

**STATE OF NEW HAMPSHIRE
BOARD OF PHARMACY
CONCORD NH**

In the Matter of:
Rite Aid Pharmacy
Permit #0522

Docket No. 23-PHARM-006

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of pharmacy, the New Hampshire Board of Pharmacy (“Board”) and Rite Aid Pharmacy (“Permittee”), a retail pharmacy permitted in the State of New Hampshire, agree to resolve certain allegations of professional misconduct now pending before the Board in accordance with the following terms and conditions:

1. Pursuant to RSA 318:30, RSA 318:31, RSA 310-A:1-j, RSA 310-A:1-l, and RSA 541-A:31, V, the Board has jurisdiction and authority to investigate and commence a disciplinary proceeding pertaining to allegations of professional misconduct committed by Permittee. Pursuant to RSA 318:31, IV, RSA 310-A:1-k, III and RSA 541-A, V, the Board may at any time before or during a disciplinary proceeding resolve allegations of professional misconduct by a written *Settlement Agreement* approved by the Board and permittees provided the complainant has an opportunity to comment upon the terms of the *Settlement Agreement* before the *Settlement Agreement* has been executed.
2. On 9/25/1997, the Board first granted Permittee Pharmacy Permit #0522 to operate a pharmacy at 1631 Elm Street, Manchester, NH.
3. On 02/08/2023, Board inspectors performed a routine inspection of the Permittee. The inspection found numerous violations of Board statute and rule, including unsafe and

unsanitary conditions. On 4/25/2023, Board inspectors performed a follow up inspection of the Permittee and found that several of the unsafe and unsanitary conditions remained.

4. On 05/1/2023 the Board voted to emergently suspend the Permittee's permit pending an emergency hearing.
5. In lieu of that hearing, and further adjudicative proceedings, the Permittee has executed this Settlement Agreement to resolve the factual matters asserted and alleged herein.
6. Permittee stipulates that if a disciplinary proceeding were to take place, Hearing Counsel could prove that Permittee engaged in misconduct pursuant to RSA 318:29, II(c) and/or (d); RSA 318:29, V(e) and/or (g) according to the following facts:
 - a. Permittee holds permit #0522 issued by the Board.
 - b. Permittee is located at 1631 Elm Street, Manchester, NH.
 - c. On February 8, 2023, Pharmacy Inspector Elsa Croteau from the Office of Professional Licensure and Certification – Division of Enforcement (“OPLC Enforcement”) performed a routine inspection of the Permittee.
 - d. She found that the Permittee had not had a Pharmacist-In-Charge (“PIC”) since the first week of December 2022. Staff further reported that the pharmacy had no functioning alarm system, there was a broken and rusted drawer at the drive-thru, the floors around the drive-thru area flooded after rain (there were also electrical wires around this area), the carpet was torn and created tripping hazards, 35-40 pills were scattered on the pharmacy floor, and there had been a failure to document Continuous Quality Improvement (“CQI”) meetings since August 2021.

- e. On February 9, 2023, inspectors issued a violation notice to the Permittee on these issues.
- f. Permittee fixed and tested the alarm system by February 10, 2023.
- g. Permittee hired John Mahoney to serve as PIC following the February inspection.
- h. On April 17, 2023, Board inspectors performed a follow up inspection of the Permittee. Inspectors observed that some of the carpeting had been replaced, and staff had placed anti-fatigue mats over other areas of damaged carpeting to reduce tripping hazards. There were no visible pills on the floor. Staff reported that the drive-thru drawer remained broken, but a new drawer was on order. Staff had temporarily fixed the drawer to the point where it could close and lock, but the drawer remained rusted. Permittee's representative indicated that the leak in the drive-thru area had been fixed, though no significant recent rainfall to test whether the repairs had worked. Inspectors observed water damage to the walls and ceiling in the drive-thru area.
- i. On April 24, 2023, following a day of significant rainfall, a Board inspector performed another follow up inspection of the Permittee. The inspector observed that the carpet near the drive-thru was visibly saturated with water, to the extent that water pooled up when a person stepped on the carpet. There were multiple electrical cords and an exposed circuit board immediately above the saturated flooring.
- j. The Board emergently suspended the Permittee's permit on May 1, 2023 for unsafe and unsanitary conditions.

- k. Following the emergency suspension, Permittee undertook immediate efforts to remediate the leak and other unsafe and unsanitary conditions.
 - l. On May 8, 2023, Board inspectors performed a follow up inspection. They observed that all carpet had been replaced and some areas of the ceiling had been painted or repaired. Board inspectors provided Permittee with a list of recommended final repair tasks.
 - m. Permittee completed all recommended tasks by May 9, 2023.
 - n. On May 10, 2023, Board inspectors performed a follow up inspection and confirmed that those tasks had been completed.
7. Permittee acknowledges that the conduct set forth herein could constitute grounds for the Board to impose disciplinary sanctions against Permittee pursuant to RSA 318:29.
8. WHEREFORE, Permittee consents to the Board imposing the following discipline and penalties pursuant to RSA 318:29, RSA 310-A:1-m, and Ph 2207:
- a. Permittee is **REPRIMANDED**.
 - b. Permittee's permit is **RESTRICTED** subject to the following terms and conditions:
 - i. Permittee's permit is restricted for a period of one (1) year (the "Restriction Period") beginning on the date the Board approves this Settlement Agreement (the "Effective Date").
 - ii. Permittee shall be subjected to at least four (4) unannounced inspections during the Restriction period, including at least one inspection after a rain event.

- iii. Permittee shall independently assess and verify the safety of any medications or consumer products that were located in the pharmacy prior to May 8, 2023. The Permittee shall provide a written description of the assessment and provide that to the Board and OPLC Enforcement within seven (7) days of the effective date of this agreement.
 - iv. Permittee shall create and submit a facility safety and sanitation procedure and verification plan to the Board and OPLC Enforcement within thirty (30) days of the effective date of this agreement. The procedure and plan shall address, at a minimum, immediate and in six (6) months to review the structural integrity of the pharmacy area, water intrusion risk, regular cleaning, air and surface testing, potentially hazardous work conditions, and staff reporting requirements Those records shall be submitted to the Board and OPLC Enforcement .
 - v. Permittee shall immediately report any leaks, flooding, or other possible moisture or mold contamination to the Board and OPLC Enforcement. Permittee shall thereafter immediately cooperate with any operational and safety recommendations made by OPLC Enforcement.
- c. Permittee shall pay an **ADMINISTRATIVE FINE** in the amount of ninety thousand dollars (\$90,000.00) representing eighty-three (83) days of violations occurring between February 8, 2023 to May 1, 2023 at one thousand dollars (\$1,000.00) per day for unsafe, unsecure, and/or unsanitary facility conditions, plus six thousand dollars (\$6,000.00) for failing to document six quarterly CQI meetings, plus one thousand dollars (\$1,000.00) for failing to have an established

PIC, where all but fifteen thousand dollars (\$15,000.00) is suspended provided Permittee complies with all provisions of this *Settlement Agreement* and the Board makes no additional finding of misconduct following a hearing for conduct occurring during the Restriction Period. If the Board makes no such finding of misconduct subject to RSA 332-G:9 statute of limitations, the suspended portion shall terminate. **Fifteen thousand dollars (\$15,000.00) is due and payable** within thirty (30) days from the Effective Date of this *Settlement Agreement* and according to the terms in paragraph 7.e.

- d. Permittee shall pay **COST OF INVESTIGATION AND PROSECUTION** in the amount of **two thousand dollars (\$2,000.00) which is due and payable** within thirty (30) days from the Effective Date of this *Settlement Agreement* and according to the terms in paragraph 8(e).
- e. All payments shall be in the form of a check or money order made payable to the Treasurer, State of New Hampshire. The payment of the administrative fine shall be made separate from any required payment of the costs of investigation and prosecution. Each payment shall specify on the memo line whether the payment is for "PHARM Administrative Fine" or "PHARM Costs of Investigation and Prosecution." Each payment shall be mailed with a printed copy of this

Settlement Agreement. All payments shall be sent to:

ATTN: OPLC Finance and Board of Pharmacy
Office of Professional Licensure and Certification
7 Eagle Sq.
Concord, NH 03301

9. The Board may consider Permittee's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Permittee's permit. Permittee's breach of any terms or conditions of this *Settlement Agreement* may constitute unprofessional conduct and may serve as a separate and independent basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board against Permittee based upon the facts and circumstances described above and at issue in this matter. However, the Board may consider such facts as evidence of a pattern of conduct in the event that similar misconduct is proven against Permittee in the future.
11. This *Settlement Agreement* shall become a permanent part of Permittee's file, which is maintained by the Board as a public document.
12. Permittee voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to Permittee other than those terms and conditions expressly stated herein.
13. Permittee understands that Permittee's action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
14. Permittee has had the opportunity to seek and obtain the advice of an attorney of Permittee's choosing in connection with its decision to enter into this *Settlement Agreement*.
15. Permittee understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Permittee specifically waives any claims that any disclosures made to the

Board during its review of this *Settlement Agreement* have prejudiced Permittee's right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

16. Permittee's Authorized Representative is not under the influence of any drugs or alcohol and is otherwise of sound mind at the time Permittee signs this agreement.

17. Permittee certifies that Permittee has read this document titled *Settlement Agreement*.

Permittee understands that Permittee has the right to a formal adjudicatory hearing concerning this matter and that at said hearing Permittee would possess the right to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on Permittee's own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Permittee fully understands the nature, quality, and dimensions of these rights. Permittee understands that by signing this *Settlement Agreement*, Permittee waives these rights as they pertain to the misconduct described herein. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR PERMITTEE

I, Authorized Representative of Rite Aid Pharmacy, Permit #0522, have reviewed the foregoing *Settlement Agreement* settling misconduct allegations pending against Permittee and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this *Settlement Agreement*. Further, I knowingly and freely waive the right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations, which have been settled by the terms of this *Settlement Agreement*.

Dated: 5/17, 2023

Jermaine Smith

Signature

Jermaine Smith

Printed Name

Authorized Representative

Rite Aid Pharmacy, Permit #0522

Permittee


On this _____ day of _____ 2023
personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me.

Justice of the Peace/Notary Public

My commission expires:

FOR THE BOARD

Dated: 5-17, 2023



John Genovese

(Print Name)

NH Office of Professional Licensure and
Certification

Authorized Representative of the NH Board of
Pharmacy