SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PODIATRIC MEDICINE AND LEE R. FRAUM

Come now Lee R. Fraum ("Licensee") and the State Board of Podiatric Medicine ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a podiatrist 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.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him 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 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 he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him 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
Licensee acknowledges that he has received a copy of the complaint filed with the Board, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Licensee's license. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this agreement are true and stipulates with the Board that Licensee's license as a Podiatrist No. 708 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 335, RSMo 2000.

Joint Stipulation of Fact

1. The State Board of Podiatric Medicine ("Board") is an agency of the state of Missouri, created and established pursuant to § 330.100, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 330, RSMo.

2. Respondent ("Licensee"), was licensed by the Board as a podiatrist, License No. 708. Licensee's Missouri license is and was, at all times relevant herein, current and active.

3. At the time of the events alleged herein, Licensee practiced podiatric medicine at Joplin Area Family Foot Care, Joplin, MO.

4. On or about January 12, 1996, the Missouri Department of Health- Bureau of Narcotics and Dangerous Drugs placed Licensee's Missouri Controlled Substances Registration No. 19454 on probation for five years terminating on January 12, 2001, for
falsification of Hydrocodone prescriptions for his own consumption.

5. From approximately February through April 2001 Licensee ordered and purchased Hydrocodone for his own consumption without a prescription or physician authorization.

6. From approximately February through April 2001 Licensee dispensed Hydrocodone to himself.

7. From approximately February through April 2001 Licensee consumed Hydrocodone to an extent that such use impaired his ability to perform the work of a podiatrist.

8. Pursuant to §195.017, RSMo 2000, Hydrocodone is a schedule III controlled substance.

9. Pursuant to §195.070.4, RSMo 2000, "an individual practitioner may not prescribe or dispense a controlled substance for such practitioner's personal use except in a medical emergency."

10. Section 195.070.1, RSMo 2000 states: A physician, podiatrist, dentist or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense controlled substances or he may cause the same to be administered or dispensed by a nurse or graduate physician under his direction and supervision.

11. Licensee's dispensation of Hydrocodone to himself fell outside the scope of his
practise as a podiatrist.

12. Pursuant to Regulation 19 CSR 30-1.041(2), Licensee was required to maintain
records and inventory regarding controlled substances prescribed, administered or dispensed
for at least two (2) years from the date of the inventory or record for inspection and copying
by the Department of Health.

13. Licensee failed to maintain controlled substance records as required by
Regulation 19 CSR 30-1.041(2).

14. Licensee was required to maintain an inventory of controlled substances
pursuant to Regulation 19 CSR 30-1.042, which states in pertinent part:

(2) Initial Inventory Date.
   (A) Every person required to keep records who is
   registered with the Department of Health after May 1, 1971, and
   who was not registered previously shall take an inventory of all
   stocks of controlled substances on hand on the date s/he first
   engages in the manufacture, distribution or dispensing of
   controlled substances.

15. Licensee failed to maintain an initial inventory of controlled substances as
required by Regulation 19 CSR 30-1.042(2).

16. Licensee was required to maintain records pursuant to Regulation 19 CSR 30-
1.048, which states in pertinent part:

   (1) Each individual practitioner, institutional practitioner
   and pharmacy shall maintain records with the following
   information for each controlled substance received, maintained,
dispensed or disposed:
(A) The name of the substance;
(B) Each finished form (for example, ten milligram (10 mg) tablet or ten milligram (10 mg) concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (for example, 100 tablet bottle or three milliliter (3 ml) vial);
(C) The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received;
(D) The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance;
(E) The number of units or volume of the finished forms, commercial containers, or both, dispensed or disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

17. Licensee failed to maintain dispensing records as required by Regulation 19 CSR 30-1.048(1)(A) and (D).

18. Licensee failed to maintain receipt records as required by Regulation 19 CSR 30-1.048(1).

19. On or about June 19, 2001, Licensee voluntarily surrendered his BNDD registration to the Missouri Bureau of Narcotics and Dangerous Drugs.

20. On or about June 19, 2001, Licensee voluntarily surrendered his DEA registration No. BF3991533 to the United States Drug Enforcement Administration.
21. Licensee's conduct in ordering and purchasing a controlled substance for his personal consumption constitutes incompetency, misconduct, repeated negligence, and gross negligence in the performance of Licensee's functions or duties as a podiatrist.

22. Licensee's conduct in dispensing a controlled substance to himself constitutes a violation of § 195.070, RSMo 2000.

23. Licensee's conduct in dispensing a controlled substance to himself constitutes incompetency, misconduct, repeated negligence, and gross negligence in the performance of Licensee's functions or duties as a podiatrist.

Joint Conclusions of Law

24. Cause exists for the Board to take disciplinary action against Licensee's license under § 330.160.2(1), (5), and (15), RSMo 2000, which states in pertinent part:

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:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;
(5) Incompetency, misconduct, repeated negligence, 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, RSMo 1994.

1. Licensee's license as a podiatrist is immediately REVOKED.

2. The parties to this settlement agreement understand that the Board of Podiatric Medicine will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 330, 610, and 620, RSMo.

3. Licensee 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 § 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 and release agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement and release agreement in that it survives in perpetuity even in the event that any court of law deems this settlement and release agreement or any portion thereof void or unenforceable.

LICENSEE 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 LICENSEE'S LICENSE AS A PODIATRIST.

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

If Licensee has not requested review by the Administrative Hearing Commission, the agreement goes in to effect 15 days after the document is signed by the Executive Director.

**RESPONDENT**

Lee R. Fraun

Date 10/17/01

**PETITIONER**

Patricia Handly
Executive Director
State Board of Podiatric Medicine

Date 11/1/01

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