October 31, 2020

BEFORE THE BOARD OF PHARMACY
OF THE STATE OF NEW MEXICO

IN THE MATTER OF:

BUCKLAND PHARMACY
RICHARD BROWER, PIC **Case No. 2019-085**
PH00001124, RP00004085,

Respondents.

SETTLEMENT AGREEMENT

The New Mexico Board of Pharmacy (Board) and Richard Brower and Buckland Pharmacy (Respondents), being willing to resolve this matter in an amicable fashion and without need of a full formal hearing hereby agree as follows:

IT IS STIPULATED AND AGREED:

1. **Jurisdiction.** Respondents are licensed pursuant to the Pharmacy Act, NMSA 1978 Sections 61-11-1 et al., and as such are subject to the jurisdiction of the Board of Pharmacy ("the Board"). The Board has jurisdiction over this disciplinary action pursuant to the Pharmacy Act and the Uniform Licensing Act ("ULA"), NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2017).

2. **Violations.** Respondents admit to the following factual summary:

   A complaint was received by the Board on December 18, 2019, from Certified Nurse Practitioner Diana Sanchez-Gallegos regarding patient E.D., who was sold and was taking three (3) prescriptions filled at Buckland Pharmacy for an entirely different patient with a similar name (D.J.). E.D. had taken lisinopril/hctz, tamsulosin, and duloxetine for approximately thirty (30) days and according to Ms. Sanchez-Gallegos did

not require treatment, only discontinuation of the medications. The Board received an Adverse Drug Event ("ADE") form from Buckland Pharmacy the following day. The ADE form stated that the main contributing factor was that both patients have the same name and the prescriptions were dispensed without verifying personal information (date of birth or address). An inspection was completed at Buckland Pharmacy on December 27, 2019, by Board Inspector Bobby Padilla. Three deficiencies were noted during the inspection:

a. staff required to wear a badge with name and title
b. need to remove expired medications from the refrigerator; and
c. filled prescriptions cannot be accessible from the outside of the pharmacy.

During the inspection the Inspectors spoke with Rhonda Schofner, a staff pharmacist at Buckland Pharmacy, regarding the error. Ms. Schofner stated that Jennifer Jaramillo, a new technician at the time, may have inadvertently sold the prescriptions to the wrong patient and confused the first and last names. On February 13, 2020, Inspector Padilla spoke with Ms. Sanchez-Gallegos regarding her complaint. Ms. Sanchez-Gallegos reiterated the information in the written complaint and also added that the pharmacy was "quite concerned" after they were notified of the error. On July 22, 2020, Ms. Schofner provided an email statement, and four (4) photos with prescription information and employee time cards that showed that the prescriptions in question were sold on November 19, 2019, at 15:44 and Ms. Schofner, Jennifer Jaramillo, April Stokes, and Richard Brower were all working during the time of the error.

Notice of Contemplated Action at 3-4. Respondents are also on probation in Case No. 2018-011(B) for substantially similar acts. On August 23, 2019, Respondents entered into a Pre-NCA Settlement Agreement ("Agreement") in that case which proscribed a term of probation in Case No. 2018-011(B) of three (3) years beginning August 23, 2019, and expiring August 22, 2022. Under the terms of that Agreement, Respondents were required to comply with all Board rules, regulations and statutes. Violations that formed the basis of that Agreement included failure to train or supervise adequately supportive personnel, and failure to ensure that supportive personnel have been properly trained for the duties they may perform.

Respondents voluntarily admit the following violations of law:

NMSA 61-11-15 (C): Pharmacies; sale of drugs; supervision requirements. Whenever an applicable law, rule or regulation requires or prohibits action by a pharmacy, responsibility for the violation shall be that of the owner and the pharmacist in charge. Richard Brower takes full responsibility for the actions of his staff.

16.19.4.9(C) NMAC: Unprofessional or dishonorable conduct

Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to.

(15) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

16.19.4.16 NMAC: RESPONSIBILITIES OF PHARMACIST: Only a pharmacist shall perform the following duties:

(B)(4) ensure that supportive personnel have been properly trained for the duties they may perform;

(C)(1): Patient records- A reasonable effort must be made to obtain, record and maintain at least the following information:

(a) name, address, telephone number, date of birth (or age) and gender of the patient;

16.19.6.9 NMAC: PHARMACIST-IN-CHARGE:

A. The term "pharmacist-in-charge" means a pharmacist licensee in the state of New Mexico who has been designated pharmacist-in-charge

pursuant to Section 61-11-15 NMSA 1978. Failure to perform any of the following duties will constitute a violation of Paragraph (1) of Subsection A of Section 61-11-20 NMSA 1978. It shall be the duty and responsibility of the pharmacist-in-charge consistent with the regulations governing professional conduct and in compliance with all applicable laws and regulations:

(3) to supervise all of the non-professional employees of the pharmacy in so far as their duties relate to the sale and storage of drugs;

(4) to establish and supervise the method and manner for the storing and safekeeping of drugs;

16.19.22.9 NMAC: TRAINING AND EDUCATION:

(A) The pharmacist-in-charge shall ensure that the pharmacy technician has completed initial training which includes:

(1) Federal and state laws and regulations that affect pharmacy practice; specific regulations which address the use of supportive personnel and technicians;

16.19.27.7 NMAC: DEFINITIONS: Dishonorable conduct by a pharmacist intern or pharmacy technician registered pursuant to Section 61-11-6 NMSA 1978.

(B)(1). Dishonorable conduct by a facility (business) shall mean but not to be limited to a violation of any provision of the Pharmacy Act as determined by the board;

(B)(2) violation of the board of pharmacy regulations as determined by the board.(15) failure to correct written deficiencies, documented by drug

inspectors during routine inspections;

(17) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;

3. **This Action.** The undersigned administrative prosecutor and Respondents are in agreement to leave discipline in the discretion of the Board to include any fines, cost of investigation, and any other terms the Board finds necessary to protect the public.
4. **Waivers.** Respondents acknowledges, agrees and stipulated to the following waivers:
    a. Respondents waive any and all time limitations set forth in the Uniform Licensing Act (ULA), §§ 61-1-1 through 61-1-33, NMSA 1978, as amended, including but not limited to all rights to have this matter heard within the time frame established in the ULA.
    b. Respondents waive the right to have these matters in the manner described in the ULA, including the right to a full evidentiary hearing on the charges made in the Notice of Contemplated Action filed against Respondents, Respondents waives his right to confront and cross-examined witnesses and Respondents waives his right to appeal any decision the Board following such hearing.
    c. Respondents waive any right to assert a claim of bias or move to excuse any Board member form the Board's consideration of the SA.

d. Respondents' waiver of these rights are made knowingly, intentionally, and voluntarily.

5. Respondents acknowledge that the Board has the statutory authority and jurisdiction to act in this matter. Upon execution of this SA, Respondents release the Board from any and all claims potentially arising out of the Board's decision to investigate and take actions described herein.
6. This SA is subject to approval by the Board. If the Board rejects this SA, the Board may proceed to adjudicate this matter in a hearing before the Board.
7. This SA is binding upon the Board and Respondents the date it is signed by the Board Chair.
8. Upon the Board Chairperson affixing his or her signature to the Order indicating the Board's approval of this SA, a copy of this SA shall be mailed to Respondents through email to Respondents' attorney. Such email shall fulfill the Board's obligation to notify Respondents of the Board's acceptance of this SA. The time limitation for Respondents' compliance with the requirements of this SA shall commence five days after said emailing by the Board as such date shall be deemed received by Respondents of this SA and the signed Order.
9. Sanctions and Conditions:
    a. Respondent shall pay a fine of $5,000 within six (6) months.
    b. Respondent's licenses shall be on probation for five (5) years.
    c. Respondent shall submit documentation of successful completion of eighteen (18) hours of continuing education in the areas of medication

error prevention and patient safety to the board's executive director within ninety (90) days.

d. Conduct an Institute for Safe Medication Practices medication safety self-assessment for Community/Ambulatory Pharmacy, and implement assessment-identified improvements. Submit a report of improvements made to the board's executive director within ninety (90) days.

e. Submit to the board's executive director a corrective action plan to ensure that personnel are properly trained and supervised for all activities performed, and for medication error prevention within ninety (90) days.

10. Upon fulfillment of the above requirements, the Board shall consider this matter closed and resolved and will contemplate no further action against Respondents for the specific conduct made the subject matter of this SA as long as all provisions of this SA are completed in full by Respondents. This SA constitutes a settlement of New Mexico Board of Pharmacy Case No. 2019-085, and only for the factual basis as stated in Paragraph 2, supra, as well as in the Notice of Contemplated Action. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar or other misconduct is proven against Respondents in the future. Also, the Board may consider the fact that discipline was imposed through this SA as a factor in determining appropriate discipline should any further misconduct be proven against Respondents in the future.

11. Respondents understand and acknowledge that entering in this SA is a final act and not subject to reconsideration, judicial review or appeal.

12. Any violation of the SA may result in the summary revocation of a license or registration issued by the Board, and is grounds for the Board to initiate further disciplinary proceedings against Respondents in accordance with Impaired Health Care Provider Act, sections 61-7-1 *et seq.* Uniform Licensing Act, sections 61-1- 1 *et seq*., and the Pharmacy Act, sections 61-11-1 *et seq.* NMSA 1978.
13. This SA will be included in Respondents' licensing file and is a public record open to inspection by the public.
14. This SA constitutes disciplinary action against the Respondents by the Board and is reportable to the Healthcare Integrity and Protection Data Bank. This matter may be reported on the Board's website.
15. This SA is a public record within the meaning of the Inspection of Public Records Act, NMSA 1978, Section 14-2-6(E) as amended. Other data, communication, and information acquired by the Board relating to this matter shall be public as provided by the Pharmacy Act.
16. Respondents affirmatively state that Respondents have read this entire SA and understand its terms and Respondents' responsibilities and duties. Respondents knowingly, intentionally and voluntarily enters into and executes this SA and affirms that no promises or representation have been made other than the terms and conditions expressly stated herein.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date last signed below.

Richard Brower, Buckland Pharmacy
Respondents

10-28-20
Date

Charles B. Kraft
Attorney for Respondents

10/29/2020
Date

Gregory Chakalian
Administrative Prosecutor

Date

THIS SETTLEMENT AGREEMENT IS ACCEPTED OR REJECTED AS INDICATED BY CHRIS WOODUL R.Ph. – CHAIRMAN OR HIS DESIGNEE

10/31/2020
Dated Accepted

Dated Rejected

Richard Brower, Buckland Pharmacy
Respondents

Date

Charles B. Kraft
Attorney for Respondents

Date

/s/ Gregory Chakalian
Gregory Chakalian
Administrative Prosecutor

October 27, 2020
Date

THIS SETTLEMENT AGREEMENT IS ACCEPTED OR REJECTED AS INDICATED BY CHRIS WOODUL R.Ph. – CHAIRMAN OR HIS DESIGNEE

10/31/2020 Accepted
Dated

Rejected
Dated

BEFORE THE BOARD OF PHARMACY
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Case No. 2018-011B

BUCKLAND PHARMACY
RICHARD BROWER (PIC)
License No. RP 4085

Respondent.

PRE-NCA SETTLEMENT AGREEMENT

Whereas, Richard Brower (hereafter, "Respondent") is licensed in New Mexico under the Pharmacy Act, NMSA 1978, Sections 61-11-1 through 61-11-29 ("the Act"), and is subject to the jurisdiction of the New Mexico Pharmacy Board ("Board"); and

Whereas, the Board received a formal complaint alleging that Respondent has violated the Act; and

Whereas, the Board found sufficient evidence to refer the matter to its administrative prosecutor and requested a Notice of Contemplated Action ("NCA") be issued against Respondent; and

Whereas, the parties have entered into a pre-NCA settlement agreement, but in the event the Board does not accept the agreement, an NCA will be issued pursuant to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017) ("ULA"), which will state that the Board has sufficient evidence which, if not rebutted or satisfactorily explained, would justify the Board taking disciplinary action against Respondent up to and including license denial or revocation; and

Whereas, Respondent is willing to resolve this matter without the need for, and time and expense of, a formal hearing conducted; and

Whereas, the Board's administrative prosecutor believes that this proposed Settlement Agreement (the "Agreement") is appropriate and in the best interest of the Board:

THEREFORE, IT IS AGREED AS FOLLOWS:

1. Jurisdiction: Respondent is licensed by the Board or otherwise subject to the Act and jurisdiction of the Board.

2. Voluntary Agreement: Respondent enters into this Agreement knowingly and voluntarily, without duress or coercion, and after a full opportunity to consult an attorney. Respondent understands that if Respondent rejects this agreement the Board

will conduct a formal evidentiary hearing which could result in the Board imposing discipline that is more severe or less severe than the sanctions imposed herein.

3. Board Approval: This Agreement requires Board approval. If the Board rejects this Agreement, the Board may proceed with a full evidentiary hearing on a date scheduled by the Board in a subsequent notice. The approval shall be effective the date this Agreement is signed by the Board or its designee.

4. Waivers: If this Agreement is accepted by the Board, Respondent agrees to waive any and all rights under the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017), including but not limited to the right to an evidentiary hearing, the right to discovery, the right to present evidence, the right to call and cross examine witnesses, and the right to judicial review.

5. Violations: Respondent admits to the following violation(s) of the Act or Board's rules:

   16.19.4.9(C) NMAC: Definition: Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to-
   (2) Violation of the board of pharmacy regulations as determined by the Board;
   (3) Violation of the Drug and Cosmetic Act as determined by the Board;
   (13) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

   16.19.4.16 NMAC: Responsibilities of Pharmacist and Pharmacist Intern:

   (B) Only a pharmacist shall perform the following duties:
   final check on all aspects of the completed prescription including sterile products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container; supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications; ensure that supportive personnel have been properly trained for the duties they may perform;

   (C) Patient records.
   A reasonable effort must be made to obtain, record and maintain at least the following information: name, address, telephone number, date of birth (or age) and gender of the patient;

   16.19.22.9 NMAC: TRAINING AND EDUCATION
   (E) All technicians are required to obtain board approved certification within one year of registration with the board as a technician. Extensions will no longer be granted to pharmacy technicians registered on or after November 15, 2010.

   16.19.22.11 NMAC: Improper Activities of Pharmacy Technicians

(A) The supervising pharmacist and the pharmacist-in-charge are responsible for the actions of pharmacy technicians. Performance of tasks by the pharmacy technician and support personnel outside the limits of the regulations that are authorized by the supervising pharmacist shall constitute unprofessional conduct on the part of the pharmacist and the pharmacist-in-charge.

16.19.22.14 NMAC: Registration of Pharmacy Technicians
(A) Application (and required registration fee) shall be submitted to the board prior to performing any technician duties. Non-certified pharmacy technicians must:
(1) Complete requirements for certified pharmacy technician within (1) one year of original application.

16.19.27.7 NMAC: Definitions
(A) Dishonorable conduct by a pharmacist intern or pharmacy technician shall mean, among other things, but not to be limited to,
(2) Violation of the board of pharmacy regulations as determined by the board

NMSA 1978 26-1-11: Drug or device; misbranding.
A. A drug or device shall be deemed to be misbranded:
(1) If it's labeling is false or misleading in any particular.

6. Sanctions and Conditions: Respondent agrees to the following disciplinary sanctions and conditions:

   a. Fine: Respondent shall pay to the Board a fine of one thousand dollars within ninety (90) days from the date this Agreement is accepted by the Board and $525 for the cost of the investigation, for a total fine of $1,525.00.
   b. Respondent shall institute a computer verification procedure that requires drug verification by a pharmacist, and pharmacist final check verification and documentation. This shall be implemented within ninety (90) days from the date this Agreement is accepted by the board; and the computer system, procedures, and compliance with this condition will be subject to verification by a Board Inspector.
   c. Three (3) years of probation.
   d. Comply with all Pharmacy Board rules, regulations, and statutes.

7. Reportable Discipline: Respondent understands that this Agreement constitutes formal disciplinary action by the Board, and will be reported to the National Practitioner Data Bank.

8. Non-Compliance: Respondent understands and agrees that failure to comply with the terms of this Agreement will result in further Board action. Any violation of this Agreement will result in the immediate, automatic filing of an administrative Notice of Non-Compliance by Board staff. Upon the filing of a Notice of Non-Compliance, the matter shall be scheduled for the next available public meeting of the Board, at which time the Board shall hear from Board staff regarding the alleged non-compliance.

Respondent shall have the opportunity to address the allegations or offer any other relevant argument or evidence regarding the reasons for non-compliance. Such argument or evidence may be provided in writing prior to the meeting or in person at the Board meeting. Any presentation regarding the Notice of Non-Compliance shall be limited to evidence surrounding Respondent's alleged failure to comply with the Agreement. Upon finding such violation occurred, the Board may suspend Respondent's license(s), provided that this suspension may only remain in effect until such time as the Respondent has complied with the terms of this agreement, or take other enforcement action as permitted by law. If Respondent's non-compliance constitutes acts that are prohibited under the Board's statute or rules, the Board may also initiate a new disciplinary action and refer that matter for administrative prosecution.

9. Contact Information: Respondent shall notify the Board within ten (10) calendar days if there is a change in employment or home address during the term of discipline or prior to completion of any conditions stated herein.

10. Public Record: This Agreement and the original complaint are public records and may be provided for inspection if requested, pursuant to the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Board may also publish this Agreement or a summary of the Agreement to the public, which may include posting to the Board's website.

I understand and have read this document and hereby agree to the terms of this Agreement freely and voluntarily. I understand that by entering into this Agreement I am giving up my rights under the Uniform Licensing Act, including my right to an evidentiary hearing on the merits of the alleged violations.

I understand that if the Board accepts this Agreement, I am required to comply with the terms stated herein, and that failure to comply with the Agreement may subject me to further discipline, including temporary suspension of my license(s).

Richard Brower
Respondent

8-20-19
Date

Respondent's Attorney (if any)

Date

ORDER

This document is not valid unless it is accepted by vote of the Board. Having come before the Board during a properly scheduled public meeting, with a quorum present and majority voting in the affirmative, this Agreement is:

X ACCEPTED

IT IS SO ORDERED.

Richard Mazzoni, R.Ph., Chair
New Mexico Board of Pharmacy

8/23/19
Date