

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

IN THE MATTER OF:)	
)	
JOEL M. WILNER, DPM)	CASE NO. P-11-02-01
LICENSE NO. 178)	
)	
Respondent.)	

SETTLEMENT AGREEMENT

WHEREAS, the New Mexico Board of Podiatry (“Board”) issued a Notice of Contemplated Action in this matter to Respondent, Joel M. Wilner (“Respondent”);

WHEREAS, the parties wish to resolve this matter in an amicable fashion without the need for a formal hearing before the Commission;

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

IT IS STIPULATED AND AGREED AS FOLLOWS:

1. **Jurisdiction.** Respondent at all times material to the allegations set forth in the complaints filed with the Board was licensed under the New Mexico Podiatry Act, NMSA 1978, § 61-8-1 through § 61-8-17 (2009) and is presently licensed and is therefore subject to the jurisdiction of the Board. The Board has jurisdiction over the Respondent and the subject matter.

2. **Violations.** Respondent acknowledges that allegations were made that he engaged in dishonest and unprofessional conduct when he obtained Vetprofen, a prescription drug, from Heartland Veterinary Supply in violation of NMSA 1978, § 61-8-11 (H) (1998), Regulation 16.21.11.10 (B)(1)(2) and (3) NMAC. By entering into this Agreement, Respondent

does not admit allegations or guilt and Respondent is entering into this Agreement to avoid further expense and to resolve the matter.

3. **Discipline.** This Agreement constitutes disciplinary action by the Board against the Respondent. The complaint and this Agreement shall be reported to the National Practitioners Data Bank as discipline action against licensee.

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

A. Respondent shall pay One Thousand Dollar (\$1,000.00) as a fine to be paid within thirty (30) days of Respondent's receipt of the Order signed by the Board Chairperson, evidencing Board approval of this Agreement.

B. Respondent shall successfully complete and actively participate in ten (10) hours of counseling with Dr. Don Fineberg, M.D., commencing June 2013 for a one (1) hour per week session. The counseling, absent an emergency on the part of Dr. Fineberg, shall be concluded by no later than August 31, 2013 which hours shall be served in satisfaction of Board Cases Nos. **P-12-07-04 and P-12-07-05** as well.

Should there be a need by Dr. Fineberg to cancel any counseling sessions written notice shall be provided the Board as to the reasoning for such cancellation and notification of dates and times of all subsequent counseling sessions. Dr. Fineberg shall provide the Board written verification of Respondent's active participation and completion of counseling within ten (10) days of the conclusion of the counseling sessions. Respondent acknowledges and agrees that Dr. Fineberg is not a party to this agreement. However, Respondent

assumes the responsibility to ensure that all written notices are timely submitted to the Board. Respondent will be responsible for all costs associated with the counseling.

5. **Waivers.** Respondent acknowledges, agrees and stipulates that by signing this Agreement he is waiving the following rights as they pertain to the misconduct described herein:

- A. Respondent enters into this Agreement voluntarily and waives his right to have these matters heard in the manner described in the ULA, NMSA 1978, §61-1-1 through §61-1-33 (2003), including the right to a full evidentiary hearing on the charges made in the complaint against him, the right to confront and cross-examine witnesses, and the right to appeal any decision of the Board following such a hearing.
- B. 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 by the ULA, in order for the Board to consider this Agreement.
- C. Respondent waives his right to assert a claim of bias or move to excuse any Board member based upon the Board member's consideration of this Agreement.
- D. Respondent's waiver of these rights contained herein is made knowingly, intentionally, and voluntarily.

6. Upon execution of this Agreement, Respondent releases the Board from any and all claims arising out of the Board's decision to investigate the complaint, file Notices of Contemplated Actions, 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 with the NCA as to both complaints. 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 these complaints.

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 Chairperson.

9. Upon the Board Chairperson affixing his signature to the Order indicating the Board's approval of this Agreement, copies of the documents shall be mailed to Respondent's counsel, Dan Cron, by Certified Mail. Mailing shall fulfill the Board's obligation to notify Respondent of the Board's acceptance of the 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 the Respondent of this Agreement and the signed Order.

10. Upon fulfillment of the above requirements, the Board will 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. 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 Board Case No. P-11-02-01 and only for the specific allegations contained therein. The Board reserves the right to initiate proceedings for any other violations of the New Mexico Podiatry Act and/or the Rules and Regulations adopted by the Board pursuant to the act. Respondent understands and acknowledges that his action in entering this Agreement is a final act and not subject to reconsideration, judicial review or appeal.

12. The complaint and this Agreement are public records within the meaning of the Inspection of Public Records Act, NMSA 1978, § 14-2-6(E) (1993 as amended through 2011). Other data, communications, and information acquired by the Board relating to this matter shall be public as provided by the New Mexico Podiatry Act.

13. Respondent understands, acknowledges and stipulates that any violation(s) of this Agreement and/or failure to comply with the terms and conditions of this Agreement shall be a separate and independent ground for disciplinary action by the Board against Respondent and at the discretion of the Board shall constitute a violation of the New Mexico Podiatry Act. Such action will immediately result in the filing of an Order to Show Cause 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 a license, restrictions on scope of practice, imposition of fees, penalties and costs and/or taken any other disciplinary action authorized pursuant to the New Mexico Podiatry Act and/or the Uniform Licensing Act.

14. Respondent has the right to be represented by an attorney. Respondent is represented by Mr. Dan Cron and Mr. Kurt A. Sommers, Attorneys, and acknowledges that he has had the opportunity to fully discuss with counsel his decision to enter into this Agreement.

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



Joel Wilner D.P.M.
Respondent
665 Harkel Rd.
Santa Fe, New Mexico 87505
(505) 983-7393

05/03/2013
Date

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

IN THE MATTER OF:

Joel Wilner
License number: 178

Respondent.

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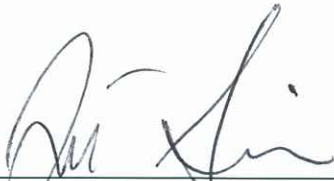
Case Nos. P-12-07-04 and
P-12-07-05 - P11-02-01

ORDER

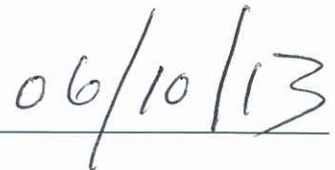
This matter having come before the New Mexico Podiatry Board on June 10, 2013
and with a quorum being present and a majority voting for the action designated below, this
Stipulated Agreement is:

Accepted

Rejected



Dr. Janet Simon, Chairperson
New Mexico Podiatry Board
P.O. Box 25101
Santa Fe, New Mexico 87504
(505) 476-4667



Date