SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF PHARMACY AND DRIVE-IN PHARMACY

Permit No. 004339
Complaint No. 2008-000979
AHC Case No. 10-2138 PH

Comes now Drive-In Pharmacy ("Licensee or permit holder") and the Missouri Board of Pharmacy ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's pharmacy permit will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

The Permit Holder acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on its own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time the Permit Holder may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's permit. Being aware of these rights provided to Permit Holder by operation of law, the Permit Holder knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement

agreement and agrees to abide by the terms of this document, as they pertain to the Permit Holder.

The Permit Holder acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline Licensee's permit, along with citations to the law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's permit to operate a pharmacy in the state of Missouri, numbered 004339 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW

1. The Missouri Board of Pharmacy ("Board") is an agency of the State of Missouri created and established pursuant to § 338.110, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Drive-In Pharmacy ("the Pharmacy or Licensee") is located at 200 East Jackson, Mexico, Missouri.

3. The Pharmacy was licensed by the Board, Permit Number 004339.

4. The Pharmacy's permit was current and active at all times relevant herein.

5. At all times relevant herein, the Pharmacy was owned by The Drive In Pharmacy, Inc.

6. Larry Kimbel served as the president of the corporation and the permit holder for the Pharmacy.

7. Kimbel also served as the pharmacist-in-charge ("PIC") at the Pharmacy from 1/1/1975 to 8/1/2007 and from 3/18/2009 to its closure.

8. When not acting in the capacity of PIC, Kimbel worked as a staff pharmacist at the Pharmacy.

9. As the owner, permit holder and PIC for the Pharmacy, Kimbel is responsible for ensuring the Pharmacy and its employees comply with all state and federal laws and regulations relating to the practice of Pharmacy.

RELEVANT STATUTORY AUTHORITY

Board's Authority to Discipline

10. **338.055**. 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> * * *
>
> (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;
>
> (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
>
> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
>
> * * *

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(16) The intentional act of substituting or otherwise changing the content, formula or brand of any drug prescribed by written or oral prescription without prior written or oral approval from the prescriber for the respective change in each prescription; provided, however, that nothing contained herein shall prohibit a pharmacist from substituting or changing the brand of any drug as provided under section 338.056, and any such substituting or changing of the brand of any drug as provided for in section 338.056 shall not be deemed unprofessional or dishonorable conduct unless a violation of section 338.056 occurs;

Missouri - When a Drug or Device Misbranded.

11. **196.100**. 1. Any manufacturer, packer, distributor or seller of drugs or devices in this state shall comply with the current federal labeling requirements contained in the Federal Food, Drug and Cosmetic Act, as amended, and any federal regulations promulgated thereunder. Any drug or device which contains labeling that is not in compliance with the provisions of this section shall be deemed misbranded.

Missouri - Certain Prohibited Acts

12. **196.015**. The following acts and the causing thereof within the state of Missouri are hereby prohibited:

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 196.080 or 196.105;

* * *

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of sections 196.010 to 196.120;

(11) The using, on the labeling of any drug or in any advertising relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 196.105, or that such drug complies with the provisions of such section;

Pharmacy Standards of Operation

13. **20 CSR 2220-2.010 (1)**(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility.

* * * *

(O) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

* * * *

Prescription Requirements

14. **20 CSR 2220-2.018**(1) In order for a prescription to be valid for purposes of

dispensing a medication by a pharmacy, it must conform to all requirements as outlined in sections 338.056 or 338.196, RSMo, and contain the following information:

(A) The prescription date and a unique, readily retrievable identifier;
(B) The name of the patient(s);
(C) The prescriber's name, if an oral prescription, signature if a written prescription;
(D) Any prescriber indication of name and dosage of drug, directions for use, name and dosage of drug dispensed;
(E) The number of refills, when applicable;
(F) The quantity dispensed in weight, volume or number of units;
(G) The initials or name of the pharmacist responsible for processes in dispensing or compounding of the prescription;
(H) Any change or alteration made to the prescription dispensed based on contact with the prescriber to show a clear audit trail. This shall include, but is not limited to, a change in quantity, directions, number of refills or authority to substitute a drug;
(I) The address of the prescriber and the patient when the prescription is for a controlled substance;
(J) The prescriber's Drug Enforcement Administration (DEA) number when the prescription is for a controlled substance; and
(K) Any prescription, when it is for a controlled substance, must comply with all requirements of federal and state controlled substance laws.

(2) The information specified in section (1) shall be required and recorded on all handwritten, telephone, oral and electronically produced prescriptions that are processed for dispensing by a pharmacist/pharmacy.

Electronic Data Processing

15. **20 CSR 2220-2.080**(1) All information concerning the compounding, dispensing or selling at retail of any drug, medicine or poison pursuant to a lawful prescription which is entered into an electronic data processing (EDP) system at any pharmacy shall be entered only by a licensed pharmacist or by an individual under the direct supervision and review of a licensed pharmacist. That pharmacist shall be personally responsible for the accuracy of the information.

(2) Any EDP system used by any pharmacy for record keeping shall comply with the requirements of section 338.100, RSMo, including the capability to store and retrieve the following information concerning the filling or refilling of any prescription:

(A) A prescription label number that is linked to the unique readily retrievable identifier;
(B) Date of original prescription, expiration date of the prescription or both;
(C) Date original prescription was filled;
(D) Patient's full name;
(E) Patient's address when a prescription prescribes a controlled substance;
(F) Prescriber's full name;
(G) Prescriber's address and Drug Enforcement Administration (DEA) number when a prescription specifies a controlled substance;
(H) Name of drug, medicine or poison dispensed;
(I) Quantity of drug, medicine or poison originally dispensed;
(J) Quantity of drug, medicine or poison dispensed on each refill;
(K) Initials or code of the pharmacist responsible for input or review of data on each original prescription and each refill;
(L) Date of each refill; and
(M) If a new prescription is transmitted by phone, a hard copy representation must be made and contain all of the information in subsections (2)(A)–(L) plus an indication of whether or not a generic substitution is permitted and made in accordance with 4 CSR 220-3.011.

(3) Prescription hard copies must be filed by either the prescription label number or by the unique readily retrievable identifier. Prescription hard copies must be retrievable at the time of inspection.

(4) Any pharmacy using an EDP system as described in section (1) shall provide documentation that the information concerning the refills of prescriptions entered into the system for all prescription drugs is accurate. This documentation shall include:

(A) The initials or code designation of the dispensing pharmacist for each refill;
(B) The date of the refill;
(C) The quantity of substances refilled;
(D) The number of authorized refills or dispensable units remaining;
(E) If additional refills are authorized and added to an existing prescription, a notation indicating the method and source of the authorization must be a part of the EDP record or hard copy, in that case the expiration date of the original prescription shall remain the same; and
(F) If any other alteration is made in the original prescription record, a clear audit trail must be maintained. This shall include, but is not limited to, a change in authorizing physician, a change in total quantity ordered or a change in directions.

(5) Any pharmacy using an EDP system as described in section (1) shall maintain the following:

(A) A bound logbook or separate file in which each pharmacist involved in the Pharmacy's record keeping system shall sign a statement each day attesting that

information concerning the refill of prescriptions has been entered into the system for that day and that the pharmacist has reviewed the information for accuracy. The logbook or file shall be maintained at the pharmacy for at least five (5) years after the date the drugs, medicines or poisons are dispensed.

* * *

(7) Any EDP system, as described in section (1), must be capable of producing the record required in subsections (2)(A)–(M) and said records shall be readily retrievable on-line. Readily retrievable is defined as providing EDP records within two (2) hours of time of request by an inspector or by making a computer terminal available to the inspector for immediate use.

Pharmacist-in-Charge

16. **20 CSR 2220-2.090**(1) A pharmacist may be a pharmacist-in-charge of a licensed pharmacy; provided, that s/he complies with all provisions of this rule.

(2) The responsibilities of a pharmacist-in-charge, at a minimum, will include:

* * *

(E) Assurance that all procedures of the pharmacy in the handling, dispensing and recordkeeping of controlled substances are in compliance with state and federal laws;

(F) Any excessive or suspicious requests, or both, for the dispensing of controlled substances be verified prior to dispensing;

(G) All labeling requirements are complied with according to section 338.059, RSMo, federal laws where required and board regulations governing auxiliary labeling of drugs and devices;

(H) The prescription files are maintained according to the requirements of this board and the other state and federal controlled substance laws and regulations;

(I) The Missouri Revised Negative Drug Formulary and state laws governing drug substitution be complied with when generic substitution takes place;

* * *

(N) The pharmacist-in-charge will be responsible for the supervision of all pharmacy personnel, to assure full compliance with the pharmacy laws of Missouri;

* * *

(R) Security is sufficient to insure the safety and integrity of all legend drugs located in the pharmacy;

* * *

(U) Assure that the appropriate handling and disposal of controlled substances is done and verified through appropriate documentation and when necessary that controlled substances be disposed of through appropriate procedures involving the Missouri Board of Pharmacy or the Bureau of Narcotics and Dangerous Drugs;

(V) No outdated drugs are dispensed or maintained within the active inventory of the pharmacy, including prescription and related nonprescription items;

(W) Assure full compliance with all state and federal drug laws and rules;

* * *

(Y) Assure that all state and federal laws concerning drug distribution and control are complied with and that no violations occur that would cause a drug or device or any component thereof to become adulterated or misbranded;

* * *

(EE) Maintain compliance of automated dispensing and storage systems with applicable board rules and regulations.

Pharmacy Physical Security Requirements

17. **19 CSR 30-1.031**(1) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances . . . .

(2) Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operations. . . .

* * *

Security for Practitioners

18. **19 CSR 30-1.034**(1) Physical Security.

(A) Controlled substances listed in Schedules I and II shall be stored in a securely locked, substantially constructed cabinet.
(B) Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies may disperse these substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

* * *

(2)(B) A registrant shall notify the Department of Health and Senior Services of the theft, diversion or significant loss of any controlled substances or regulated chemicals upon discovery.

1. The registrant shall complete and submit a report of the loss or diversion of controlled substances to the Department of Health and Senior Services no later than seven (7) business days after the discovery of such a loss. . . .
* * *

MISAPPROPRIATION OF DRUGS BY KIMBEL'S SON

19. Paragraphs 1 through 18 are incorporated by reference.

20. From 2005 continuing through March 19, 2009, while employed at the Pharmacy, Kimbel's son misappropriated controlled and non-controlled medications from the Pharmacy, forged prescriptions for himself and altered records to cover up his diversion.

21. Kimbel failed to provide adequate security to detect and prevent drug diversion in violation of Missouri regulations 19 CSR 30-1.031 (1), (2), 19 CSR 30-1.034.1(B) and 20 CSR 2220-2.010 (1) (H), (O).

22. The Pharmacy failed to maintain accurate controlled substance records in violation of section 195.050.6, RSMo and 19 CSR 30-1.044(1).

23. The son's conduct caused the Pharmacy to dispense controlled substances in the absence of a valid prescription in violation of section 195.060.1, RSMo and 19 CSR 30-1.066.

24. The son's conduct caused the Pharmacy to dispense controlled substances in violation of 195.030.3, RSMo and 195.252.1(1), (2), RSMo.

25. Kimbel's conduct as alleged herein constitutes incompetency, misconduct, gross negligence, in the performance of his duties as a licensed Pharmacist, the PIC and the permit holder for the Pharmacy in violation of section 338.055.2(5), RSMo.

26. The son's acts and omissions as alleged herein caused the Pharmacy to be in violation of the drug laws and regulations of this state and the federal government in violation of 338.055.2(15), RSMo.

27. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to § 338.055.2(5), and (15), which states in relevant parts:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> * * * *
>
> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
>
> (15) Violation of, the drug laws or rules and regulations of this state, any other state or the federal government.

FRAUDULENT PRESCRIPTION BILLING BY AR

28. Paragraphs 1 through 27 are incorporated by reference.

29. AR was employed as a pharmacy technician at the Pharmacy at all times relevant herein.

30. Beginning in February 2008 and continuing through April 2009, AR had a prescription for Aciphex, which she filled at the Pharmacy.

31. Beginning in February 2008 and continuing monthly through April 2009, AR fraudulently billed her Aciphex prescription as Prevacid and paid for her Aciphex prescription with

a Prevacid promotional card.

32. AR was fraudulently billing and paying for her Aciphex prescription with a Prevacid promotional card.

33. Every month, AR entered the above referenced transaction and altered the Pharmacy's records.

34. The Pharmacy was paid for dispensing Prevacid by insurance companies, when it fact it dispensed Aciphex.

35. As a result of AR's fraud, as alleged herein, the Pharmacy obtained or attempted to obtain a fee, charge, or other compensation by fraud, deception, or misrepresentation in violation 338.055.2(4), RSMo.

36. Kimbel failed to supervise his employees to ensure full compliance with all laws and regulations relating to the practice of pharmacy.

37. The Pharmacy failed to maintain accurate controlled substance records in violation of section 195.050.6, RSMo and 19 CSR 30-1.044(1).

38. Kimbel's conduct as alleged herein constitutes incompetency, in the performance of his duties as a licensed Pharmacist, the PIC and the permit holder for the Pharmacy in violation of section 338.055.2(5), RSMo.

39. AR's acts and omissions as alleged herein caused the Pharmacy to be in violation of the drug laws and regulations of this state and the federal government in violation of 338.055.2(15), RSMo.

40. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to § 338.055.2(4), (5), (6), , and (15), which states in relevant parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

BILLING FRAUD BY KIMBEL

41. Paragraphs 1 through 40 are incorporated by reference.

42. The Pharmacy obtained payments from insurance companies by deception, dishonesty and/or misrepresentation in that Kimbel billed or directed his employees to bill for the brand name drug Altace while dispensing the generic drug Ramipril to patient(s) in the following particulars:

Date	Rx No.	Drug and Quantity Dispensed	Drug and Quantity Billed
3/19/2008	6513494	Ramipril #60	Altace 60
4/21/2008	6513494	Ramipril #60	Altace 60
5/21/2008	6513494	Ramipril #60	Altace 60
6/18/2008	6513494	Ramipril	Altace

Date	Rx No.	Drug and Quantity Dispensed	Drug and Quantity Billed
		#60	60
7/16/2008	6513494	Ramipril #60	Altace 60
8/20/2008	6513494	Ramipril #60	Altace 60
9/17/2008	6513494	Ramipril #60	Altace 60
10/15/2008	6513494	Ramipril #60	Altace 60
2/21/2008	6507856	Ramipril #30	Altace 30
6/18/2008	6520107	Ramipril #60	Altace 60
9/22/2008	6520107	Ramipril #60	Altace 60
12/1/2008	6520107	Ramipril #60	Altace 60
1/5/2009	6520107	Ramipril #60	Altace 60
2/12/2009	6520107	Ramipril #60	Altace 60
3/14/2009	6520107	Ramipril #60	Altace 60
5/6/2009	6520107	Ramipril #60	Altace 60

43. An audit of the drugs Ramipril and Altace was conducted at the Pharmacy. The dispensing records provided to the Board's inspector by Kimbel do not support the actual activity of these drugs.

44. From 8/1/2007 through 6/19/2009, the Pharmacy purchased 600 units of Altace, but dispensed 690 units resulting in a shortage of 90 units.

45. From 8/1/2007 through 6/19/2009, the Pharmacy purchased 2,300 units of Ramipril and dispensed 2,160 units.

46. The Pharmacy's records indicate that the Pharmacy was dispensing Ramipril and not Altace.

47. The Pharmacy obtained payment from insurance companies by deception, dishonesty and/or misrepresentation in that Kimbel billed or directed his employees to bill for a larger number of doses of Nefazodone 250 mg. than what was dispensed to the patient(s) in the following particulars:

Drug: NEFAZODONE			
DATE	Rx No.	Quantity Dispensed	Quantity Billed
10/24/2006	6485853	60	60
11/22/2006	6485853	60	120
12/22/2006	6485853	60	120
1/23/2007	6485853	60	120
2/21/2007	6485853	60	120
3/21/2007	6485853	60	120
4/20/2007	6485853	60	120
5/23/2007	6485853	60	120
6/19/2007	6485853	60	120
7/20/2007	6485853	60	60
8/17/2007	6485853	60	120
9/19/2007	6485853	60	120
10/17/2007	6485853	60	120
11/14/2007	6507941	60	120
12/12/2007	6507941	60	120
1/15/2008	6507941	60	120
2/12/2008	6507941	60	120
3/12/2008	6507941	60	120
4/10/2008	6507941	60	60
5/14/2008	6507941	60	120
6/12/2008	6507941	60	120
7/9/2008	6507941	60	120
8/14/2008	6522814	60	120
9/9/2008	6522814	60	120
9/30/2008	6522814	60	120
11/17/2008	6526105	60	120
1/8/2008	6526105	60	120
2/9/2009	6526105	60	60
3/9/2009	6526105	60	60

Drug: NEFAZODONE			
DATE	Rx No.	Quantity Dispensed	Quantity Billed
4/4/2009	6526105	60	60
5/11/2009	6526105	60	60

48. The Pharmacy obtained payment from insurance companies by deception, dishonesty and/or misrepresentation in that Kimbel billed or directed his employees to bill for a larger number of doses of Armour Thyroid 1 gr. than what was dispensed to the patient(s) in the following particulars:

Drug: ARMOUR THYROID			
DATE	Rx No.	Quantity Dispensed	Quantity Billed
4/10/2008	6514531	60	120
5/9/2008	6514531	60	120
6/12/2008	6514531	60	120

49. The Pharmacy obtained payment from insurance companies by deception, dishonesty and/or misrepresentation in that Kimbel billed or directed his employees to bill for a larger number of doses of Brimonidine 0.2% than what was dispensed to the patient(s) in the following particulars:

Drug: BRIMONIDINE				
DATE	Rx No.	Quantity Dispensed	Quantity Billed	Price
10/9/2007	6505947	10 ml.	15 ml.	27.43
11/13/2007	6505947	10 ml.	15 ml.	27.43
1/9/2008	6505947	10 ml.	15 ml.	27.43
2/18/2008	6513338	10 ml.	15 ml.	27.43
3/11/2008	6513338	10 ml.	15 ml.	27.43
4/8/2008	6513338	10 ml.	15 ml.	18.96
5/27/2008	6513338	10 ml.	15 ml.	27.43
6/24/2008	6520379	10 ml.	15 ml.	27.71
7/23/2008	6521788	10 ml.	15 ml.	72.39

4/23/2008	6535047	10 ml.	15 ml.	29.06

50. Prescription No. 6505947 referenced above was issued for 10 ml. of Brimonidine 0.2%, the 10 ml. size was dispensed to the patient, but the 15 ml. size was billed to the insurance company.

51. Prescription No. 6513338 referenced above was issued for 15 ml. of Brimonidine 0.2%, the 10 ml. size was dispensed to the patient, but the 15 ml. size was billed to the insurance company.

52. Prescription No. 6513645 for Patient DG was filled on 2/21/2008 and 3/20/2008. This prescription was billed to the insurance company by the Pharmacy but never dispensed to Patient DG. The Pharmacy billed the insurance company for this prescription to recover the amount that DG owed the Pharmacy.

53. On 8/2/2007 and 5/30/2008, Patient IP received a prescription for Fortical Nasal Spray, prescription no. 6500737. The Pharmacy dispensed Fortical Nasal Spray but billed the Patient's insurance company for Miacalcin Nasal Spray in order to receive a higher payment from the insurance company.

54. The Pharmacy obtained payment from insurance companies by deception, dishonesty and/or misrepresentation in that Kimbel billed or directed his employees to bill for drugs that were not dispensed by the Pharmacy, in the following particulars:

PATIENT	DRUG DISPENSED	DRUG BILLED BY PHARMACY	NO. Rx'S INVOLVED
Robert Weiser	Risperidone 4 mg.	Risperdal 4mg	2
Linda J. Martin	Simvastatin 40 mg	Zocor 40 mg	1
Lisa Tidball	Simvastatin 40 mg	Zocor 40 mg	1
Eugene E. Hill	Simvastatin 40 mg	Zocor 40 mg	1
Debi Meyer	Simvastatin 40 mg	Zocor 40 mg	2
Sharon Caples	Fluticasone Spray	Flonase Spray	1

PATIENT	DRUG DISPENSED	DRUG BILLED BY PHARMACY	NO RX'S INVOLVED
Stephanie Goff	Lamitrigine 200 mg	Lamictal 200 mg	1
Amy Hatfield	Lamitrigine 200 mg	Lamictal 200 mg	1
Richard Hatfield	Lamitrigine 200 mg	Lamictal 200 mg	2
Linda Morton	Lamitrigine 200 mg	Lamictal 200 mg	2
Rusty Davis	Sertraline 50 mg	Zoloft 50 mg	1
Larry Brownsfield	Lamotrigine 100 mg	Lamictal 200 mg	2
Greig Kincheloe	Lamotrigine 100 mg	Lamictal 200 mg	2
Cliff Kliethermes	Lamotrigine 100 mg	Lamictal 200 mg	1
Vicki Eveatt	Simvastatin 40 mg	Zocor 40 mg	1
Dorothy Schlatt	Simvastatin 40 mg	Zocor 40 mg	1
Linda Martin	Simvastatin 40 mg	Zocor 40 mg	1
Gail Paluskas	Simvastatin 40 mg	Zocor 40 mg	3
Cliff Kliethermes	Lamotrigine 100 mg	Lamictal 100 mg	2
Betty Baker	Amlo/Benaz 5/20	Lotrel 5/20	1
Vernon Floyd	Amlo/Benaz 5/20	Lotrel 5/20	1
Oleta Brooks	Pantoprazole 40 mg	Protonix 40 mg	1
Jean Burton	Pantoprazole 40 mg	Protonix 40 mg	1
Teresa Finder	Pantoprazole 40 mg	Protonix 40 mg	1
Ron Salmons	Pantoprazole 40 mg	Protonix 40 mg	1

55. The Pharmacy obtained payment from insurance companies by deception, dishonesty and/or misrepresentation in that Kimbel or his employees accepted returned drugs from long term care facilities without providing credit for the returned long term care drug. Some of these returned drugs were destroyed by pharmacy employees. A portion of these returned drugs were re-dispensed and re-billed..

56. Records were altered and/or false and/or inaccurate information was entered into the Pharmacy's computer system to cover up these activities.

57. Kimbel provided altered records to the Board and its staff, .

58. Kimbel altered and increased a patient's co-pay amount because the Pharmacy was being charged a high processing fee. The co-[ay was increased by 20%.

59. The Pharmacy obtained payment from insurance companies by deception,

dishonesty and/or misrepresentation in that the Pharmacy billed insurance companies for prescriptions that were not authorized, in the following particulars:

PATIENT	Rx NUMBER	DRUG RECORDED AS DISPENSED	ACTUAL DRUG DISPENSED	AMOUNT BILLED BY PHARMACY	AMOUNT OWED BY PATIENT TO PHARMACY
Debby Guile	6513645	Welbutrin XL 150 mg	None	72.12	72.12

60. Prescriptions that were prepared for customer pickup, were billed to the customer's insurance company and the Pharmacy received payment. If the customer never picked up the prescription, the Pharmacy did not timely reverse the transaction and return payment to the insurance company.

61. The Pharmacy re-used customer's prescription bottles rather than dispense new prescriptions in new bottles.

62. The Pharmacy maintained a notebook where it recorded all drugs that were returned to the Pharmacy by long term care centers. The drug name and quantity returned were recorded in the notebook.

63. For long term care drugs that were returned to the Pharmacy, the Pharmacy only gave credit only for drugs that were paid with cash or a hospice price code. No credit was given to Medicaid or insurance companies.

64. The long term care drugs that were returned to the Pharmacy, were placed back in stock and re-dispensed and re-billed.

65. Kimbel's conduct as alleged herein violates 20 CSR 2200-2.090.

66. The Pharmacy's conduct as alleged herein constitutes a violation of Missouri drug laws and regulations, specifically sections 338.059, 338.100, 195.030, 195.060, 195.180, 195.211, 195.226, 195.246, and 195.252.1(1)(2), 196.015, RSMo.

67. The Pharmacy dispensed controlled substances in the absence of a valid prescription in violation of section 195.060.1, RSMo and 19 CSR 30-1.060.

68. Licensee's conduct as alleged herein constitutes, misconduct, gross negligence, misrepresentation, and dishonesty in the performance of its duties as a licensed Pharmacy in the state of Missouri.

69. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with its clients in that its clients relied upon the professional expertise of Licensee to ensure that all applicable state and federal laws and regulations regarding the practice of pharmacy were followed.

70. Licensee's conduct as alleged herein violated its clients' professional trust and confidence.

71. Licensee's failure to keep an accurate inventory of the drugs in its possession and failed to timely report the theft of controlled substances in violation of Section 338.100, RSMo.

72. Licensee's conduct constitutes a violation of 4 CSR 2200-2.010(1)(N), which states:

> (N) When a pharmacy permit holder knows or should have known, within the usual and customary standards of conduct governing the operation of a pharmacy as defined in Chapter 338, RSMo, that an employee, licensed or unlicensed, has violated the pharmacy laws or rules, the permit holder shall be subject to discipline under Chapter 338, RSMo.

73. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to § 338.055.2(5), (6), and (15), which states in relevant parts:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> . . . .
>
> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
>
> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
>
> . . . .
>
> (15) Violation of, the drug laws or rules and regulations of this state, any other state or the federal government.

GUILTY PLEA BY KIMBEL

74. Paragraphs 1 through 73 are incorporated by reference.

75. On May 13, 2011, in the United States District Court for the Eastern District of Missouri, Eastern Division, Drive In Pharmacy, Inc, by and through Defendant Larry Kimbel as president, entered a guilty plea to violating Title 18, United State Code, Section 1347, relative to his creation and use of false documents related to prescription drugs from 2006 to 2009, the submission of reimbursement claims for prescription drugs that were not dispensed from 2006 to 2009, and false statements that Larry Kimbel made to the Missouri Board of Pharmacy during the 2009 investigation, of which the Government was aware of at the time, Case No. 4:11-cr-00189.

76. A true and accurate copy of Drive In Pharmacy's Guilty Plea Agreement is attached as exhibit 1 and incorporated by reference.

77. Licensee's conduct as alleged herein constitutes, misconduct, gross negligence, misrepresentation, and dishonesty in the performance of its duties as a licensed Pharmacy in the state of Missouri.

78. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with its clients in that its clients relied upon the professional expertise of Licensee to ensure that all applicable state and federal laws and regulations regarding the practice of pharmacy were followed.

79. Licensee's conduct as alleged herein violated its clients' professional trust and confidence.

80. Violation of Title 18 of the United State Code, Section 1347, constitutes an offense reasonably related to the qualifications, functions or duties of a licensed pharmacist, an essential element of which is dishonesty, and is an offense involving moral turpitude.

81. Cause exists for Petitioner to take disciplinary action against Respondent's license pursuant to § 338.055.2(2), (5), (6), and (15), which states in relevant parts:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> > (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any

> state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;
>
> . . . .
>
> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
>
> . . . .
>
> (15) Violation of, the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, as amended.

1. Licensee's permit to operate a pharmacy in the State of Missouri, Permit No. 004339 is hereby **VOLUNTARILY SURRENDERED.**

2. The parties to this Agreement understand that the Board of Pharmacy will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 338, 610, and 620, RSMo.

3. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

4. Licensee, together with its heirs and assigns, and its attorney(s), do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

5. Licensee understands that it may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit its request to:

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

6. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

Larry Kimbel

LARRY KIMBEL
President and Permit Holder
The Drive In Pharmacy, Inc.

Date 10/24/2011

BOARD:

KIMBERLY GRINSTON, J.D.
Executive Director
Missouri Board of Pharmacy

Date 11-17-11

ATTORNEY FOR LICENSEE

RONALD E. JENKINS, ESQ.
Jenkins & Kling, P.C.
150 North Meramec Avenue
Suite 400
Clayton, MO 63105
Telephone: 314-721-2525
Fax: 314-721-5525
E-mail: rjenkins@jenkinskling.com

ATTORNEY FOR THE BOARD:

LORETTA SCHOUTEN
Missouri Bar No. 52290
7970 S. Tomlin Hill Road
Columbia, MO 65201
Telephone: 573-340-9825
Fax: 877-585-5180
E-mail: llschouten@gmail.com