

**STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY**

IN RE:)	
)	
NIEMANN FOODS, INC. d/b/a)	
COUNTY MARKET PHARMACY 375)	Complaint No. 2014-004097
1208 S. Main Street)	
Palmyra, Missouri 63461)	
Permit No.: 2011002754)	

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF
PHARMACY AND NIEMANN FOODS, INC. D/B/A
COUNTY MARKET PHARMACY 375**

COME NOW Niemann Foods, Inc. d/b/a County Market Pharmacy 375 (“Respondent” or the “Pharmacy”) and the Missouri Board of Pharmacy (“Board” or “Petitioner”) and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent’s permit to operate a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, 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 Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent 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 counsel; the right to have all charges against it proved 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 in 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 it by operation of law, Respondent 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.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's permit to operate a pharmacy, numbered 2011002754, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo¹, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Niemann Foods, Inc. d/b/a County Market Pharmacy 375 ("Respondent" or the "Pharmacy"), 1208 S. Main Street, Palmyra, Missouri, is permitted by the Board under permit number 2011002754. Respondent's permit is, and was at all times relevant herein, current and active.

3. At all times relevant herein, Rhonda Maxwell served as pharmacist-in-charge ("PIC") of the Pharmacy.

4. On or around July 23, 2014, during a routine inspection of the Pharmacy, Inspector Bennie Dean was informed that pharmacy technician _____ was being investigated by the

¹ All statutory references are to the Revised Statutes of Missouri (Supp. 2013) as amended, unless otherwise stated.

Pharmacy for ordering and paying for merchandise at cost from a wholesaler, taking prescriptions from the Pharmacy without paying for them and making quantity adjustments to pseudoephedrine inventory.

5. Internal investigations by the Pharmacy showed that from January 15, 2014, through June 3, 2014, had 22 prescriptions filled at the Pharmacy and did not pay or only partially paid for five (5) of them, resulting in a total approximate loss to the Pharmacy of \$246.79.

6. Ms. failed to pay for prescriptions nos. 4004999 and 704098 on May 2, 2014; prescription no. 7041882 on May 29, 2014; and prescription no. 7042177 on June 3, 2014.

7. Ms. only partially paid for prescription nos. 7041365 and 7032384 on May 15, 2015.

8. On or around July 18, 2014, Ms. was interviewed by County Market Pharmacy's Asset Protection Manager and admitted to ordering items from the wholesaler and only paying cost.

9. Ms. also admitted during the interview that she sometimes forgot to pay for prescriptions.

10. The loss reports submitted by the Pharmacy to the Drug Enforcement Administration on or about January 20, 2015, showed the following losses:

Loss Report	
Drug²	Amount Lost
Lorazepam 1mg Tab	-248
Lorazepam 0.5mg Tab	-1
Phentermine 37.5mg Cap	-340
Phentermine 37.5mg Tab	-220
Promethazine c Cod 6.25mg/10 ml	-1094 ml
Hydrocodone/APAP 10/325mg Tab	-17,869
Small Nasal Decongestant (pseudoephed)	-48
Pseudoephedrine	-426

11. An audit conducted by Inspector Dean for February 1, 2011, through August 30, 2014, showed the following results:

Drug Name and Strength³	Total Accountable For	Total Accounted For	Difference
Lorazepam 1mg	24800	24552	-248
Lorazepam 0.5mg	28200	26199	-1
APAP c Cod 30mg	11200	11489	289
Phentermine 37.5mg Caps	2900	2560	-340
Phentermine 37.5 mg Tabs	1300	1080	-220
Promethazine c Cod Syrup	33600	32506	-1094
Oxycodone/APAP 5/325 mg	21300	21552	252
Hydrocodone/APAP 10/325mg	64800	46931	-7313
Tramadol 50mg Tabs	71200	72927	1727
Tramadol 100mg ER	90	90	0
Tramadol 37.5mg/325mg	3600	3662	62
Sm Nasal Dec 30mg	600	552	-48
Pseudoephedrine 30 mg	3696	3366	-426
Sudafed 30mg	96	96	0

² Lorazepam is a Schedule IV controlled substance pursuant to § 195.017.8(2)(bb), RSMo. Phentermine is a Schedule IV controlled substance pursuant to § 195.017.8(4)(h), RSMo. Promethazine with codeine is a Schedule V controlled substance pursuant to § 195.017.10(1)(b), RSMo. Hydrocodone was rescheduled from a Schedule III to a Schedule II controlled substance on October 6, 2014. 21 §§ C.F.R. 1308.12-.13. At the time of the loss, it was a Schedule III controlled substance. Pseudoephedrine is a Schedule V controlled substance. § 195.017.10(3), RSMo.

³ In addition to those drugs listed in footnote 2, APAP (acetaminophen) with 30 mg of codeine is a Schedule III controlled substance under § 195.017.6(4)(b), RSMo. Oxycodone is a Schedule II controlled substance under § 195.017.4(a), RSMo. Tramadol became a Schedule IV controlled substance on August 18, 2014. 21 CFR § 1308.14(b)(3); 79 FR 37623-01 (July 2, 2014).

12. PIC Maxwell confirmed and agreed to the results of Inspector Dean's audit on or about February 16, 2015.

13. During Inspector Dean's July 23, 2014, inspection, PIC Maxwell also informed Inspector Dean that she and Dr. [redacted]; D.O. had a verbal agreement, sometimes referred to by the Pharmacy and staff as a "waiver," effective through spring 2014 whereby anytime a known patient of the Pharmacy wanted to purchase pseudoephedrine, a prescription was written by a staff member of the Pharmacy and filled as a prescription with Dr. [redacted] as the prescribing physician.

14. The Pharmacy never notified Dr. [redacted] when a "prescription" was written with him identified as the prescriber.

15. From February 23, 2012, through April 25, 2014, a total of 74 purported pseudoephedrine prescriptions were dispensed with Dr. [redacted] as prescriber under the "waiver."

The "prescriptions" and dispensing pharmacists are as follows:

RX Number	Date	Responsible Pharmacist
4001408	3/26/2012	Rhonda Maxwell
4001486	4/12/2012	Rhonda Maxwell
4001529	4/21/2012	Rhonda Maxwell
4001545	4/26/2012	Rhonda Maxwell
4001554	4/30/2012	Rhonda Maxwell
4001584	5/4/2012	Rhonda Maxwell
4001634	5/18/2012	Rhonda Maxwell
4001719	6/6/2012	Rhonda Maxwell
4001770	6/18/2012	Rhonda Maxwell
4001811	6/27/2012	Rhonda Maxwell
4001932	7/27/2012	Rhonda Maxwell
4001982	8/8/2012	Rhonda Maxwell
4001998	8/13/2012	Rhonda Maxwell
4002112	9/6/2012	Rhonda Maxwell
4002119	9/6/2012	Rhonda Maxwell
4002132	9/10/2012	
4002150	9/13/2012	Rhonda Maxwell
4002184	9/22/2012	Rhonda Maxwell
4002238	10/4/2012	
4002248	10/5/2012	Rhonda Maxwell

4002371	10/27/2012	Rhonda Maxwell
4001811	10/29/2012	Rhonda Maxwell
4002457	11/19/2012	Rhonda Maxwell
4002481	11/26/2012	Rhonda Maxwell
4002535	12/6/2012	Rhonda Maxwell
4002627	12/24/2012	Rhonda Maxwell
4002654	12/28/2012	
4002779	1/22/2013	
4002865	2/12/2013	
4002871	2/13/2013	Rhonda Maxwell
4002882	2/15/2013	Rhonda Maxwell
4002779	2/15/2013	Rhonda Maxwell
4003083	3/26/2013	Rhonda Maxwell
4003121	4/4/2013	Rhonda Maxwell
4003148	4/11/2013	Rhonda Maxwell
4002779	4/16/2013	Rhonda Maxwell
4003199	4/22/2013	Rhonda Maxwell
4003296	5/13/2013	Rhonda Maxwell
4003323	5/18/2013	Rhonda Maxwell
4003358	5/24/2013	
4003368	5/29/2013	
4002779	5/31/2013	Rhonda Maxwell
4003394	6/4/2013	
4003510	7/1/2013	Rhonda Maxwell
4003534	7/8/2013	Rhonda Maxwell
4003621	7/26/2013	Rhonda Maxwell
4003667	8/7/2013	Rhonda Maxwell
4003701	8/16/2013	Rhonda Maxwell
4003739	8/26/2013	Rhonda Maxwell
4003750	8/27/2013	Rhonda Maxwell
4003751	8/27/2013	Rhonda Maxwell
4003764	8/29/2013	Rhonda Maxwell
4003785	9/4/2013	
4003394	9/6/2013	Rhonda Maxwell
4003814	9/11/2013	
4003822	9/13/2013	Rhonda Maxwell
4003882	9/26/2013	Rhonda Maxwell
4003940	10/7/2013	Rhonda Maxwell
4003950	10/8/2013	Rhonda Maxwell
4003966	10/11/2013	Rhonda Maxwell
4004012	10/21/2013	Rhonda Maxwell
4004068	11/4/2013	Rhonda Maxwell
4004079	11/6/2013	Rhonda Maxwell
4003368	11/6/2013	Rhonda Maxwell
4004081	11/6/2013	Rhonda Maxwell

4003814	11/9/2013	Rhonda Maxwell
4004093	11/9/2013	Rhonda Maxwell
4004108	11/12/2013	Rhonda Maxwell
4004126	11/14/2013	Rhonda Maxwell
4004128	11/14/2013	Rhonda Maxwell
4004193	11/27/2013	Rhonda Maxwell
4004194	11/29/2013	Rhonda Maxwell
4004200	11/30/2013	Rhonda Maxwell
4004959	4/25/2014	Rhonda Maxwell

16. Of these 74 prescriptions, PIC Maxwell was the pharmacist responsible for filling 64, _____ was responsible for filling eight and _____ and _____ were each responsible for filling one.

17. At all times relevant herein, Respondent was not enrolled in the pseudoephedrine tracking database called National Precursor Log Exchange (NPLEx).

18. NPLEx is the electronic pseudoephedrine tracking system utilized by the Missouri Department of Health and Senior Services.

19. Respondent enrolled in NPLEx on November 24, 2015 and at that time installed the system in the Pharmacy.

20. Respondent purportedly terminated PIC Maxwell for malfeasance, misfeasance and nonfeasance.

21. Section 195.060.1, RSMo, states:

1. Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulation of the department of health and senior services. All written prescriptions shall be signed by the person prescribing the same. All prescriptions shall be dated on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he is required by those laws to be so registered.

22. 19 CSR §130-1.074(3)(C) states:

(3) Methamphetamine precursor products may be sold, dispensed, distributed, or otherwise provided only as follows:

* * *

(C) Dispensers shall utilize the real-time electronic pseudoephedrine tracking system established and maintained by the Missouri Department of Health and Senior Services

23. By dispensing pseudoephedrine to customers without valid prescriptions signed by a prescriber and without reporting to the Missouri electronic pseudoephedrine tracking system, pharmacists employed with Respondent violated §195.060.1, RSMo and 19 CSR §130-1.074(3)(C).

24. To be valid for dispensing purposes, a prescription must comply with the requirements of 20 CSR §2220-2.018(1), which states:

(1) To be valid for purposes of dispensing, a prescription shall conform to all requirements of sections 338.056 or 338.196, RSMo, and shall contain the following information:

(A) The date of prescribing;

(B) The name of the patient(s), or if an animal, species and owner's name;

(C) The prescriber's name, if an oral prescription, or written or electronic signature if a written, faxed, or an electronically transmitted prescription. Electronic signatures shall comply with all applicable provisions of 20 CSR 2220-2.085;

(D) Name, strength and dosage of drug, device or poison prescribed and the directions for use;

(E) The number of refills, if applicable;

(F) The quantity prescribed in weight, volume, or number of units;

(G) An indication of whether generic substitution has been authorized by the prescriber, as required by section 338.056, RSMo;

(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) Controlled substance prescriptions shall also comply with all requirements of federal and state controlled substance laws.

25. By dispensing controlled substances without prescriptions that failed to contain any of the information required by 20 CSR § 2220-2.018(1), pharmacists employed by Respondent violated Missouri law.

26. 20 CSR § 2220.2.080(1)-(2) states:

(1) In lieu of a non-electronic (manual) record-keeping system, a pharmacy may elect to maintain an electronic data processing (EDP) record keeping-system. All information concerning the compounding, dispensing, or selling by a pharmacy of any drug, device, or poison pursuant to a lawful prescription which is entered into an EDP system at any pharmacy shall be entered only by a licensed pharmacist or by a technician or intern pharmacist under the direct supervision and review of a licensed pharmacist. Prior to dispensing, a pharmacist shall personally verify the accuracy of prescription data entered into the EDP for each original prescription. The EDP system shall comply with all applicable state and federal controlled substance laws and regulations.

(2) EDP systems shall comply with the requirements of section 338.100, RSMo, and shall be capable of storing and retrieving the following information concerning the original filling or refilling of any prescription:

- (A) A unique, sequential prescription label number;
- (B) If applicable, a unique readily retrievable identifier;
- (C) Date the prescription was prescribed;
- (D) The date the prescription was initially filled and the date of each refill;
- (E) Patient's full name, or if an animal, the species and owner's name;
- (F) Patient's address or animal owner's address when a prescription prescribes a controlled substance;
- (G) Prescriber's full name;
- (H) Prescriber's address and Drug Enforcement Administration (DEA) number when a prescription specifies a controlled substance;
- (I) Name, strength and dosage of drug, device or poison dispensed and any directions for use;
- (J) Quantity originally dispensed;
- (K) Quantity dispensed on each refill;
- (L) Identity of the pharmacist responsible for verifying the accuracy of prescription data prior to dispensing on each original prescription;

- (M) Identity of the pharmacist responsible for reviewing the final product prior to dispensing on each original and refill prescription, if different from the pharmacist verifying prescription data;
- (N) The number of authorized refills and quantity remaining;
- (O) Whether generic substitution has been authorized by the prescriber;
- (P) The manner in which the prescription was received by the pharmacy (e.g., written, telephone, electronic, or faxed); and
- (Q) Any other change or alteration made in the original prescription 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.

27. By entering fabricated and inaccurate information for the aforementioned pseudoephedrine “prescriptions” into the Pharmacy’s electronic record-keeping system (“EDP”), the pharmacists employed by Respondent violated the integrity of Respondent’s EDP in violation of 20 CSR § 2220.2.080(1)-(2).

28. By falsely stating the prescribing physician on prescription drugs, pharmacists employed by Respondent improperly labeled prescriptions in violation of § 338.059.1(5), RSMo, which states:

1. It shall be the duty of a licensed pharmacist or a physician to affix or have affixed by someone under the pharmacist's or physician's supervision a label to each and every container provided to a consumer in which is placed any prescription drug upon which is typed or written the following information:

(5) The prescriber's name;

29. Dispensing a prescription drug with knowledge that a physician had not performed a physical examination and/or clinical assessment of a patient is in violation of 20 CSR § 2220-2.020(11), which states in pertinent parts:

(11) Prescriptions processed by any classification of licensed pharmacy must be provided by a practitioner licensed in the United States authorized by law to prescribe drugs and who has performed a sufficient physical examination and clinical assessment of the patient. A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the

circumstances, that the prescription order for such drug was issued on the basis of . . . a telephonic consultation . . . without a valid preexisting patient practitioner relationship.

30. Pharmacists employed by Respondent assisted customers in fraudulently attempting to obtain controlled substances by creating prescriptions without authority in violation of §195.204.1 (1), (3) and (5), RSMo, which states:

1. A person commits the offense of fraudulently attempting to obtain a controlled substance if he obtains or attempts to obtain a controlled substance or procures or attempts to procure the administration of the controlled substance by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address. The crime of fraudulently attempting to obtain a controlled substance shall include, but shall not be limited to nor be limited by, the following:

(1) Knowingly making a false statement in any prescription, order, report, or record, required by sections 195.005 to 195.425;

* * *

(3) Making or uttering any false or forged prescription or false or forged written order;

* * *

(5) Possess a false or forged prescription with intent to obtain a controlled substance.

31. Respondent's failure to provide effective controls and procedures to guard against the theft and diversion of controlled substances is in violation of 21 CFR § 1301.71(a) which states:

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Administrator shall use the security requirements set forth in 1301.72-1301.76 as standards for the physical security controls and operating procedures necessary to prevent diversion. Materials and construction which will provide a structural equivalent to the physical security controls set forth in

1301.72, 1301.73 and 1301.75 may be used in lieu of the materials and construction described in those sections.

32. Respondent's failure to provide effective controls and procedures to guard against the theft and diversion of controlled substances is in violation of 21 CFR §1301.75(b) which states:

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

33. Respondent's failure to maintain adequate security to deter theft of drugs and diversion of controlled substances is in violation of 20 CSR § 2220-2.010(1)(H) which states in pertinent part:

(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.

34. Respondent's failure to provide effective controls and procedures to guard against the theft and diversion of controlled substances is in violation of 19 CSR § 30-1.031(1) which states:

(1) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032.19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

35. Respondent's failure to provide adequate physical security to guard against the theft and diversion of controlled substances is in violation of 19 CSR § 30-1.034(1)(A)-(B) and (2) which states:

(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) Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operations. If a controlled substance is transferred to a different schedule, or a noncontrolled substance is listed on any schedule, or the quantity of controlled substances in the possession of the registrant in normal business operations significantly increases, physical security controls shall be expanded and extended accordingly.

36. Respondent's failure to have adequate security and controls in place to detect and prevent the diversion of controlled substances facilitated the loss of controlled substances alleged herein.

JOINT CONCLUSIONS OF LAW

37. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit pursuant to § 338.210.5, RSMo which states:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

38. Cause exists for Petitioner to take disciplinary action against Respondent's pharmacy permit pursuant to 20 CSR § 2220-2.010(1)(O) which states:

(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.

39. Cause exists for Petitioner to take disciplinary action against Respondent's permit under §338.055.2(5), (6), (13), and (15), RSMo, which states, in pertinent 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 or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(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;

* * *

(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.

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 Section 621.045.3, RSMo:

A. Respondent's pharmacy permit number 2011002754 shall be placed on **PROBATION for a period of TWO (2) YEARS**. The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

The following terms apply for the entire disciplinary period.

1. Respondent shall pay all required fees for licensing to the Board and shall renew its pharmacy license prior to October 31 of each licensing year.
2. Respondent 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.
3. If requested, Respondent shall provide the Board a list of all licensed pharmacists employed by the Respondent, and the individuals' current home addresses and telephone numbers.
4. If, after disciplinary sanctions have been imposed, Respondent fails to keep its pharmacy license current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.
5. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months (due by each January 1 and July 1), beginning with whichever date occurs first after this Agreement becomes effective, stating truthfully whether or not it has complied with all terms and conditions of its disciplinary order.

6. Respondent shall not serve as an intern training facility for interns.
7. Respondent shall make a representative of the pharmacy available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.
8. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.
9. 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 324, 338, 610, RSMo.

B. Upon the expiration of said discipline, Respondent's license as a pharmacy in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Respondent 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 Respondent.

C. 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.

D. If the Board determines that Respondent 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.

E. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. 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.

F. Respondent hereby waives and releases the Board, its 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 Section 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 litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge 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.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ **REQUESTS**

 _____ **DOES NOT REQUEST**

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S PERMIT TO OPERATE AS A PHARMACY.

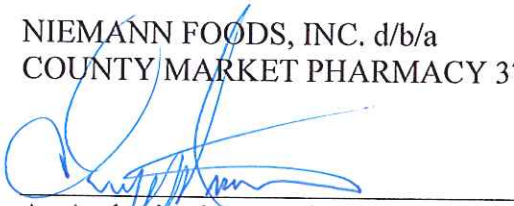
If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Board's Executive Director.

RESPONDENT

NIEMANN FOODS, INC. d/b/a
COUNTY MARKET PHARMACY 375

By:

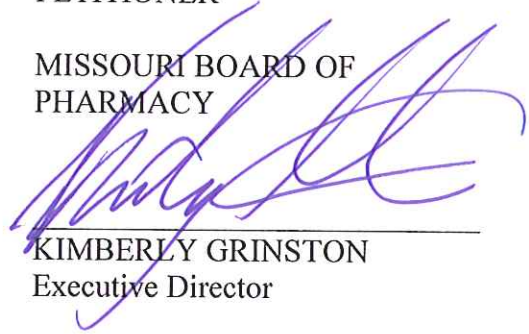


As Authorized Agent for
NIEMANN FOODS, INC. d/b/a
COUNTY MARKET PHARMACY 375

PETITIONER

MISSOURI BOARD OF
PHARMACY

By:



KIMBERLY GRINSTON
Executive Director

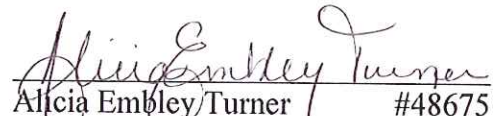
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