SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY AND CVS PHARMACY #8590

Come now CVS Pharmacy #8590 ("Licensee") and the State 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 and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

The Licensee acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; and 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 it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence on mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided to the Licensee by operation of law, Licensee 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 it.

The Licensee acknowledges that it has received a copy of the investigation report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes was violated. Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's pharmacy permit, Permit No. 2006015995, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2005 and Chapter 338, RSMo.

Joint Stipulation of Facts

1. The Board is an agency of the State of Missouri created pursuant to § 338.140, RSMo[1], for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. The Licensee holds a permit from the Board as a pharmacy, permit number 2006015995. The Licensee's Missouri pharmacy permit was current and active at all times relevant herein, and is presently still active.

3. Licensee's physical location is on 315 W. 75th Street, Kansas City, Missouri 64114.

4. On or about September 19, 2006, the Board received notification from Roger Kyle Stephenson that as of September 16, 2006, he was no longer the Pharmacist-in-Charge ("PIC") for the Licensee.

[1] All statutory references are to the 2000 Revised Statutes of Missouri, as amended, unless other wise stated.

5. On or about October 25, 2006, the Board received a change of PIC form from the Licensee showing that Jennifer Winningham was the new PIC effective October 22, 2006.

6. The Licensee operated without a PIC from September 16, 2006 to October 22, 2006.

7. Section 338.055, RSMo 2000, in pertinent part, states as follows:

> 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 or registration or authority, permit or license for any one or any combination of the following causes:
>
> * * *
>
> (6) Violation of, or assisting or enabling any person to violate, any provisions of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
>
> * * *
>
> (13) Violation of any professional trust and/or confidence;
>
> * * *
>
> (15) Violation of the drug laws or rules and regulations of this state, any other state, or the federal government[.]
>
> * * *

8. Section 338.010, RSMo states, in pertinent part:

1. The **"practice of pharmacy"** shall mean the interpretation and evaluation of prescription orders; the compounding, dispensing and labeling of drugs and devices pursuant to prescription orders; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper record thereof; consultation with patients and other health care practitioners about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy. No person shall engage in the practice of pharmacy unless he is licensed under the provisions of this chapter. This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist in any of his duties. The assistance in no way is intended to relieve the pharmacist from his responsibilities for compliance with this chapter and he will be responsible for the actions of the auxiliary personnel acting in his assistance. This chapter shall also not be construed to prohibit or interfere with any legally registered practitioner of medicine, dentistry, podiatry, or veterinary medicine, or the practice of optometry in accordance with and as provided in sections 195.070 and 336.220, RSMo, in the compounding or dispensing of his own prescriptions.

2. Nothing in this section shall be construed as to prevent any person, firm or corporation from owning a pharmacy regulated by sections 338.210 to 338.315, provided that a licensed pharmacist is in charge of such pharmacy.

* * *

9. 20 C.S.R. 2220-2.010(1) states, in pertinent part:

* * *

(L) Pharmacy operations must be conducted at all times under the supervision of a properly designated pharmacist-in-charge. When a licensed pharmacist leaves the employment of a pharmacy where s/he has been pharmacist-in-charge, s/he immediately shall notify the executive director of the board of the termination of his/her services in the pharmacy. Likewise,

> the holder of the permit shall notify the executive director of the board of the termination of the services and give the name of the new licensed pharmacist-in-charge.
>
> * * *
>
> (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.

10. 20 CSR 2220-2.020(6) states in pertinent part:

> (6) No pharmacy permit will be issued unless the pharmacy area is under the direct supervision of a licensed pharmacist in good standing with the Missouri State Board of Pharmacy, who meets the requirements of 4 CSR 220-2.090.

11. Cause exists for the Board to take disciplinary action against the Licensee pursuant to § 338.055.2(6), RSMo, because Licensee's failure to maintain a PIC continuously constitutes a violation of the laws adopted pursuant to Chapter 338, RSMo.

12. Cause exists for the Board to take disciplinary action against the Licensee pursuant to § 338.055.2(13), RSMo, because Licensee's failure to maintain a PIC violates the trust that the public places by virtue of its professional licensure that the Licensee will maintain an adequate staff of licensed professionals.

13. Cause exists for the Board to take disciplinary action against the Licensee pursuant to § 338.055.2(15), RSMo, because Licensee's failure to have a PIC present at all times of pharmacy operation is in violation of § 338.010, RSMo, 20 C.S.R 2220-2.010(1), and 20 CSR 2220-2.020(6).

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, RSMO 2000.

Licensee's pharmacy permit, permit number 2006015995, is hereby placed on PROBATION for TWO (2) YEARS. The terms of probation shall be:

1. If requested, Respondent shall provide the Board a list of all licensed pharmacists employed by the Respondent, and the individuals' current home address and telephone numbers.

2. The Licensee shall pay all required fees for permitting to the Board and shall renew its permit prior to October 31 of each permitting year.

3. The Licensee shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules, and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

4. The Licensee shall not serve as an intern training facility for interns.

5. If, after disciplinary sanctions have been imposed, the Licensee fails to keep its Missouri pharmacy permit current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.

6. Licensee shall report to the Board, on a preprinted form supplied by the Board office, once every six months, beginning six months after this agreement becomes effective,

stating truthfully whether or not it has complied with all terms and conditions of this disciplinary order.

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

8. 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.

9. Upon the expiration of said discipline, Licensee's permit shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Licensee has violated any term or condition of this settlement agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the permit of Licensee.

10. No order shall be entered by the Board pursuant to the preceding paragraph of this settlement agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

11. If the Board determines that Licensee has violated a term or condition of this settlement agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any

lawful remedies or procedures afforded it and is not bound by this settlement agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this settlement agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this settlement agreement has occurred.

12. 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.

Licensee understands that it may, either at the time the settlement agreement is signed by all parties, or within 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 permit. 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 West High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

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 permit. 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

By: _____
CVS Pharmacy #8590

Date _____

CARSON & COIL, P.C.

_____
Nicole L. Sublett #51728
515 East High Street, P.O. Box 28
Jefferson City, MO 65102
573-636-2177
573-636-7119 (fax)
E-mail: niki.s@carsoncoil.com

Attorneys for CVS Pharmacy

STATE BOARD OF PHARMACY

_____
~~Executive Director~~ Chief Inspector
State Board of Pharmacy

Date 9-19-08

JEREMIAH W. (JAY) NIXON
Attorney General

_____
Neel Mookerjee
Assistant Attorney General
Missouri Bar No. 59631

7th Floor, Broadway State Office Building
221 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-5406
Telefax: 573-751-5660
E-mail: neel.mookerjee@ago.mo.gov

Attorneys for State Board of Pharmacy