BEFORE THE BOARD OF PHARMACY OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

LIONEL ANAYA
License No.: RP4560
Respondent.

Case No. 2005-038

SETTLEMENT AGREEMENT

WHEREAS, the parties wish to resolve this matter without the time and expense of a formal hearing;

IT IS AGREED AS FOLLOWS:

A. Jurisdiction:

1. The Respondent is a licensed pharmacist pursuant to the Pharmacy Act, Section 61-11-1 et seq. NMSA, and is subject to the jurisdiction of the New Mexico Board of Pharmacy.

B. Underlying Allegations:

2. The Respondent admits that he refilled prescriptions for five children by changing the allergy medication indicated on the refill (Loratadine) with another allergy medication the customer’s had on file (Zyrtec), per the request of the mother, without the prior authorization of the prescribing physician and to violating NMSA 1978 Section 61-11-20(A)(1), (A)(3) of the Pharmacy Act and NMSA Sections 26-1-16 (C) and (G) of the New Mexico Drug, Device and Cosmetic Act and Title 16 NMAC Chapter 19 Part 4.9 (C)(3) and (C)(5) of the New Mexico Administrative Code.

Settlement Agreement Anaya
Case No. 2005-038
C. Terms and Conditions:

3. The Respondent enters into this Settlement Agreement voluntarily and waives the right to have this matter heard in the manner described in the New Mexico Uniform Licensing Act, 1978 NMSA § 61-1-1 et seq. (Repl. Pamp. 2003), including the right to a full evidentiary hearing, the right to confront and cross-examine witnesses, and the right to an appellate process, but **Respondent shall appear before the Board of Pharmacy on the date set for presenting this settlement agreement.**

4. This Settlement Agreement is subject to Board of Pharmacy approval. If the Board of Pharmacy rejects this agreement, the Board of Pharmacy may set the matter for hearing on another date, and the terms of this agreement or statements made by the Respondent in support of this agreement shall **not** be used against the Respondent in such hearing.

5. The Respondent waives all rights to have this matter heard within the time frame set by the Uniform Licensing Act, §61-1-1 et seq. NMSA in order for the Board of Pharmacy to consider this Settlement Agreement.

6. It is further agreed as follows:
   a. Respondent shall be placed on probation for a period of six (6) months and shall commence the effective date of this Agreement.
   b. Respondent shall pay the cost of the investigation of this case, in the amount of two hundred and twenty five dollars, ($225.00) to be paid within six (6) months of the effective date of this Agreement.
c. Respondent shall take and pass the MPJE within six (6) months of the effective date of this Agreement.

d. Respondent agrees to commit no violations of the Board’s statutes, rules and regulations including but not limited to the Pharmacy Act, and the Drug Device and Cosmetic Act during the probationary period. Any new allegations of violations of the Board’s statutes, rules or regulations during the probationary period will void this Agreement and result in immediate suspension of the Respondent’s license to practice Pharmacy in the State of New Mexico. The suspension shall remain in effect pending a Board hearing in accordance with the Uniform Licensing Act.

e. Respondent agrees that any violations of the terms and conditions of this Agreement will void this Agreement and result in immediate suspension of the Respondent’s license to practice Pharmacy in the State of New Mexico. The suspension shall remain in effect pending a Board hearing in accordance with the Uniform Licensing Act.

f. This Agreement becomes effective after the Respondent receives a copy of this Agreement via certified mail or after final delivery is attempted by certified mail, whichever comes first.

7. This settlement agreement resolves all New Mexico Board of Pharmacy administrative charges that were or could have been brought as a result of the incidents described in the Notice of Contemplated Action.
BEFORE THE BOARD OF PHARMACY
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

LIONEL ANAYA
License No.: RP 4560
Respondent.

ORDER

This matter having come before the Board of Pharmacy on August 29, 2006, and with a quorum being present and a majority voting for the action designated below, this Settlement Agreement is:

[ ] Accepted

[ ] Rejected

Date: August 29, 2006

Woodrow Storey, R.Ph.
Chairperson
New Mexico Board of Pharmacy
BEFORE THE BOARD OF PHARMACY
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:  

LIONEL ANAYA, R. Ph.  
License No.:  RP 4560  
Respondent.

) ) ) Case No. 2005-038

NOTICE OF CONTEMPLATED ACTION

1. The Respondent is licensed or applying to be licensed under the Pharmacy Act, NMSA 1978 Section 61-11-1 through Section 61-11-29 and is subject to the jurisdiction of the New Mexico Board of Pharmacy, hereafter, “the board.”

2. The Board has sufficient evidence which, if not rebutted or explained, will justify the Board in suspending or revoking or taking other action against Respondent’s license pursuant to NMSA 1978, Sections 61-11-20 (A)(1), (A)(3) of the Pharmacy Act; NMSA 1978 Section 26-1-16 (C) and (G) of the New Mexico Drug, Device and Cosmetic Act and Title 16 NMAC Chapter 19 Part 4.9 (C)(3) and (C)(5) of the New Mexico Administrative Code, which provide in pertinent part:

61-11-20 Disciplinary proceedings; Uniform Licensing Act:

A. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may... suspend or revoke any certificate of registration or license held ... under the Pharmacy Act [this article] upon grounds that the licensee:

(1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;

(3) is guilty of a violation of the Controlled Substances Act [30-31-1 NMSA 1978], the Pharmacy Act [Chapter 61,
26-1-16. Dangerous drugs; conditions for sale; prescription refilling; limitations

C. Pharmacists are prohibited from selling or disposing of any dangerous drug except on prescription of a practitioner and except as such sale or possession is authorized under Subsection A of this section. It is the duty of all pharmacists to keep an accurate record of all disposals, which record shall be open to inspection by any enforcement officer of this state.

G. No prescription may be lawfully refilled: (1) if it is marked by the issuing practitioner as not to be refilled; (2) when the practitioner indicates a specific number of refills or a specific period of time, on the original prescription calling for a dangerous drug, it may be refilled the number of times or for the period of time indicated; provided, the date of refill, the initials of the pharmacist refilling the prescription and the amount of drug dispensed, if it differs from the amount called for on the original prescription, is recorded on the original prescription; provided, a prescription issued for drugs controlled by the Controlled Substances Act shall comply with that act; (3) when the practitioner does not indicate refill instructions on the original prescription calling for a dangerous drug, unless: (a) the practitioner is contacted orally, by telephone, telegraph or other means of communication for instruction; and (b) if authorization to refill is given the pharmacist, the following information will be immediately transferred to the original prescription: 1) date; 2) name of person authorizing the refill; 3) pharmacist's initials; and 4) amount dispensed if different than the amount indicated on the original prescription; (4) when the practitioner indicates on the original prescription calling for dangerous drugs that it may be refilled "prn" the pharmacist may refill it within the limits of the dosage directions for a period of twelve months, provided the date of refilling and the initials of the pharmacist are recorded on the original prescription. At the expiration of the twelve-month period, the practitioner must be contacted for a new prescription; provided that this is not to be construed to apply
to those drugs regulated by the Controlled Substances Act; and
(5) the board may adopt and promulgate regulations to permit the use of computer systems for the storage and retrieval of prescription records for the purpose of refilling a prescription.

16 NMAC 19.4.9

DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:

A. **Preamble:** In defining “unprofessional conduct” the definitions of professional conduct and a pharmacist’s duty should be considered.

B. **Professional conduct** may be defined as complying with all the laws and regulations that apply to a given professional activity.

C. **Definition:** Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not limited to:

3. Violation of the Drug and Cosmetic Act as determined by the Board.
5. Failure of the pharmacist to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public, other health professionals and fellow pharmacists.

THIS ACTION IS BASED ON THE FOLLOWING ALLEGATIONS:

3. The general nature of the evidence is as follows:

a) On March 8, 2005 Walgreens Pharmacy #3367 faxed refill requests to Paulette Herman, NP, for Zyrtec for five children.

b) Herman telephoned the pharmacy that day to deny the refills because the children were receiving Loratadine under their insurance.

c) On March 10, 2005 Paulette Herman, NP, called the pharmacy to authorize limited Zyrtec refills after learning of a change in insurance that would cover Zyrtec.

d) The respondent told Ms. Herman that he had already issued Zyrtec prescriptions for the five children. He listed six refills for each child.
4. Unless the respondent within twenty days after service of this notice deposits in the mail a certified return receipt requested letter addressed to the Board at the address below containing a request for hearing, the Board will take the contemplated action. Such letter requesting a formal hearing should be mailed to Mr. William Harvey, R.Ph., Executive Director, New Mexico Board of Pharmacy, 5200 Oakland NE Suite A, Albuquerque, New Mexico 87113

The formal hearing, if requested, will be conducted pursuant to the New Mexico Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-31. Pursuant to Section 61-1-8, the licensee is specifically advised as follows:


A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to Section 61-1-4, NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.
Date: 07-20-2006

Woodrow Storey, R.Ph. Chairperson
New Mexico Board of Pharmacy
5200 Oakland NE Suite A
Albuquerque, New Mexico 87113
(505) 222-9830

Certified Mail No.: 7004 2510 0006 6275 6865
Return Receipt Requested