

**State of New Hampshire
Board of Pharmacy
Concord, New Hampshire**

In the Matter of:

Direct Success Pharmacy Dept.

Registration No.: NR0182 (formerly NR0849)

(Misconduct Allegations)

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 Direct Success Pharmacy Dept. ("Respondent"), a non-resident pharmacy registered by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 318:29, I; RSA 318:30; RSA 318:31; and Pharmacy Administrative Rule ("Ph") 204, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by its licensees. Pursuant to RSA 318:29-b, the Board may take reciprocal action after a licensing authority of another jurisdiction has imposed disciplinary sanctions against a pharmacy registered in New Hampshire. Pursuant to RSA 318:30, VII; RSA 318:31, IV; and Ph 204.15, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a registration to do business in the State of New Hampshire as a non-resident pharmacy on December 21, 2011. Respondent was initially issued registration number NR0849. However, due

- to a recent change in ownership, that registration number expired, effective July 10, 2017, when registration number NR0182 was issued to Respondent. Respondent primarily operates out of a facility in Farmingdale, New Jersey.
3. On October 13, 2015, the Arkansas State Board of Pharmacy (“Arkansas Board”) issued a *Consent Order* imposing disciplinary action against Respondent for engaging in the practice of pharmacy without a permit by processing and distributing 491 orders for legend drugs for clients in Arkansas. The Arkansas Board fined Respondent \$122, 750 and suspended its out-of-state permit for 2 years. The entire suspension was stayed and served as a period of probation.
 4. Respondent subsequently notified the Board that as a result of the Arkansas Board’s Consent Order, it entered into Consent Orders with the New Jersey Board of Pharmacy (“New Jersey Board”) and the Alabama State Board of Pharmacy (“Alabama Board”). On November 11, 2016, the New Jersey Board reprimanded Respondent and required it to pay a \$1,000 civil penalty. On February 21, 2017, the Alabama Board required Respondent to pay a \$7,500 administrative fine.
 5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that while Respondent was registered as a non-resident pharmacy in New Hampshire, final disciplinary action was imposed against it by the Arkansas Board, which resulted in reciprocal discipline being imposed by the New Jersey Board and the Alabama Board.

6. Respondent acknowledges that, pursuant to RSA 318:29-b and RSA 318:29, II, the conduct underlying the Arkansas Board's *Consent Order* would constitute grounds for the Board to reciprocally impose disciplinary sanctions against Respondent's registration to do business in the State of New Hampshire as a non-resident pharmacy.
7. Respondent consents to the Board imposing the following discipline, pursuant to RSA 318:29-b and RSA 318:29, IV:
 - A. Respondent is reprimanded.
 - B. Respondent's registration to do business in the State of New Hampshire as a non-resident pharmacy is placed on probation until September 1, 2019.
 - C. Respondent is assessed an administrative fine in the amount of \$1,000. Respondent shall pay this total amount in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 121 South Fruit Street, Concord, New Hampshire 03301.
 - D. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
 - E. Within ten (10) days of the effective date of this *Settlement Agreement*, Respondent shall furnish a copy of this *Settlement Agreement* to any current employer for whom Respondent performs services as a

pharmacy or work which requires a license, permit, or registration to operate as a pharmacy or directly or indirectly involves access to legend drugs, and to any agency or authority which licenses, permits, registers, certifies or credentials pharmacies, with which Respondent is presently affiliated.


- F. For a continuing period of three (3) years from the effective date of this *Settlement Agreement*, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply to do business as a pharmacy or for work in any capacity which requires a license to operate a pharmacy or directly or indirectly involves access to legend drugs, and to any agency or authority that licenses, permits, registers, certifies or credentials pharmacies, to which Respondent may apply for any professional privileges or recognition.
8. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 318:29, II (c), and a separate and sufficient basis for further action by the Board.
9. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this *Settlement Agreement* as a factor in

- determining appropriate discipline should any further misconduct be proven against Respondent in the future.
10. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
 11. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to it other than those terms and conditions expressly stated herein.
 12. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the conduct and action described herein.
 13. Respondent understands that this action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
 14. Respondent has had the opportunity to seek and obtain the advice of an attorney of its choosing in connection with its decision to enter into this *Settlement Agreement*.
 15. Respondent 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. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced its right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

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

FOR THE RESPONDENT

Date: 08/21/2017

 (signature)
Cheryl Lawrence McDaniel (print name)
Authorized Representative
Direct Success Pharmacy Dept.
Respondent

FOR THE BOARD*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 9/21/17


(Signature)

Michael D. Bullock
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Pharmacy

* Board member(s), recused:

