

JOHN T. HASSLER 5311
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

RECEIVED
PROF & OCCASIONAL
LIFE SCIENCES DIVISION

2013 JUN 21 A 9:59

DEPT OF COMMERCE
CONSUMER AFFAIRS
STATE OF HAWAII

Attorneys for Department of Commerce
and Consumer Affairs

RECEIVED
REGULATED INDUSTRIES
COMPLAINTS OFFICE

2013 JUL 18 P 2:44

DEPT 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 2010-57-L
)
PORTLAND PROFESSIONAL)
PHARMACY ASSOCIATES,) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL ORDER;
Respondent.) EXHIBIT "1"

248040108 (rev. 6.12.13)

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 PORTLAND PROFESSIONAL PHARMACY
ASSOCIATES (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 523. Permit

Number PMP 523 was issued on or about July 3, 2007. The permit will expire on or about December 31, 2013.

2. Respondent's mailing address for purposes of this action is 53 Darling Avenue, South Portland, Maine 04106.

3. RICO received information that on or about July 27, 2010, Respondent entered into an Agreed Settlement with the Nebraska Department of Health and Human Services in The Matter of the Request for Hearing by: Portland Professional Pharmacy d/b/a Ascend Specialty Rx Pharmacy License No. 565, in which Respondent agreed to various facts, including that Respondent was acquired by new owners effective May 1, 2008 and that the prior owner was not properly licensed in Nebraska.

4. The Agreed Settlement was adopted by the Nebraska Department of Health and Human Services on or about August 6, 2010.

5. A certified copy of the Agreed Settlement and Order on Agreed Settlement is attached as Exhibit "1."

6. RICO alleges that Respondent was the subject of disciplinary action in another state for reasons as provided by Hawaii's licensing laws.

7. RICO alleges that the forgoing allegation, if proven at an administrative hearing before the Board, would subject Respondent to possible discipline pursuant to Hawaii Revised Statutes ("HRS") § 436B-19(13)(Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section).

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

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent's mailing address for purposes of this Settlement Agreement is c/o Cynthia S. Nakamura, Esq., Law Office of Linda Chu Takayama, American Savings Bank Tower, 1001 Bishop Street, Suite 2817, Honolulu, Hawaii 96813.

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 permits 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 in RICO's investigation in RICO Case No. PHA 2010-57-L.

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

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

C. TERMS OF SETTLEMENT:

1. Administrative Cost. Respondent agrees to pay an administrative cost 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 administrative cost shall be due at the time this fully executed Settlement Agreement is returned to RICO.

2. Possible further sanction. The Board, at its discretion, may pursue disciplinary action as provided by law to include 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.

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

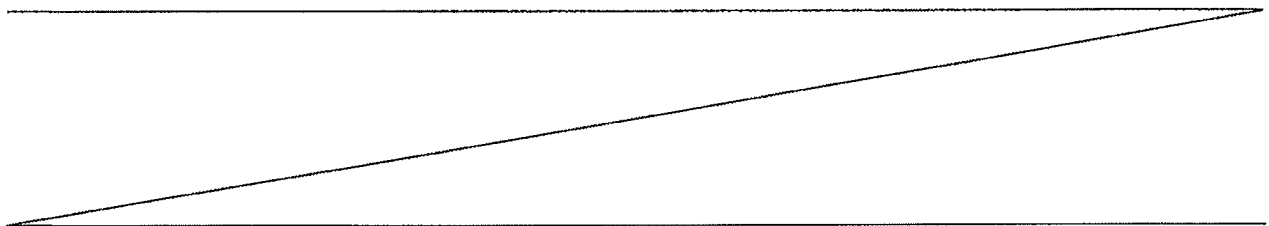
4. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Board's usual and customary fashion pursuant 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.

5. 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.

6. 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.

7. 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: Lisle, Illinois, June 14, 2013.
(CITY) (STATE) (DATE)

Portland Professional Pharmacy Associates
PORTLAND PROFESSIONAL PHARMACY
ASSOCIATES

By: CPPP Ben
Its SVP & General Counsel

DATED: Honolulu, Hawaii, JUN 21 2013.

John T. Hassler
JOHN T. HASSLER
Attorney for Department of Commerce
and Consumer Affairs

APPROVED AS TO FORM:

Cynthia S. Nakamura
CYNTHIA S. NAKAMURA, ESQ.
Attorney for Respondent

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF PORTLAND PROFESSIONAL
PHARMACY ASSOCIATES; SETTLEMENT AGREEMENT PRIOR TO FILING OF
PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
EXHIBIT "1"; CASE NO. PHA 2010-57-L.

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII



JILL OLIVEIRA GRAY



TODD INAFUKU

LYDIA KUMASAKA

CAROLYN S.J. MA

7-18-13

DATE



MARY JO KEEFE



GARRETTA. LAU



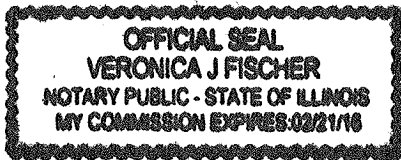
KERRI OKAMURA

PVL 06/13

STATE OF ILLINOIS)
COUNTY OF DUPAGE) SS.

On this 14th day of JUNE, 2013, before me personally appeared Clifford Berman, to me known to be the person described, and who executed the foregoing instrument on behalf of PORTLAND PROFESSIONAL PHARMACY ASSOCIATES as SVP + GENERAL COUNSEL, and acknowledged that he/she executed the same as his/her free act and deed.

This 8-page SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER document dated JUNE 14, 2013, 2013 was acknowledged before me by CLIFFORD BERMAN this 14th day of JUNE, 2013, in the City of LISLE, in the County of DUPAGE, in the State of ILLINOIS.



Veronica J Fischer
Name: VERONICA J. FISCHER
Notary Public, State of ILLINOIS
My Commission expires: 02/21/2016



Division of Public Health

Please reply to: Licensure Unit
PO Box 68609 Lincoln, NE 68609-4986
Phone: (402) 471-2118
Fax: (402) 471-8614

State of Nebraska

Dave Heineman, Governor

CERTIFICATION OF LICENSE

State of Hawaii
Regulated Industries Complaints Office
DCCA
235 S Beretania St, 9th Floor
Honolulu, Hawaii 96813

PROFESSION NAME:	Mail Service Pharmacy Permit		
Number:	565	Status:	Active
Issuance Date:	10/17/2008	Expiration Date:	10/17/2010
Name:	Portland Professional Pharmacy dba Ascend Specialty RX		
Address:	53 Darling Ave South Portland ME 04106		
Credential Obtained by:	Application		
Disciplinary Action:			

To expedite the certification process, the Licensure Unit is using the above format. There is no derogatory information in the facility's records if the Disciplinary Action section above is left blank.

Helen L. Meeks, Administrator
Licensure Unit

September 2, 2010

(SEAL)

**You may verify licenses under the following Internet Web Site
Address: <http://www.dhhs.ne.gov/lis/lisindex.htm>**

EXHIBIT 1

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF
THE REQUEST FOR HEARING BY

PORTLAND PROFESSIONAL PHARMACY
D/B/A ASCEND SPECIALTY RX

H10-1087


ORDER ON
AGREED SETTLEMENT

A proposed Agreed Settlement was filed with the Department on August 3, 2010.

ORDER

1. The Agreed Settlement is adopted, attached hereto and incorporated by reference.
2. The facts as set out in the Agreed Findings of Fact are taken as true and adopted herein.
3. The parties shall comply with all of the terms of the Agreed Settlement.

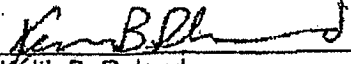
DATED this 6 day of August, 2010.



Joann Schaefer, M.D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

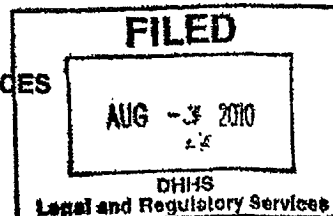
CERTIFICATE OF SERVICE

COMES NOW the undersigned and certifies that on the 9th day of August, 2010 a copy of the foregoing **ORDER ON AGREED SETTLEMENT** was sent by United States certified mail, postage prepaid, return receipt requested, to **Edward Rickert, Krieg Devault, 30 N. LaSalle St., Suite 3516, Chicago, IL 60602** and by interoffice mail to **Roger Brink, Department of Health and Human Services, Lincoln, Nebraska.**



Keith B. Roland
DHHS Legal and Regulatory Services
P.O. Box 98914
Lincoln NE 68509-8914
P. (402) 471-7237 F. (402)742-2376

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA



IN THE MATTER OF THE
REQUEST FOR HEARING BY:

PORTLAND PROFESSIONAL PHARMACY
D/B/A ASCEND SPECIALTY RX
PHARMACY LICENSE NO. 565

Case No. H10-1087

AGREED SETTLEMENT

The Hearing Officer is advised that the Parties have agreed to resolve this matter and agree to the following Findings of Fact and Conclusions of Law. Respondent Portland Professional Pharmacy d/b/a Ascend Specialty RX has been advised of its right to contest the allegations against it, to cross-examine witnesses, and to present witnesses and evidence in its own defense. Respondent hereby knowingly and voluntarily waives these rights. Respondent neither admits nor denies the Department's allegations, but agrees to entry of the Findings of Fact, Conclusions of Law and Agreed Order set out below only in order to resolve this matter.

AGREED FINDINGS OF FACT

1. Respondent is a licensed Mail Service Pharmacy in the State of Nebraska, holding license number 565.
2. Respondent was acquired by new owners effective May 1, 2008. Before that transaction closed, the previous owner submitted an application for licensure as a mail service pharmacy to the Nebraska Board of Pharmacy on or about March 25, 2008. On May 1, 2008 the change of ownership transaction was completed, and the new owners amended the application to reflect the new ownership.
3. On July 25, 2008, the Department sent Respondent a statement of deficiencies, identifying additional information that was needed prior to issuance of the license, namely, that it

required Respondent to identify a Nebraska licensed pharmacist to serve as the responsible pharmacist for medications dispensed to Nebraska patients.

4. On or about July 29, 2008, Respondent's pharmacist-in-charge submitted his application to sit for the Nebraska licensing examination, and on September 25, 2008, he received his Nebraska pharmacist's license.

5. The Department issued Respondent its mail service license on October 17, 2008.

6. The Department has alleged that between May 1, 2008 and October 17, 2008, Respondent delivered 162 different prescription medications to patients residing in Nebraska, in violation of Neb. Rev. Stat. § 71-2408(1).

7. Respondent asserts that its own diligence during the course of the change of ownership transaction led to the discovery that the prior owner was not properly licensed in Nebraska, and that it insisted that the prior owner obtain its Nebraska mail service pharmacy license in March 2008. On May 1, 2008, the date that the new owners assumed ownership of the pharmacy, Respondent had just 15 patients who resided in the state of Nebraska. These patients were receiving specialty medications under a health plan that required those patients to obtain their specialty drugs from Respondent. Respondent continued to provide prescription drugs to those patients from May 1, 2008 through October 17, 2008. Respondent's conduct in this matter was not intended to circumvent or violate Nebraska law, and it acted diligently to obtain its Nebraska mail service permit. Its conduct between May 1, 2008 and October 17, 2008 was done to ensure that Nebraska patients did not have to suffer an interruption of drug therapy.

AGREED CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter and over the Respondent.

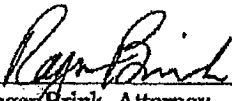
2. Respondent was charged with violating Neb. Rev. Stat. § 71-2408(1) by delivering prescription medications to patients residing in Nebraska prior to the date on which the pharmacy was licensed to deliver medications in Nebraska; and is found by the Department to have done so.

AGREED ORDER

1. Respondent agrees to pay to the Department Five Thousand Dollars (\$5,000.00) as a civil penalty. The fine is due thirty days from the date of entry of this Order.

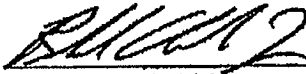
2. The Department retains jurisdiction over the instant case until all matters are finally resolved as set forth in this Order.

Agreed to this 27th day of July, 2010 by:



Roger Brink, Attorney

Nebraska Department of Health & Human Services



Rick Couillard, R.Ph.
Director, Specialty Pharmacy Operations
Portland Professional Pharmacy
d/b/a Ascend Specialty RX
(Appearing *Pro Se*)