prescription in October 2009 at the Wal-Mart Pharmacy in Hilo, Hawaii.

4. RICO alleges that Respondent dispensed the wrong dosage of medication from what was prescribed in this incident in October 2009.

5. The foregoing allegation, if proven at an administrative hearing before the Board, would constitute violations of the following statute and rule: Hawaii Revised Statutes ("HRS") § 461-21(a)(2) (professional misconduct) and Hawaii Administrative Rules ("HAR") § 16-95-110(a)(11).

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 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 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 license.

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 against him in RICO's investigation in RICO Case No. PHA 2010-14-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: Bobbi W.Y. Lum-Mew, 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 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.

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 pharmacists 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.

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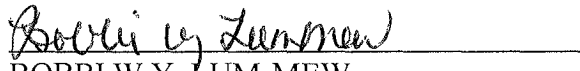
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IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Rochester, Mn, 12-30-11  
(CITY) (STATE) (DATE)

  
\_\_\_\_\_  
DAVID A. COOPER  
Respondent

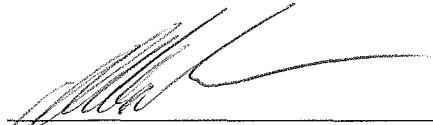
DATED: Honolulu, Hawaii, JAN 04 2012

  
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BOBBI W.Y. LUM-MEW  
Attorney for Department of Commerce and  
Consumer Affairs

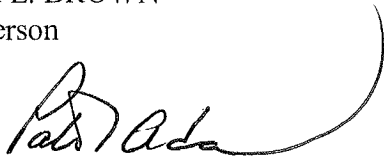
IN THE MATTER OF THE PHARMACIST LICENSE OF DAVID A COOPER;  
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY  
ACTION AND BOARD'S FINAL ORDER; CASE NO. PHA 2010-14-L

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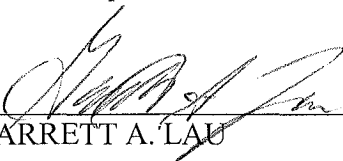
APPROVED AND SO ORDERED:  
BOARD OF PHARMACY  
STATE OF HAWAII


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

January 19, 2012  
DATE

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

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

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

  
\_\_\_\_\_  
CAROLYN S. J. MA

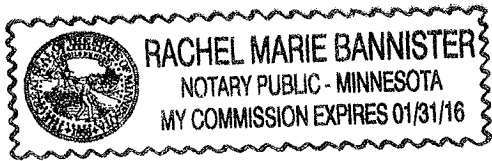
  
\_\_\_\_\_  
JILL OLIVEIRA GRAY

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

PVL 07/15/11

STATE OF Minnesota )  
 ) SS.  
COUNTY OF Olmsted )

On this 30<sup>th</sup> day of December, 2011, before me personally appeared David A. Cooper, to me known to be the person described and who executed the foregoing instrument and acknowledged the same as his/her free act and deed.



Rachel Marie Bannister  
Name: Rachel Marie Bannister  
Notary Public - State of  
Minnesota  
My commission expires: 01-31-16