

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY
(Docket No. D-030910-008)

In The Matter Of:

SAM J. POSTOLSKI, R.Ph.
5 Clark Avenue
Cincinnati, Ohio 45215
(R.Ph. No. 03-2-09642)

This Settlement Agreement is entered into by and between Sam J. Postolski and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Sam J. Postolski voluntarily enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Sam J. Postolski acknowledges that by entering into this agreement he has waived his rights under Chapter 119. of the Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Sam J. Postolski is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about September 10, 2003 and December 1, 2003, pursuant to Chapter 119. of the Ohio Revised Code, Sam J. Postolski was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Sam J. Postolski requested a hearing; it was scheduled and continued. The September 10, 2003, Notice of Opportunity for Hearing and December 1, 2003 Addendum Notice contain the following allegations or charges:

- (1) Records of the Board of Pharmacy indicate that Sam J. Postolski was originally licensed in the State of Ohio on July 27, 1970, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio.
- (2) Sam J. Postolski did, on or about the following dates, intentionally create and/or knowingly possess false or forged prescriptions, to wit: Sam J. Postolski created and dispensed the following prescriptions for himself and/or family members without authorization from an authorized prescriber:

<u>Rx #</u>	<u>Drug</u>	<u>Date Filled</u>	<u>Qty</u>
891599	Proscar 5 mg	03/09/02	10
892596	Zithromax 250 mg	04/01/02	6
892890	cephalexin 250 mg	04/06/02	30
894470	Protonix 40 mg	05/15/02	60
894711	nifedipine 10 mg	05/22/02	30

<u>Rx #</u>	<u>Drug</u>	<u>Date Filled</u>	<u>Qty</u>
897107	Protonix 40 mg	07/20/02	60
897121	chlorzoxazone 500 mg	07/21/02	12
897209	prednisone 5 mg	07/23/02	30
898665	Proscar 5 mg	08/28/02	20
899537	amoxicillin 500 mg	09/19/02	10
899536	Guaifenesin PSE 600/120	09/19/02	8
900150	sucralfate 1 gm	10/06/02	100
900892	Proscar 5mg	10/24/02	20
901256	prednisone 5 mg	11/01/02	15
901256	prednisone 5 mg	11/01/02	15
903362	penicillin VK 500 mg	12/26/02	10
279496	Prevacid 30 mg	01/01/03	60
903961	Proscar 5mg	01/11/03	15
904051	cephalexin 250 mg	01/14/03	30
904408	cephalexin 250 mg	01/22/03	30
890702	Patanol 0.1% Eye Drops	02/19/02	5
891614	hydrocortisone 2.5% Cream	03/10/02	30
891769	Acular 0.5% eye Drops All	03/13/02	5
891739	Benzagel-10 Gel DER	03/13/02	43
892448	sulfamethoxazole/TMP DS	03/27/02	12
892785	Zithromax 250 mg	04/04/02	6
894706	sulfamethoxazole/TMP DS	05/21/02	15
894901	benzoyl peroxide 10% gel	05/27/02	60
895136	Zithromax 250 mg	06/03/02	6
895290	Zithromax 250 mg	06/05/02	4
897669	Zithromax 250 mg	08/02/02	4
898770	Zithromax 250 mg	08/30/02	3
899595	Sulfamethoxazole/TMP DS	09/22/02	20
900389	Zithromax 250 mg	10/10/02	4
900523	Zithromax 250 mg	10/14/02	4
900899	Zithromax 250 mg	10/24/02	3
901696	Benzagel-10 Gel DER	11/13/02	43
901944	sulfamethoxazole/TMP DS	11/19/02	20
902365	Zithromax 250 mg	11/29/02	3
902526	Zithromax 250 mg	12/03/02	6
902944	Benzagel-10 Gel DER	12/15/02	43
903938	Zithromax 250 mg	01/10/03	6
904974	sulfamethoxazole/TMP DS	02/05/03	20
905131	hydroxyzine HCL 25 mg	02/10/03	15
879620	cefadroxil 500 mg	04/07/01	20
893929	Zithromax 250 mg	05/02/02	6
894128	Zithromax 250 mg	05/06/02	6
895975	Zithromax 250 mg	06/22/02	6
903607	Penlac	01/02/03	7
903936	Flonase 0.05% Nasal Spray	01/10/03	16
905096	erythromycin 2% Solution	02/09/03	60
905128	Zithromax 250 mg	02/10/03	2
879621	Claritin 10 mg	04/07/03	5

<u>Rx #</u>	<u>Drug</u>	<u>Date Filled</u>	<u>Qty</u>
903937	erythromycin/sulfisox SUSP	01/10/03	200
904877	erythromycin/sulfisox SUSP	02/03/03	200
904975	prednisone 20 mg	02/05/03	16

Such conduct is in violation of Section 2925.23(B) of the Ohio Revised Code.

(3)

Sam J. Postolski neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated September 10, 2003 and the Addendum Notice Dated December 1, 2003; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Sam J. Postolski knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Sam J. Postolski's license to practice pharmacy will be placed on probation for a period of eighteen months with the following terms:
- (1) Sam J. Postolski's pharmacist identification card will not be in good standing, thereby denying him the privilege of being a preceptor and training pharmacy interns, pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
 - (2) Sam J. Postolski may not serve as a responsible pharmacist.
 - (3) Sam J. Postolski may not destroy, assist in, or witness the destruction of controlled substances.
 - (4) Sam J. Postolski must not violate the drug laws of Ohio, any other state, or the federal government.
 - (5) Sam J. Postolski must abide by the rules of the State Board of Pharmacy.
- (B) Sam J. Postolski agrees to the imposition of a monetary penalty of two thousand five hundred dollars (\$2,500.00) due and owing within thirty days from the effective date of this Agreement. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0320.

If, in the judgment of the Board, Sam J. Postolski appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Sam J. Postolski acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Sam J. Postolski waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Sam J. Postolski waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

In the event the Board, in its discretion, does not adopt this Agreement as its Adjudication, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. Sam J. Postolski agrees that should the Board reject this Agreement and if this case proceeds to hearing, he will assert no claim that the Board was prejudiced by its review and discussion of this Agreement or of any information relating thereto.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

SIGNED AND EFFECTIVE JANUARY 5, 2004