

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	CASE NO. 2015-6
Nonresident Pharmacy License of	)	
	)	<b>COMBINED AMENDED STATEMENT</b>
<b>PHARMACY CREATIONS, LLC</b>	)	<b>OF CHARGES, SETTLEMENT</b>
License No. 4185	)	<b>AGREEMENT, AND FINAL ORDER</b>
Respondent.	)	

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**COME NOW** the Iowa Board of Pharmacy ("Board") and Pharmacy Creations, LLC ("Respondent") and enter into this Combined Amended Statement of Charges, Settlement Agreement, and Final Order ("Order") pursuant to Iowa Code sections 17A.12(5) and 272C.3(4) (2015), and 657 IAC 36.6. The Board issued a Notice of Hearing and Statement of Charges against Respondent on November 4, 2015. Through this Order, the Board and Respondent consent to amend the Statement of Charges and Factual Circumstances as outlined below, and agree to settle the contested case currently pending before the Board.

**A. AMENDED STATEMENT OF CHARGES**

**COUNT I  
OUT-OF-STATE DISCIPLINE**

Respondent is charged with violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state, pursuant to Iowa Code section 155A.13A(3), and 657 IAC 19.10 and 36.1(4)"ad".

**COUNT II  
FAILURE TO NOTIFY OF DISCIPLINE**

Respondent is charged with failing to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary sanction, pursuant to Iowa Code section 155A.13A(3), and 657 IAC 19.10 and 36.1(4)"k".

**B. AMENDED FACTUAL CIRCUMSTANCES**

1. Respondent became licensed as an Iowa nonresident pharmacy in May 2013. When initially licensed, Respondent was a limited liability company co-owned by two individuals.

2. On October 17, 2013, the Indiana State Board of Pharmacy granted Respondent an Indiana nonresident pharmacy permit, but placed it on probation for a minimum period of 16 months. The probationary period was based solely on Respondent's shipment of medications into Indiana prior to licensure. Respondent reported the discipline to the Board in December 2014. The probationary period has now expired and the probation has been lifted.

3. On April 1, 2014, Imprimis Pharmaceuticals Inc. acquired 100% of the membership interests of the limited liability company Pharmacy Creations, LLC.

4. On April 22, 2014, the Ohio State Board of Pharmacy granted Respondent's Ohio nonresident pharmacy permit, but placed it on probation for 12 months and imposed a \$2,000 fine. The probationary period and fine were based solely on Respondent's shipment of medication into Ohio prior to licensure in 2012. Respondent reported the discipline to the Board in August 2014. The probationary period has now expired and the probation has been lifted.

5. On March 16, 2015, the Alabama Board of Pharmacy granted Respondent's Alabama nonresident pharmacy permit, but placed it on probation for a period of one year. The probationary period was based solely on Respondent's prior discipline in Indiana and Ohio, as described above. Respondent reported the discipline to the Board on June 1, 2015.

6. On July 28, 2015, the Colorado Board of Pharmacy issued a Letter of Admonition to Respondent solely for failing to provide timely notification of the above referenced Alabama discipline. Respondent timely reported the discipline to the Board on August 6, 2015.

7. On August 4, 2015, the Texas State Board of Pharmacy granted Respondent's Texas nonresident pharmacy permit, but placed it on probation for a period of two years and imposed a \$2,200 fine. The probationary period and fine were based on prior discipline as outlined above and Respondent's failure to disclose one single prior disciplinary action that occurred in 2005. Respondent timely reported the discipline to the Board on September 2, 2015.

8. On October 22, 2015, the Hawaii State Board of Pharmacy granted Respondent's Hawaii non-resident pharmacy permit, but placed it on probation solely due to and concurrent with the Alabama probation. Respondent timely reported the discipline to the Board on November 2, 2015.

9. On November 10, 2015, Respondent agreed to a fine from the New Jersey Board of Pharmacy for deficiencies identified in an inspection. Respondent timely reported the violations to the Board on November 18, 2015.

### **C. SETTLEMENT AGREEMENT AND FINAL ORDER**

1. The Board has jurisdiction over the parties and the subject matter of these proceedings.
2. Respondent acknowledges that the allegations in the Amended Statement of Charges, if proven in a contested case hearing, would constitute grounds for the discipline agreed to in this Order. Respondent asserts that at the time of acquisition, Imprimis was not aware of the actions taken by the previous co-owners and management as described herein that resulted in disciplinary actions and that following the acquisition and Imprimis' knowledge of such actions, Imprimis terminated all business relationships with the former co-owners and management of the business and such co-owners and management no longer have any association with Respondent's business.
3. Execution of this Order constitutes the resolution of contested case number 2015-6. Respondent has a right to hearing before the Board on the charges, but Respondent waives the right to hearing and all attendant rights, including the right to appeal or seek judicial review of the Board's action, by freely and voluntarily entering into this Order. Once entered, this Order shall have the force and effect of a disciplinary order entered following a contested case hearing.
4. Respondent acknowledges that it has the right to be represented by counsel on this matter.

5. Respondent agrees that the State's counsel may present this Order to the Board and may have *ex parte* communications with the Board while presenting it.

~~6. This Order is subject to approval by a majority of the full Board. If the Board does not approve this Order, it shall be of no force or effect to either party, and shall not be admissible for any purpose in further proceedings in this matter. If the Board approves this Order, it shall be the full and final resolution of this matter.~~

7. This Order shall be part of Respondent's permanent record and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations.

8. Respondent understands the Board is required by federal law to report any adverse action to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse and the National Practitioner Data Bank.

9. This Order, when fully executed, is a public record and is available for inspection and copying in accordance with the requirements of Iowa Code chapters 22 and 272C.

10. The Board's approval of this Order shall constitute a **FINAL ORDER** of the Board.

**IT IS THEREFORE ORDERED:**

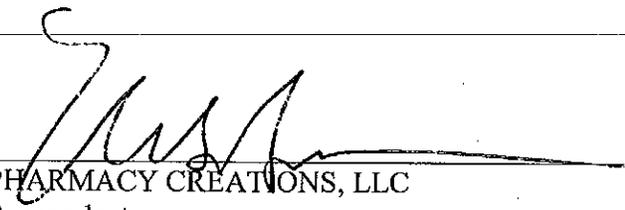
11. Respondent is hereby **CITED** for violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state and for failing to timely notify the Board of discipline and **WARNED** that Respondent's failure to comply with the laws and rules governing the practice of pharmacy in the future could result in further discipline.

12. Respondent shall pay a **CIVIL PENALTY** in the amount of two thousand five hundred dollars (\$2,500) within thirty (30) days of Board approval of this Order. The check shall be made payable to the "Treasurer of Iowa" and shall be deposited in the general fund. The civil penalty should be mailed to the Iowa Board of Pharmacy, Attn: Debbie Jorgenson, 400 SW Eighth Street, Suite E, Des Moines, IA 50309.

13. Respondent shall comply with all laws and rules governing Iowa licensed nonresident pharmacies.

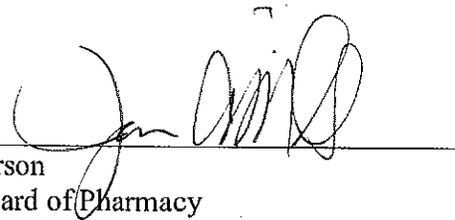
14. Should Respondent violate the terms of this Order, the Board may initiate action to impose other licensee discipline as authorized by Iowa Code chapters 147, 155A, and 272C and 657 IAC 36.

This Combined Amended Statement of Charges, Settlement Agreement, and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 2<sup>nd</sup> day of March, 2016.

  
PHARMACY CREATIONS, LLC  
Respondent

By this signature, Mark L. Baum acknowledges  he is the President for Pharmacy Creations, LLC and is authorized to sign this Combined Amended Statement of Charges, Settlement Agreement, and Final Order on behalf of Pharmacy Creations, LLC.

This Combined Amended Statement of Charges, Settlement Agreement, and Final Order is approved by the Iowa Board of Pharmacy on the 8<sup>th</sup> day of March, 2016.

  
Chairperson  
Iowa Board of Pharmacy

Copy to:

Laura Steffensmeier  
Assistant Attorney General  
Licensing & Administrative Law Division  
Iowa Department of Justice  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
ATTORNEY FOR THE STATE

**BEFORE THE IOWA BOARD OF PHARMACY**

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Re:	)	CASE NO. 2015-6
Nonresident Pharmacy License of	)	
	)	<b>NOTICE OF HEARING AND</b>
<b>PHARMACY CREATIONS, LLC</b>	)	<b>STATEMENT OF CHARGES</b>
License No. 4185	)	
Respondent.	)	

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**COMES NOW** the Iowa Board of Pharmacy ("Board") and files this Notice of Hearing and Statement of Charges against Pharmacy Creations, LLC ("Respondent"), 540 Route 10 West, Randolph, New Jersey, 07869, pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 272C.3(1)"e", and 657 IAC 35.5 and 36.5. Respondent's Iowa nonresident pharmacy license number 4185 is currently active through December 31, 2015.

**A. TIME, PLACE, AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on January 12, 2016, before the Board. The hearing shall be held during the morning session beginning at 9:00 a.m. and shall be located in the Board conference room located at the Iowa Board of Pharmacy Office, 400 S.W. 8<sup>th</sup> Street, Suite E, Des Moines, Iowa, 50309-4688.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges, you may file an Answer pursuant to 657 IAC 35.11. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges.

Filing of Pleadings. Pleadings shall be filed with the Board at the following address: Iowa Board of Pharmacy, 400 S.W. 8<sup>th</sup> Street, Suite E, Des Moines, Iowa, 50309-4688.

Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge from the Department of Inspections and Appeals make initial rulings on prehearing matters, and be present to assist and advise the Board at hearing.

Pre-hearing Conference. Any party may request a prehearing conference in accordance with 657 IAC 35.15 to discuss issues related to the hearing.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 657 IAC 35. At the hearing, you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at the hearing. If you need to request an alternative time or date for the hearing, you must comply with the requirements in 657 IAC 35.16. The hearing may be open to the public or closed to the public at your discretion.

Prosecution. The Office of Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address:

Laura Steffensmeier  
Assistant Attorney General  
Iowa Attorney General's Office  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319

Ms. Steffensmeier can also be reached by phone at (515) 281-6690 or by e-mail at [laura.steffensmeier@iowa.gov](mailto:laura.steffensmeier@iowa.gov).

Communications. You may contact the Board office at (515) 281-5944 with questions regarding this notice and other matters relating to these disciplinary proceedings. You may not contact individual Board members in any manner, including by phone, letter, or e-mail, regarding this Notice of Hearing and Statement of Charges. Board members may only receive information about the case when all parties have notice and the opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case.

## **B. LEGAL AUTHORITY AND JURISDICTION**

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 155A, and 272C (2015).

Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 147, 155A, and 272C, and 657 IAC 36.

Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 657 IAC 35.21.

## **C. CHARGES**

### **COUNT I**

#### **OUT-OF-STATE DISCIPLINE**

Respondent is charged with violating the pharmacy or drug laws or rules of another state while under the jurisdiction of that state, pursuant to Iowa Code section 155A.13A(3), and 657 IAC 19.10 and 36.1(4)"ad".

### **COUNT II**

#### **FAILURE TO NOTIFY OF DISCIPLINE**

Respondent is charged with failing to notify the board within 30 days after a final decision entered by the licensing authority of another state, territory, or country which decision resulted in a license or registration revocation, suspension, or other disciplinary sanction, pursuant to Iowa Code section 155A.13A(3), and 657 IAC 19.10 and 36.1(4)"k".

**COUNT III**  
**FAILURE TO NOTIFY OF PHARMACY LICENSE CHANGE**

Respondent is charged with failing to timely submit an application for a change in pharmacist in charge, or failing to appoint or notify the board of a temporary pharmacist in charge, in violation of 657 IAC 8.35(6)"c", pursuant to Iowa Code section 155A.13A(3), and 657 IAC 19.10 and 36.1(4)"u".

**D. FACTUAL CIRCUMSTANCES**

1. Respondent became licensed as an Iowa nonresident pharmacy in May 2013. When initially licensed, Respondent was a limited liability company co-owned by two individuals.

2. On October 17, 2013, the Indiana State Board of Pharmacy granted Respondent an Indiana nonresident pharmacy permit, but placed it on probation for a minimum period of 16 months. The probationary period was based on Respondent's shipment of medications into Indiana prior to licensure. Respondent reported the discipline to the Board in December 2014.

3. On April 1, 2014, Imprimis Pharmaceuticals Inc. acquired 100% of the membership interests of the limited liability company.

4. On April 22, 2014, the Ohio State Board of Pharmacy granted Respondent's Ohio nonresident pharmacy permit, but placed it on probation for 12 months and imposed a \$2000 fine. The probationary period and fine were based on Respondent's shipment of medication into Ohio prior to licensure. Respondent reported the discipline to the Board in August 2014.

5. The New Jersey Board of Pharmacy issued two Interim Consent Orders, on May 14, 2014, and on July 21, 2014, that related to inspection deficiencies identified by inspectors in June 2013, but neither Consent Order was disciplinary in nature. These Consent Orders were not reported to the Board.

6. On June 5, 2014, the North Carolina Board of Pharmacy denied Respondent's application for a North Carolina nonresident pharmacy permit. The denial was based on inspection deficiencies noted by the New Jersey Board of Pharmacy in June 2013. Respondent reported the denial to the Board in December 2014.

7. On September 19, 2014, the Missouri Board of Pharmacy denied Respondent's application for a Missouri nonresident pharmacy permit. The denial was based on Respondent's prior discipline. Respondent reported the denial to the Board in December 2014.

8. In September 2014, the Board received notification from the pharmacist in charge that he was resigning effective October 10, 2014. The Board received Respondent's renewal indicating a change in pharmacist-in-charge on December 16, 2014. The Board did not receive any information regarding the appointment of a permanent or temporary pharmacist in charge between these two dates.

9. On March 16, 2015, the Alabama Board of Pharmacy granted Respondent's Alabama nonresident pharmacy permit, but placed it on probation for a period of one year. The

probationary period was based on Respondent's prior discipline. Respondent reported the discipline to the Board on June 1, 2015.

10. On July 28, 2015, the Colorado Board of Pharmacy issued a Letter of Admonition to Respondent for failing to provide timely notification of the Alabama discipline. Respondent timely reported the discipline to the Board on August 6, 2015.

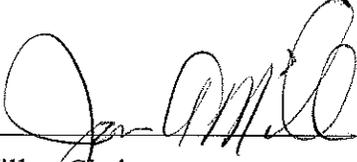
11. On August 4, 2015, the Texas State Board of Pharmacy granted Respondent's Texas nonresident pharmacy permit, but placed it on probation for a period of two years and imposed a \$2,200 fine. The probationary period and fine were based on prior discipline and Respondent's failure to disclose all prior discipline. Respondent timely reported the discipline to the Board on September 2, 2015.

#### **E. SETTLEMENT**

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 657 IAC 36.6. If you are interested in pursuing settlement in this matter, please contact Assistant Attorney General Laura Steffensmeier at (515) 281-6690.

#### **F. FINDING OF PROBABLE CAUSE**

On this 4<sup>th</sup> day of November, 2015, the Iowa Board of Pharmacy found probable cause to file this Notice of Hearing and Statement of Charges.

  
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James Miller, Chairperson  
Iowa Board of Pharmacy

Copy to:

Laura Steffensmeier  
Assistant Attorney General  
Hoover Building, 2<sup>nd</sup> Floor  
Des Moines, IA 50319

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-5944. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).