

DIANE R. CORN 3912

Regulated Industries Complaints Office | 2012 NOV 23 | A 9:05

Department of Commerce and Consumer Affairs

State of Hawaii

Leiopapa A Kamehameha Building

235 S. Beretania Street, 9th Floor

Honolulu, Hawaii 96813

Telephone: (808) 586-2660

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 Pharmacy

Miscellaneous Permits of

BENECARD CENTRAL FILL OF PA,
LLC,

Respondent.

) PHA 2011-20-L

)

) SETTLEMENT AGREEMENT AFTER

) FILING OF PETITION FOR DISCIPLINARY

) ACTION AND BOARD'S FINAL ORDER;

) EXHIBIT "1"

)

) Administrative Hearings Officer:

) Sheryl Lee A. Nagata

)

241092407

SETTLEMENT AGREEMENT AFTER 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 BENECARD CENTRAL FILL OF PA, LLC, (hereinafter

"Respondent"), enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. The Respondent was at all times relevant herein issued pharmacy
miscellaneous permit no.604 on May 22, 2009 and is due to expire on December 31, 2013.

2. Respondent's mailing address is 5040 Ritter Road, Mechanicsburg, PA

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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

HEARINGS OFFICE

2012 DEC 20 P 1:17

DEPT OF COMMERCE
AND CONSUMER AFFAIRS

17055. Respondent is represented by Stephen Birek, Esq., General Counsel for Benecard Services.

3. On or about June 29, 2012, RICO filed a Petition for Disciplinary Action alleging that Respondent violated the following statute(s): 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).

4. The Board of Pharmacy (hereinafter "Board") has jurisdiction to hear and resolve this matter pursuant to HRS §§ 461-4.5 and 461-21.

5. On or about August 1 through August 10, 2010, Respondent failed to comply with Colorado's Drug Monitoring Program ("PDMP") by failing to upload data or submit a "zero" report to the PDMP database for this data reporting period as required by the Colorado Board rule.

6. On or about March 14, 2011 Respondent entered into a Stipulation and Final Agency Order with the Colorado Board and paid a fine in the amount of \$5,500.00. A certified copy is attached hereto as Exhibit "1."

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is fully aware that it has the right to be represented by an attorney of its choosing in this matter and is represented by Stephen Birek, 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 admits to a violation of the following:

- a. 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).

6. Respondent has engaged in no conduct in the State of Hawaii that has put any Hawaii resident at risk of harm.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. PHA 2011-20-L.

8. Respondent understands that this settlement agreement is public record pursuant to HRS Chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative Costs. Respondent agrees to pay administrative costs of FIVE HUNDRED ND NO/100 (\$500.00). Said 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: Diane Corn, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the administrative costs shall be due at the time this settlement 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 pharmacy miscellaneous 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 its pharmacy miscellaneous 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 pharmacy miscellaneous permit until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to be issued pharmacy miscellaneous permits again, Respondent must apply to the Board for new pharmacy miscellaneous permits 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 and 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: CLIFTON NJ, NJ, 10-31-12.
(City) (State) (Date)

BENECARD CENTRAL FILL OF PA, LLC

By: [Signature]
Its General Counsel

DATED: Honolulu, Hawaii, NOV 15 2012.

[Signature]
DIANE R. CORN
Attorney for Department of Commerce
and Consumer Affairs

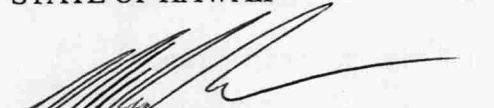
APPROVED AS TO FORM:

[Signature]
STEPHEN BIREK
Attorney for Respondent

IN THE MATTER OF THE PHARMACY MISCELLANEOUS PERMIT OF BENECARD CENTRAL FILL OF PA, LLC,
SETTLEMENT AGREEMENT AFTER FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL
ORDER; EXHIBIT "1"; CASE NO. PHA 2011-20-L.

IN THE MATTER OF THE PHARMACY MISCELLANEOUS PERMITS OF BENECARD
CENTRAL FILL OF PA, LLC, SETTLEMENT AGREEMENT AFTER FILING OF PETITION
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; EXHIBIT "1"; CASE NO.
PHA 2011-20-L.

APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII



MARK E. BROWN
Chairperson

12-20-2012

DATE

PATRICK ADAMS
Vice Chairperson



TODD INAFUKU



GARRETT A. LAU



CAROLYN S. J. MA



JILL OLIVEIRA GRAY



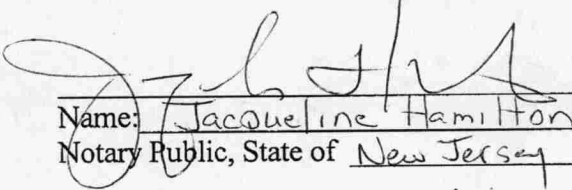
LYDIA KUMASAKA

PVL 07/15/11

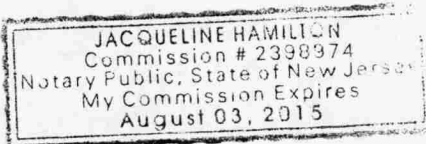
STATE OF New Jersey)
) SS.
COUNTY OF PASSAIC)

On this 31 day of OCTOBER, 2012, before me personally appeared
Stephen Berk, to me known to be the person described, and who
executed the foregoing instrument on behalf of Bertrand Central FILL PA LLC as its
General Counsel, and acknowledged that he/she executed the same as
his/her free act and deed.

This 7 -page Settlement Agreement
document dated 10-31, 2012 was acknowledged before me by
Stephen J Berk Jr this 31 day of OCT, 2012, in the City of
Clifton, in the County of PASSAIC, in the State of New Jersey.


Name: Jacqueline Hamilton
Notary Public, State of New Jersey

My Commission expires: 8/3/2015





Dora
Department of Regulatory Agencies

Division of Registrations
Rosemary McCool
Director

State Board of Pharmacy
Wendy Anderson
Program Director

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive
Director

May 23, 2011

Lee Ann Teshima, Executive Officer
Board of Pharmacy
P.O. Box 3469
Honolulu, HI 96801

RE: Benecard Central Fill; OSP 5809
Case No. 2011-0612

Certification

Dear Ms. Teshima:

As the official custodian of the records of the Colorado State Board of Pharmacy, I hereby certify that the attached are true copies of the original records on file with the State of Colorado.

FOR THE COLORADO STATE BOARD OF PHARMACY

Wendy L. Anderson
For

Wendy L. Anderson

Program Director



ATTACHMENTS

EXHIBIT 7

1560 Broadway, Suite 1350
Fax 303.894.7692

Denver, Colorado 80202
www.dora.state.co.us

Phone 303.894.7800
V/TDD 711





Dora

Department of Regulatory Agencies

Division of Registrations
Rosemary McCool
Director

State Board of Pharmacy
Wendy Anderson
Program Director

Bill Ritter, Jr.
Governor

Barbara J. Kelley
Executive
Director

May 23, 2011

Lee Ann Teshima, Executive Officer
Board of Pharmacy
P.O. Box 3469
Honolulu, HI 96801

RE: Benecard Central Fill; OSP-5809
Case #2011-0612

Dear Ms. Teshima:

The Stipulation and Final Agency Order you requested on the above licensee or registrant is attached. The Stipulation and Final Agency Order became effective on the date signed.

X The registrant successfully completed the terms of this Stipulation and Final Agency Order.

The registrant has not yet completed the terms of the Stipulation and Final Agency Order as of this date. The registrant is considered to be in compliance with the document's terms until such time as any subsequent action would become final.

If you wish information in addition to what is contained in the Stipulation and Final Agency Order, you may request an appointment to review the licensee file or you may place specific questions in writing to the Board for its response.

FOR THE COLORADO STATE BOARD OF PHARMACY

Linda Acosta
Licensing/Complaint Specialist

enclosure

1560 Broadway, Suite 1350
Fax 303.894.7692

Denver, Colorado 80202
www.dora.state.co.us

Phone 303.894.7800
V/TDD 711



BEFORE THE STATE BOARD OF PHARMACY
STATE OF COLORADO

Case No. 2011-0612

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE NON-RESIDENT PRESCRIPTION DRUG OUTLET REGISTRATION OF **BENECARD CENTRAL FILL**, REGISTRATION NO. OSP-5809,
RESPONDENT PHARMACY.

IT IS HEREBY STIPULATED AND AGREED by and between the Colorado State Board of Pharmacy ("Board") and Benecard Central Fill ("Respondent Pharmacy"), to resolve all matters pertaining to Board Case Number 2011-0612 as follows:

1. On May 12, 2009, Respondent Pharmacy became registered by the Board as a non-resident prescription drug outlet in the State of Colorado and was issued Registration No. OSP-5809 ("Colorado Registration").
2. The Board has jurisdiction over Respondent Pharmacy, its Colorado Registration, and the subject matter of this Stipulation and Final Agency Order ("Final Agency Order") pursuant to the provisions of title 12, article 22, C.R.S. (2010), otherwise known as the Pharmaceuticals and Pharmacists Act.
3. Respondent Pharmacy's address of record with the Board and current location is 5040 Ritter Road, Mechanicsburg, Pennsylvania 17055.
4. Respondent Pharmacy admits these findings and hereby waives any further proof in this or any other proceeding before the Board regarding the following facts.
5. Respondent Pharmacy failed to comply with Colorado's Prescription Drug monitoring Program ("PDMP") because it failed to upload data or submit a "zero" report to the PDMP database for the August 1 through 10, 2010 data reporting period as required by Board rule.
6. Respondent Pharmacy admits that the conduct described above constitutes a violation of §§12-22-125(1)(c) and 12-22-708, C.R.S. and that such conduct provides grounds for disciplinary action against Respondent Pharmacy's Colorado Registration pursuant to Board Policy 30-8.
7. The Parties agree that based upon Respondent Pharmacy's above-described violations of the Pharmaceuticals and Pharmacists Act and relevant rules and regulations, the following discipline is just and appropriate under the circumstances.

DISPOSITION

\$5,000.00 Fine with 10% Surcharge and Terms


8. **Fine with Surcharge.** Pursuant to §12-22-125.2(5), C.R.S., Respondent Pharmacy shall pay a fine of **Five Thousand Dollars and No Cents (\$5,000.00)**. Respondent Pharmacy understands and acknowledges that, pursuant to §24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 10% of this fine. Respondent Pharmacy shall therefore pay a total amount of **Five Thousand Five Hundred Dollars and No Cents (\$5,500.00)**. The total amount shall be payable to the State of Colorado and shall be remitted in one lump sum when Respondent Pharmacy submits this signed Final Agency Order to the Board.
9. **Compliance with PDMP.** At all times Respondent Pharmacy is registered with the Colorado State Board of Pharmacy, it shall comply with the data submission requirements of the PDMP. Respondent Pharmacy understands and acknowledges that future violations of PDMP reporting requirements, including failure to submit a "zero" report in the event of no dispensing transactions in Colorado during the relevant reporting period, shall lead to additional penalties pursuant to Board Policy 30-8.
10. **Advisements and Waivers.** Respondent Pharmacy enters into this Final Agency Order freely and voluntarily, after having had the opportunity to consult with its own legal counsel and/or choosing not to do so. Respondent Pharmacy acknowledges its understanding that it has the following rights:
 - a. To have a formal notice of hearing and charges served upon it;
 - b. To respond to said formal notice of charges;
 - c. To have a formal disciplinary hearing pursuant to §12-22-125, C.R.S., and
 - d. To appeal this Board order.

Respondent Pharmacy freely **waives** these rights, and acknowledges that such waiver is made voluntarily in consideration for the Board's limiting the action taken against it to the sanctions imposed herein.

11. **Acknowledgments.** The undersigned authorized agent of Respondent Pharmacy has read this Final Agency Order in its entirety and acknowledges, after having had the opportunity to consult with its own legal counsel and/or choosing not to do so, that Respondent Pharmacy understands the legal consequences and agrees that none of the terms or conditions herein is unconscionable. Respondent Pharmacy is not relying on any statements, promises or representations from the Board other than as may be contained in this Final Agency Order. Respondent Pharmacy further acknowledges that it is not entering into this Final Agency Order under any duress.

12. **Violations.** Time is of the essence to this Final Agency Order. It is the responsibility of Respondent Pharmacy to take all appropriate steps to comply fully with this Final Agency Order. Respondent Pharmacy acknowledges and agrees that any violation of this Final Agency Order may be sanctioned as provided under §12-22-125.2(4), C.R.S., and may be sufficient grounds for additional discipline, including but not limited to revocation of its registration. The pendency of any suspension or disciplinary action arising out of an alleged violation of this Final Agency Order shall not affect the obligation of Respondent Pharmacy to comply with all terms and conditions of this Final Agency Order.
13. **Integration and Severability.** Upon execution by all parties, this Final Agency Order shall represent the entire and final agreement of and between the parties in this case. In the event any provision of this Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Final Agency Order shall be given full force and effect.
14. **Public Record.** Upon execution by all parties, this Final Agency Order shall be a public record, maintained in the custody of the Board.
15. **Effective Date.** This Final Agency Order shall become effective upon signature of a Board member or representative.

ACCEPTED AND AGREED BY



Authorized Agent of Respondent Pharmacy

Dated: 3-9-11

RECEIVED PVL
LICENSING BRANCH
2011 MAY 26 A 4:00
STATE OF NEW JERSEY

Subscribed and sworn to before me in the County of Passaic, State of New Jersey, this 8 day of March, 2011 by Steve Birek, in his/her capacity as an authorized agent of United States Pharmaceutical Group LLC.

FLOR I. SEGARRA-GARCIA
NOTARY PUBLIC OF NEW JERSEY
My commission expires: 8/3/2015


Notary Public

FINAL AGENCY ORDER

WHEREFORE, the within Stipulation and Final Agency Order is approved, accepted, and hereby made an Order of the Board.

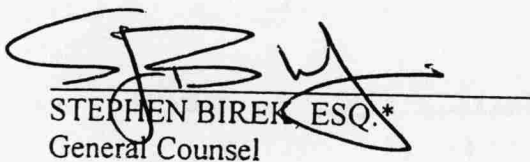
DONE AND EFFECTIVE THIS 14th DAY OF March, 2011.

State Board of Pharmacy

BY: Wendy Anderson
Wendy Anderson
Program Director

APPROVED AS TO FORM

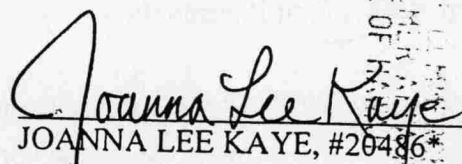
BENECARD SERVICES, INC.


STEPHEN BIREK, ESQ.*
General Counsel

Attorneys for Respondent Pharmacy

3131 Princeton Pike, Bldg 2B, Suite 103
Lawrenceville, New Jersey 08648
Telephone: (609) 219-0400
FAX: (609) 219-1788
stephen.birek@benecard.com
*Counsel of Record

JOHN W. SUTHERS
Attorney General


JOANNA LEE KAYE, #20486*
Assistant Attorney General
Business and Licensing Section

Attorneys for State Board of Pharmacy

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-6170
FAX: (303) 866-5395
jo.kaye@state.co.us
*Counsel of Record

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DEPT. OF HEALTH
& COMMUNITY AFFAIRS
STATE OF NEW JERSEY

CERTIFICATE OF SERVICE


This is to certify that I have duly served the within **STIPULATION AND FINAL AGENCY ORDER** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 21st day of March 2011, addressed as follows:

Benecard Central Fill
Attn: Mark A. Boeshore, RPH
5040 Ritter Road
Mechanicsburg, PA 17055

Stephen Birek, Esq.
3131 Princeton Pike, Bldg 2B, Ste 103
Lawrenceville, NJ 08648

And through interagency mail to:

Joanna Lee Kaye
Assistant Attorney General


RECEIVED PYL
LICENSING BRANCH
2011 MAY 26 A 4:09
STATE OF ILLINOIS
& COMMISSIONER
OF REVENUE