

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

In the Matter of:
Jean-Pierre Raphael, R.Ph.
License No.: 3770
(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 Jean-Pierre Raphael, R.Ph. (“Ms. Raphael” or “Respondent”), a pharmacist licensed 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; 318:30; and 318:31, and Pharmacy Administrative Rule (“Ph”) 204, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by pharmacists. Pursuant to RSA 318:30, VII, 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 license to practice pharmacy in the State of New Hampshire on July 11, 2011. Respondent holds license number 3770. Respondent practices pharmacy as the Pharmacist-In-Charge at CVS Pharmacy in Nashua, New Hampshire.

3. On April 1, 2015, the Board's Compliance Unit received a written complaint from a physician ("Complainant") alleging that Respondent dispensed Oxycodone to one of the physician's patients without authorization.
4. In response to this, the Board conducted an investigation and obtained information from various sources, including Respondent.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in professional misconduct, in violation of RSA 318:29, II (d) through violations of Ph 704.11 (b)(3), (7) and (9), Ph 709.05 (a), (b) and (c)(5), Ph 1606.01 (c), RSA 318-B:9, I and III (h) and 21 CFR 1306.11 (a), by the following facts:
 - A. On March 6, 2015, the Complainant spoke with a hospitalist at a local hospital to review the discharge plan of one of her patients. When the hospitalist asked about pain medication, the Complainant advised against prescribing narcotic pain relievers given the patient's history of substance abuse. The hospitalist and the Complainant agreed that three days worth of Tramadol would be sufficient. However, the Oxycodone prescription, which had been prepared, but not signed, was unintentionally given to the patient upon discharge.
 - B. On March 9, 2015, a nurse working for the Complainant called the patient to follow up with him. The nurse noted that the patient was very emotional, he was crying and his speech was slurred. The patient reported that he had been taking the Oxycodone that had been prescribed. A visiting nurse who had just arrived at the patient's residence confirmed that the discharge summary noted orders for Augmentin and Tramadol. The visiting nurse checked the patient's

prescription vials and found that he did have a prescription filled at CVS on March 6, 2015, for 12 tablets of Oxycodone 10mg. The Complainant was listed as the prescriber on the vial, which only had 9 tablets left.

- C. Upon being informed of the prescription for Oxycodone, the Complainant's nurse called CVS and spoke with an employee. According to the nurse, the employee informed her that the Oxycodone prescription had not been signed and, as a result, it was filled under the Complainant's name since she was the patient's primary care physician.
- D. Respondent was listed as the dispensing pharmacist on the Oxycodone prescription on file at the pharmacy. When questioned, Respondent indicated that he was familiar with the requirements of a controlled substance prescription, but that he did not notice that the subject prescription had not been signed.
- E. The data entry for the subject prescription had been performed by a pharmacy intern who said he listed the Complainant as the prescriber of the unsigned Oxycodone prescription because three prescriptions were brought in and the unsigned prescription was in-between two other prescriptions signed by the Complainant.
- F. There were actually five prescriptions brought in by the patient and none of them were signed by the Complainant. In addition to the unsigned prescription, there were four other prescriptions brought in and each one was signed by the hospitalist. However, only two of the prescriptions were filled under the hospitalist's name. The other three prescriptions were filled under

the Complainant's name. Additionally, PRN was left off of one of the prescriptions during data entry.

- G. Respondent stated that, to help avoid a similar occurrence in the future, the pharmacist should physically examine the hard copy of any prescription for a controlled substance before the final check in order to verify that each piece of information is included for the prescription to be considered legitimate.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 318:29, II (d) through violations of Ph 704.11 (b)(3), (7) and (9), Ph 709.05 (a), (b) and (c)(5), Ph 1606.01 (c), RSA 318-B:9, I and III (h) and 21 CFR 1306.11 (a).
7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against his license to practice as a pharmacist in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 318:29, IV.
- A. Respondent is **reprimanded**.
- B. Respondent is required to meaningfully participate in ten (10) hours of **continuing education** in the area of medication safety. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within one (1) year from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.

- C. Respondent is assessed an **administrative fine** in the amount of one thousand dollars (\$1,000). Respondent shall pay this fine 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 S. Fruit Street, Concord, New Hampshire 03301-2412.
- D. Respondent shall bear all costs required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
- E. The Board may consider Respondent’s compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent’s license.
- F. Within ten (10) days of the effective date of this *Settlement Agreement*, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a pharmacist or work which requires a degree in pharmacy and/or license to practice pharmacy or directly or indirectly involves access to legend drugs, and to any agency or authority which licenses, certifies or credentials pharmacists, with which Respondent is presently affiliated.
- G. For a continuing period of one (1) year 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 for work as a pharmacist or for work in any capacity which requires a degree in pharmacy and/or license to practice pharmacy or directly or indirectly involves access to

legend drugs, and to any agency or authority that licenses, certifies or credentials pharmacists, to which Respondent may apply for any professional privileges or recognition.

9. 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.
10. 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.
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
13. 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 facts described herein.
14. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.

15. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this *Settlement Agreement*.
16. 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*, or any settlement guidance provided to the parties by the Board during the course of the settlement process, has prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
17. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
18. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his 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*, he waives these rights as they pertain to the misconduct described herein.
19. 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: 1-11-16

Jean Pierre Raphael
Jean-Pierre Raphael, R.Ph.
Respondent

Date: N/A

N/A
~~Rick Fradette, Esq.
Counsel for Respondent~~

FOR THE BOARD/*

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

Date: 4/27/17

[Signature]
(Signature)

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

/* _____, Board members, did not participate.