

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

RECEIVED  
DEPT. OF COMMERCE, PROF. & VOCATIONAL  
LICENSING DIVISION  
2011 NOV -3 P 11 28 2011 AUG 30 A 9:50  
DEPT. OF COMMERCE  
REGULATED INDUSTRIES  
COMPLAINTS 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 Miscellaneous Permit of ) PHA 2011-16-L  
)  
CAREMARK TEXAS MAIL PHARMACY ) SETTLEMENT AGREEMENT PRIOR TO  
LLC dba CVS CAREMARK, ) FILING OF PETITION FOR DISCIPLINARY  
) ACTION AND BOARD'S FINAL ORDER;  
Respondent. ) EXHIBIT "1"  
)

248040108

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 CAREMARK TEXAS MAIL PHARMACY  
LLC, doing business as CVS 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 410. The  
permit was issued on or about January 27, 2005. The permit will expire on or about December  
31, 2011.

2. Respondent's mailing address for purposes of this action is c/o Mercedes Powers, Legal Dept., CVS Caremark, 9501 E. Shea Boulevard, MC024, Scottsdale, AZ 85260.

3. RICO received information that Respondent signed an acknowledgement of a Uniform Penalty Letter in Lieu of Formal Disciplinary Complaint with the New Jersey State Board of Pharmacy. Attached as Exhibit "1" is a true and correct copy of this Uniform Penalty Letter and acknowledgement. On July 19, 2010, Respondent agreed to pay a \$20,000.00 penalty and to cease and desist from the alleged conduct relating to authorization for renewal of prescriptions and patient profile record system. Respondent disclosed this action to the Hawaii Board on or about January 31, 2011.

4. RICO alleges Respondent did not disclose this disciplinary action to the Hawaii Board within thirty (30) days.

5. The foregoing allegation, if proven at an administrative hearing before the Board, would constitute violations of the following statute: Hawaii Revised Statutes ("HRS") § 436B-19(15) (disciplinary action to be disclosed within 30 days).

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 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 2011-16-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 ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00). 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 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: San Antonio, Texas, 8/24/2011  
(CITY) (STATE) (DATE)

  
CAREMARK TEXAS MAIL PHARMACY LLC

By: Rebecca Suzette Tijerina  
Its President

DATED: Honolulu, Hawaii, AUG 30 2011

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

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF CAREMARK TEXAS  
PHARMACY LLC DBA CVS CAREMARK; SETTLEMENT AGREEMENT PRIOR TO  
FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;  
CASE NO. PHA 2011-16-L; EXHIBIT "1"

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APPROVED AND SO ORDERED:  
BOARD OF PHARMACY  
STATE OF HAWAII

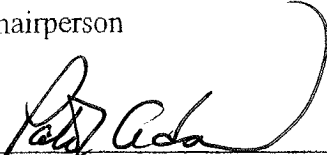
*September 15, 2011*

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MARK E. BROWN  
Chairperson

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DATE



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PATRICK ADAMS  
Vice Chairperson

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TODD INAFUKU

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GARRETT A. LAU

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~~KARL H. MIYAMOTO~~  
CAROLYN S. J. MA

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~~STANLEY M. CHOW~~  
JILL OLIVEIRA GRAY

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~~ELIZABETH C. HO~~  
LYDIA M. K. B. KUMASAKA

PVL 09/01/10

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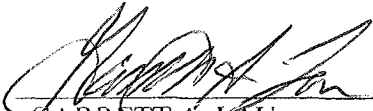
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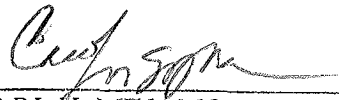
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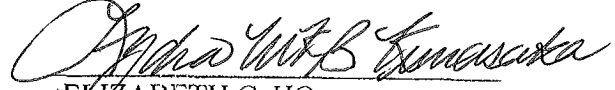
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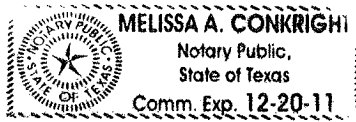
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ELIZABETH C. HO  
LYDIA M. K. B. KUMASAKA

PVL 09/01/10

STATE OF Texas )  
 ) SS.  
COUNTY OF Bexar )

On this 24th day of August, 2011, before me personally  
Rebecca Suzette Tijerina  
appeared \_\_\_\_\_, to me known to be the person described, and who executed  
Caremark Texas Mail Pharmacy, L.L.C.  
the foregoing instrument on behalf of \_\_\_\_\_ as  
President, and acknowledged that he/she executed the same as  
his/her free act and deed.



  
Name: \_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_



CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

## New Jersey Office of the Attorney General

Division of Consumer Affairs  
Board of Pharmacy  
124 Halsey Street, 6<sup>th</sup> Floor, Newark, NJ 07102



PAULA T. DOW  
Attorney General

THOMAS R. CALCAGNI  
Acting Director

### Via Regular and Certified Mail

*Mailing Address:*  
P.O. Box 45013  
Newark, NJ 07101  
(973) 504-6450

June 30, 2010

Karl Von Reich, RPIC  
CVS Caremark Mail Order Pharmacy 2BR0 00014700  
7034 Alamo Downs Parkway  
San Antonio, Texas 78238

Re: Uniform Penalty Letter in Lieu of  
Formal Disciplinary Complaint

Dear Mr. Von Reich:

This letter is to advise you that the New Jersey State Board of Pharmacy, the "Board" has had an opportunity to review the information you submitted concerning the unauthorized dispensing refills to New Jersey residents.

Upon review of all available information, the Board has preliminarily found that you have violated N.J.A.C. 13:39-7.3 authorization for renewal of prescriptions and N.J.A.C. 13:39-7.19(e) patient profile record system.

The Board has determined that it will first offer an opportunity to settle this matter and thereby avoid the initiation of formal disciplinary proceedings. Should you wish to avail yourself of this opportunity, you should sign the acknowledgment below and agree to the following:

1. Cease and desist from engaging in the conduct alleged.
2. Pay a penalty in the amount of \$20,000.00 (to be paid immediately upon your signing of the acknowledgment at the bottom of this letter)

Karl Von Reich  
Uniform Penalty Letter  
June 30, 2010  
Page 2

Alternatively you may waive your right to a hearing and submit a written statement or explanation to the Board. The Board will then consider your submission and render a final decision, which may include any of the terms set forth above. Any disposition by way of a settlement will be a public record, and will have the same effect as an order of the Board. Any failure to comply with the terms to which you agree will be deemed a violation.

If you do not wish to settle this matter, you may request a hearing. In that event, this letter will serve as notice of the charge against you and a hearing will be scheduled before the Board. At that hearing you either personally or with the assistance of an attorney will have an opportunity to respond to the charge and submit evidence and present testimony as may be necessary in order for the Board to make a final determination concerning the charge of unlawful activity.

You should be aware that in making its final decision, the Board may, if unlawful activity has been proven, assess civil penalties in a greater amount than that offered in this letter. Additionally, the Board may, if the facts are found to so warrant, enter an order requiring you to reimburse certain monies, directing you to cease and desist from engaging in unlawful acts and/or requiring you to pay costs incurred in the matter.

Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact this office at the above address and/or telephone number.

The enclosed certification should be completed and returned to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and you will be deemed in default. The allegations against you will be deemed uncontested. The Board will then proceed to schedule the matter for final review and will enter an appropriate order. Once an order has been entered, your failure to pay any penalties may result in further action to suspend or revoke your license.

**New Jersey State Board of Pharmacy**

By: *Dianne Boyer*  
Dianne Boyer, R.Ph.  
Executive Director

cc: Megan Cordoma, Deputy Attorney General

### CERTIFICATION

I, Karl Von Reich , hereby acknowledge that I have read and reviewed the Board's letter dated June 30, 2010 regarding allegations of violations of the Board's enabling act and/or regulations.

**Please Check One:**



I acknowledge the conduct which has been charged and agree to:

1. Cease and desist in engaging in the conduct alleged and pay a penalty in the amount of **\$20,000.00**(to be paid upon signing of this certification).

I am also aware that the action taken against me by the Board herein is a matter of public record, and that the Board's letter and this certification are public documents.

- I hereby waive any rights I may have to a hearing in this matter and defend myself against any charges, but ask the Board to consider my explanation before the rendering its final decisions. I understand that the Board may order any of the terms specified in its letter and that the certifications are public documents.
- I request a formal administrative hearing to contest the charges specified by the Board.  
I understand that I will be advised of the time, date and place for that hearing at another time. I am aware that I may be represented by an attorney and that at the time of the hearing I may submit to the Board, testimony and documentation relevant to the charges. I understand that in making its final decision, the Board may, if unlawful activity has been proven, assess civil penalties in an amount greater than that herein offered in its letter and may order such other remedies as it may deem appropriate. I am also aware that this proceeding is a matter of public record and that the Board's letter and this certification are public documents.

Karl Von Reich  
(Signature)

Dated: July 19, 2010

KARL VON REICH  
(Print Name)