

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

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2013 JUN 20 P 2: 52

HEARINGS OFFICE

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2013 JUN -4 A 9: 59

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
STATE OF HAWAII

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 2012-29-L
)
MED QUEST PHARMACY,)
) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR DISCIPLINARY
Respondent.) ACTION AND BOARD'S FINAL ORDER;
) EXHIBIT "1"
)

241042211

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 MED QUEST PHARMACY (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 232. The
permit was issued on or about August 20, 2001. The permit will expire or forfeit on or about
December 31, 2013.

2. Respondent's mailing address for purposes of this action is through its attorney, William J. Stilling, Esq., Parsons Behle & Latimer, 201 South Main Street, Suite 1800, Salt Lake City, Utah 84111.

3. RICO received information regarding disciplinary action taken by the State of Louisiana against the Respondent on August 9, 2007. Respondent had entered into a Consent Agreement and Order in In the Matter of Medquest Pharmacy Louisiana Pharmacy Permit No. 5686 in Complaint No. 07-0168. The matter stemmed from Respondent operating as a pharmacy without a valid permit. Attached as Exhibit "1" is a true and correct copy of the Consent Agreement and Order. Respondent paid a fine of \$5,000.00 and costs of \$250.00.

4. Respondent was disciplined in the State of Maine on July 9, 2012 for its failure to disclose on its Maine renewal form the disciplinary action taken against it in Louisiana. Respondent did notify the Board of the Maine disciplinary action within 30 days. Because of this notification, RICO then became aware of the disciplinary action taken in Louisiana.

5. RICO alleges that Respondent failed to notify the Board of the Louisiana disciplinary action within 30 days.

6. The foregoing allegation, if proven at an administrative hearing before the Board, would constitute a violation of the following statute: Hawaii Revised Statutes ("HRS") § 436B-19(15) (failure to report in writing to the Board any disciplinary action in another jurisdiction within 30 days).

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

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is represented by attorney William J. Stilling, Esq. in this matter.

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 No. PHA 2012-29-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 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, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due no later than thirty (30) days following Board approval of this Settlement Agreement.

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 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: N. Salt Lake, Utah, May 21st, 2013.

MED QUEST PHARMACY
Respondent

By: Jacques Butler
Its Owner

DATED: Honolulu, Hawaii, JUN 04 2013.


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

APPROVED AS TO FORM:

William J. Stilling
WILLIAM J. STILLING
Attorney for Respondent

IN THE MATTER OF THE MISCELLANEOUS PERMIT OF MED QUEST PHARMACY;
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY
ACTION AND BOARD'S FINAL ORDER; CASE NO. PHA 2012-29-L


APPROVED AND SO ORDERED:
BOARD OF PHARMACY
STATE OF HAWAII



MARK E. BROWN
Chairperson

6/20/13

DATE



PATRICK ADAMS
Vice Chairperson

TODD INAFUKU



GARRETT A. LAU

CAROLYN S. J. MA

JILL OLIVEIRA GRAY



LYDIA KUMASAKA

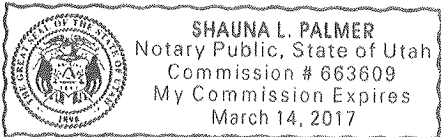
PVL 07/15/11

STATE OF UTAH)
COUNTY OF Salt Lake) SS.
)

On this 21st day May, 2013, before me personally appeared Jacque Butler, to me known to be the person described, and who executed the foregoing instrument on behalf of Med Quest Pharmacy as OWNER, 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

May 21, 2013 was acknowledged before me by Jacque Butler this 21st day of May, 2013, in the City of North Salt Lake in the County of Salt Lake, in the State of Utah.



Shauna Palmer
Name: Shauna Palmer
Notary Public, State of Utah

My Commission expires: March 14, 2017

EXHIBIT 1

LOUISIANA BOARD OF PHARMACY

BATON ROUGE, LOUISIANA

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

IN THE MATTER OF:

CONSENT ORDER

MEDQUEST PHARMACY

2012 NOV 13 P 2:39

LOUISIANA PHARMACY PERMIT NO. 5686

CONSUMER COMPLAINTS
SECTION

Complaint No. 07-0168

CONSENT AGREEMENT

WHEREAS, MEDQUEST PHARMACY (hereinafter referred to as "Respondent"), holding Louisiana Pharmacy Permit No. 5686,669 West 900 North, North Salt Lake, Utah 84054, with Michelle Earl Cruson, Louisiana License No. 18171, serving as pharmacist-in-charge, dispensed prescriptions into Louisiana without a valid Louisiana pharmacy permit after December 31, 2006;

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:

EXHIBIT 1

1. A Letter of Warning is issued to Louisiana Pharmacy Permit No. 5686; 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, Jacques Butler, authorized to act on behalf of and acting on behalf of MEDQUEST 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.

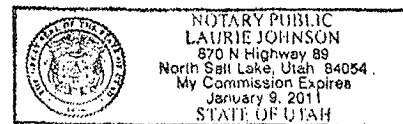
SIGNED, AGREED TO AND ENTERED ON THIS 3rd DAY OF August 2007.

MEDQUEST PHARMACY, Louisiana Pharmacy Permit No. 5686

Jacques Butler
Authorized Representative

Laurie Johnson
WITNESS
Wendy Humphries
WITNESS

Carlos M. Finalet, III
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 August 9, 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
Donna L. L...
Louisiana Board of Pharmacy