

**BEFORE THE BOARD OF PHARMACY
OF THE STATE OF NEW MEXICO**

6/30/15

IN THE MATTER OF:

**COLBERT PHARMACY
License No.: PH-3523**

Respondent.

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) **Case No. 2014 – 064P**
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STIPULATED AGREEMENT

WHEREAS On October 16, 2014, the New Mexico Board of Pharmacy (“Board”) considered a complaint against Colbert Pharmacy (“Respondent”) regarding Respondent’s delinquency in reporting controlled substance prescription information to the Prescription Monitoring Program as required by state law; and

WHEREAS, on October 16, 2014, the Board found sufficient reason to vote to issue an Notice of Contemplated Action (“NCA”), as required pursuant to the Uniform Licensing Act (“ULA”); and

WHEREAS, Respondent is willing to resolve these matters in an amicable fashion and without issuance of the NCA as required under the ULA and without need of a formal hearing; and

WHEREAS, the Board believes that this Stipulated Agreement (“Agreement”) is appropriate and in the best interests of both the Board and Respondent,

IT IS STIPULATED AND AGREED AS FOLLOWS:

1. **Jurisdiction.** Respondent is a licensed nonresident pharmacy pursuant to the New Mexico Pharmacy Act, NMSA 1978, §§ 61-11-1 to 61-11-29 (1969, as amended through 2009),

and, as such, is subject to the jurisdiction of the Board. The Pharmacist-in-charge, on behalf of Respondent, approves and ratifies all portions of this agreement.

2. **Violations:** Respondent admits to being delinquent in reporting controlled substance prescriptions information to the Prescription Monitored Program and that this disciplinary action is for violations of NMSA 1978, § 61-11-20 (A) (3) (1997) of the Pharmacy Act; NMSA 1978, § 30-31-16 (F) (1994) of the Controlled Substances Act, and Regulations 16.19.29.8 (C) NMAC (07/05/04 as amended through 08/3/12) and 16.19.27.7 (B) (2) NMAC (12/01/03 as amended through 12/15/08).

3. **Discipline:** This Agreement constitutes disciplinary action by the Board against Respondent.

4. The Board shall take no further action against Respondent with respect to the matters alleged in the referral, provided that Respondent complies completely with the following:

A. Respondent shall timely report as required pursuant to the Prescription Monitoring Program.

B. Respondent's New Mexico nonresident pharmacy license shall be on probationary status for a period of six months commencing on the date of Respondent's receipt of the Board's order signed by the Board Chairperson indicating the Board's approval of this Agreement. Respondent stipulates that any reporting delinquencies during the probationary period shall be considered a probation violation.

C. The Respondent shall pay a One Hundred Dollar (\$100.00) fine within thirty (30) days of receipt of the Board's order signed by the Board Chairperson indicating the Board's approval of this Agreement.

5. **Waivers:** Respondent acknowledges, agrees and stipulates to the following waivers:

- A. Respondent waives any and all time limitations set forth in the ULA, including all rights to have this matter heard within the time frame established in the ULA.
- B. Respondent enters into this Agreement voluntarily and waives Respondent's right to have these matters heard in the manner described in the ULA, NMSA 1978, Section 61-1-1 through Section 61-1-33 (2003), including the right to a full evidentiary hearing on the charges made in the complaint against Respondent, the right to confront and cross-examine witnesses, and the right to appeal any decision of the Board following such hearing.
- C. Respondent waives Respondent's right to assert a claim of bias or move to excuse any Board member based on the Board member's consideration of this Agreement.
- D. Respondent's waiver of these rights is made knowingly, intentionally, and voluntarily.
6. Respondent acknowledges that the Board has the statutory, administrative and regulatory authority and thereby jurisdiction to investigate and adjudicate allegations of professional misconduct committed by nonresident pharmacies. NMSA 1978, §61-11-1 through §61-11-29. Upon execution of this Agreement, Respondent releases the Board from any and all claims potentially arising out of the Board's decision to investigate the complaint and take the actions described herein.
7. This Agreement is subject to approval by the Board. If the Board rejects this Agreement, the Board may proceed to formal hearing based on the complaint and the issuance of the NCA. If the Board rejects this Agreement, the terms of this Agreement or statements made by the Respondent in support of this Agreement shall **not** be used against Respondent in a subsequent proceeding if such concerns the claims alleged in this complaint.

8. This Agreement is binding upon the Board and the Respondent when it is signed by the Respondent and the attending Order, validating the terms of the Agreement, is signed by the Board Chair.

9. Upon the Board Chairperson affixing his signature to the Order indicating the Board's approval of this agreement, copies of both documents shall be mailed to Respondent by Certified Mail. Such mailing shall fulfill the Board's obligation to notify Respondent of the Board's acceptance of this Agreement. The time limitations for Respondent's compliance with the requirements of this Agreement shall commence five days after said mailing by the Board as such date shall be deemed receipt by Respondent of this Agreement and the signed Order.

10. Upon fulfillment of the above requirements the Board shall consider this matter closed and resolved and will contemplate no further action against Respondent's license for the conduct made the subject matter of this Agreement as long as all provisions of this agreement are completed in full by Respondent. 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 Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed through this Agreement and the accompanying Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

11. This Agreement is a settlement of New Mexico Board of Pharmacy Case Number 2014-064P, and only for the specific allegations contained therein. The Board reserves the right to initiate proceedings for any other violations of the New Mexico Pharmacy Act, the Controlled Substances Act and/or the Rules and Regulations of the Board adopted by the Board pursuant to that Act, the Controlled Substances Act and/or the ULA. Respondent understands and

acknowledges that Respondent's action in entering this Agreement is a final act and not subject to reconsideration, judicial review or appeal.

12. Respondent understands, acknowledges and stipulates that any violations of this Agreement and/or failure to comply with the terms and conditions of this Agreement shall be separate and independent grounds for disciplinary action by the Board against Respondent and, at the discretion of the Board, shall constitute a violation of the Pharmacy Act. In the event Respondent fails to comply with any provisions of this Agreement, an Order to Show Cause shall be filed as to why the Board should not find the Respondent in violation of the Agreement and impose any and all lawful sanctions at its disposal including but not limited to revocation, suspension or denial of Respondent's license, restrictions on its scope of practice, imposition of fees, penalties and costs and/or any other disciplinary action authorized pursuant to the Pharmacy Act and/or the Uniform Licensing Act.

13. The complaint, this Agreement and the attending Order are public records within the meaning of the Inspection of Public Records Act, NMSA 1978, § 14-2-6(E) (1993). Other data, communications, and information acquired by the Board relating to this matter shall be public as provided by the Pharmacy Act and the Controlled Substances Act. This Agreement is a public record open to inspection by the public. This Agreement constitutes disciplinary action against Respondent by the Board and is reportable to the Healthcare Integrity and Protection Data Bank. This matter may be reported on the Board's website.

14. Respondent acknowledges that Respondent has the right to be represented by an attorney and has been given the opportunity to have counsel of Respondent's choice review this Agreement. By signature Respondent acknowledges that Respondent has chosen to proceed without counsel.

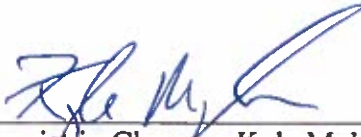
15. Respondent affirmatively states that Respondent has read this entire document and understands Respondent's responsibilities and duties in reference to settlement of this matter. Respondent agrees and stipulates to all of the terms of this agreement. Respondent knowingly, intentionally and voluntarily enters into and executes this Agreement and affirms that no promises or representations have been made other than the terms and conditions expressly stated herein.



Colbert Pharmacy - License PH 3523
On behalf by Kyle Myhan - Pharmacist-in-Charge
Respondent
500 S. Montgomery Ave., Suite 108
Sheffield, Alabama 35660
(256) 389-9900
myhanenterprises@gmail.com

4-27-15

Date



Pharmacist in Charge - Kyle Myhan

4-27-15

Date

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OF THE STATE OF NEW MEXICO**

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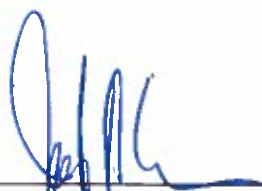
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ORDER

This matter having come before the New Mexico Board of Pharmacy on 6/25/15, 2015 and with a quorum being present and a majority voting for the action designated below, the attached Stipulated Agreement is:

Accepted

Rejected



Chairperson, Joseph D. Cross
New Mexico Board of Pharmacy
5200 Oakland N.E. – Suite A
Albuquerque, New Mexico 87113
(505) 222-9830

6/25/15

Date