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State of New Hampshire
Board of Pharmacy
Concord, New Hampshire

NH BOARD OF PHARMACY

In the Matter of:
Penro Specialty Compounding Pharmacy
Permit #0336
(Unlicensed Practice)

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 Penro Specialty Compounding ("Penro" or "Respondent"), a pharmacy located in Colchester, Vermont, that mailed prescriptions into New Hampshire for New Hampshire residents, do hereby stipulate and agree to resolve certain allegations of unlicensed practice now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 318:55, the Board may impose civil penalties "not to exceed \$5,000 per violation upon any person who willfully or repeatedly violates the provisions of this chapter." Pursuant to RSA 318:30, VII, 318:31, IV and Ph 204.17, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board recently received information that Penro had been shipping products into the State of New Hampshire without a license. The Board's investigator learned that Penro's last license with the Board expired on March 31, 2009. The Board's investigator contacted Neal Pease, Penro's Pharmacist-in-Charge; Mr. Pease acknowledged that Penro had not been licensed since 2009. Mr. Pease provided the Board with a listing of all prescriptions that Penro had shipped to residents of New Hampshire between March 31, 2009 and October 21, 2016.
3. Pursuant to RSA 318:37, II, "No person shall conduct or operate a mail-order pharmacy located outside of this state by shipping, mailing, or delivering prescription drugs into this state unless such pharmacy is

registered in New Hampshire and a permit has been issued by the New Hampshire pharmacy board.”

4. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would present evidence upon which the Board could conclude that Respondent engaged in unlicensed practice, in violation of RSA 318:37, II by the following facts:
 - a. Pursuant to an unrelated investigation, the Board learned that Penro Pharmacy had been shipping products in the State of New Hampshire. A board investigator then cross-checked the Board’s files for current licensure and learned that at the time, Penro did not possess a valid license, and its last license expired on March 31, 2009.
 - b. On or about October 21, 2016, the investigator notified Mr. Pease that a license was required. Mr. Pease acknowledged that Penro had not been licensed since 2009. The investigator asked Mr. Pease for a complete listing of all prescriptions that Penro had shipped to residents of New Hampshire between March 31, 2009 and October 21, 2016.
 - c. On or about November 8, 2016, Board staff received a binder from Penro containing prescriptions filled for New Hampshire Residents whether picked up in Vermont or mailed to New Hampshire between March 31, 2009 and October 24, 2016, as well as an application for a Non-Resident/Mail-Order Pharmacy Permit Application along with a check for the amount required by the application.
5. Respondent consents to the Board imposing the following discipline, pursuant to RSA 318:29, IV and 318:55.
 - a. Respondent is assessed an ***administrative fine in the amount of \$25,000, with \$12,500 suspended pending no further violations for 24 months.*** Respondent shall pay \$1,500 of this fine within thirty (30) days of the effective date of this Settlement Agreement, as defined further below, by delivering a money order or bank check, make payable to “Treasurer, State of New Hampshire”, to the Board’s office at 121 South Fruit Street, Suite 401, Concord, New Hampshire 03301. Respondent shall pay the remaining amount by

paying \$1,000 per month for the next eleven (11) months of the first day of the month after execution. Payments shall again be made by delivering a money order or bank check, make payable to "Treasurer, Sate of New Hampshire", to the Board's office at 121 South Fruit Street, Suite 401, Concord, New Hampshire 03301.

- b. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 318:29, II (d), and a separate and sufficient basis for further action by the Board.
- c. 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 of a pattern of conduct 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 is proven against Respondent in the future.
- d. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
- e. 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.
- f. 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.
- g. 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.

- h. 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*.
- i. 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 claim that any disclosures made to the Board for its review of this *Settlement Agreement*, and any guidance or explanations provided to the parties by the Board resulting from that review, has prejudiced his right to a fair and impartial hearing, in the event this *Settlement Agreement* is not accepted by the Board and no other *Settlement Agreement* is presented to the Board thereafter.
- j. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*
- k. 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.
- l. 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: June 28, 2017

Neal E. Pease R.Ph.

Authorized Representative of Penro
Specialty Compounding Pharmacy
Respondent

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

DATE: July 20th 2017

Michael D. Bullek R.Ph.

Michael D. Bullek R.Ph
Administrator/Chief of Compliance
For the Board