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NH BOARD OF PHARMACY

State of New Hampshire
Board of Pharmacy
Concord, New Hampshire

In the Matter of:
McKesson Drug Company
License No. 3978
(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 McKesson Drug Company (“McKesson” or “Respondent”), a Manufacturer/Wholesaler/Distributor/Broker 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 as a Manufacturer/Wholesaler/Distributor/Broker in the State of New Hampshire on April 5, 1999. Respondent holds license number 3978. Respondent operates as a Manufacturer/Wholesaler/Distributor/Broker in Livonia, Michigan.
3. On or about January 17, 2017, Respondent notified the Board that it had entered into a settlement agreement with the United States, acting through the U.S. Department of

Justice ("DOJ") dated effective January 17, 2017, which attached terms and conditions set forth in the Administrative Memorandum of Agreement dated effective January 17, 2017 (collectively, the "DEA Settlement Agreement").

4. Under the DEA Settlement Agreement, the DEA registration for Respondent's Livonia distribution facility is suspended for two years, effective January 18, 2017, to January 18, 2019.
5. The DEA Settlement Agreement permits the Livonia distribution facility to distribute and possess List I Chemicals Products and contains a partial exception to the suspension imposed upon Respondent which permits the Livonia distribution center, at its option, to possess and distribute controlled substances to federal customers which purchase controlled substances from McKesson under an exclusive contract with the U.S. Department of Veterans Affairs ("VA").
6. On or about March 24, 2017, Respondent notified the Board that it had been subject to disciplinary action in New York as a result of the DEA Settlement Agreement.
7. On or about July 17, 2017, Respondent notified the Board that it had been subject to disciplinary action in Idaho as a result of the DEA Settlement Agreement it had entered into with the DEA.
8. 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, (c) and RSA 318:29-b, I, by being subjected to a disciplinary action in Idaho and by entering into a Settlement Agreement with the DEA.

9. 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, (c).
10. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a Manufacturer/Wholesaler/Distributor/Broker in the State of New Hampshire.
11. Respondent consents to the Board imposing the following discipline, pursuant to RSA 318:29, IV, and 318:55.
 - A. Respondent is reprimanded.
 - B. Respondent's right to distribute controlled substances is suspended until January 17, 2019, or for such other period of time as the DEA implements in its suspension. Respondent will notify the Board if the DEA suspension dates are changed. This suspension shall not apply to or limit Respondent's authority to distribute, or operations involving List I Chemical Products at or from Respondent which are authorized under Respondent's DEA registration and the DEA Settlement Agreement. Respondent is permitted, at its option, to possess and distribute controlled substances to federal customers which purchase controlled substances from McKesson under an exclusive contract with the VA.
 - 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.
12. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 318:29, II (c), and shall be a separate and sufficient basis for further action by the Board.
 13. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above or any subsequent reciprocal state action based on the DEA Settlement Agreement. However, 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.
 14. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
 15. 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.
 16. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with further disciplinary action against Respondent in the

event that Respondent is subject to reciprocal discipline in another state imposed solely in connection with the DEA Settlement Agreement and/or another state's discipline based on the DEA Settlement Agreement.

17. 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.
18. Respondent understands that its action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
19. 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*.
20. 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.
21. 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.

22. 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: 11.7.2017



McKesson Drug Company
Respondent

Date: _____

Roger Morris, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: 12/12/17



(Signature)

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

/* Board members, did not participate: