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PETER C. HARVEY
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th Floor
124 Halsey Street
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By: Marianne W. Greenwald
Deputy Attorney General
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FILED
JUL 27 PAID
BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF **DANIEL SHACK, R.P.** License No. 28RI01681500 TO PRACTICE PHARMACY IN THE STATE OF NEW JERSEY	Administrative Action **PROVISIONAL ORDER OF DISCIPLINE**

This matter was opened to the New Jersey State Board of Pharmacy upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Respondent is a pharmacist in the State of New Jersey and has been a licensee at all times relevant hereto.

2. On May 19, 2005 respondent entered a guilty plea to a one count Information which charged Conspiracy to Defraud the United States, to unlawfully buy and sell prescription drug

samples, and to misbrand prescription drugs in violation of 18 U.S.C. § 371, in the United States District Court, District of New Jersey. Specifically, respondent, from July 2000 through June 2003, purchased prescription drug samples from a co-conspirator for $100 to $500 for drug samples that would then be sold to the general public. (See Plea Agreement in a Criminal Case attached hereto as Exhibit A.)

CONCLUSIONS OF LAW

1. The above-described conduct provides grounds for the suspension or revocation of respondent's license to practice pharmacy in New Jersey pursuant to N.J.S.A. 45:1-21(f) in that the crime of which respondent was convicted is one of moral turpitude and/or relates adversely to the practice of pharmacy.

IT IS THEREFORE on this 27th day of July, 2005, ORDERED that:

1. Respondent's license to practice pharmacy and his right to be a permit holder in the State of New Jersey be and hereby are provisionally revoked.

2. The within Order shall be subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry hereof unless respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

a. Submitting a written request for modification or dismissal to Joanne Boyer, Executive Director, State Board of Pharmacy, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

b. Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.

c. Submitting any and all documents or other written evidence supporting respondent's request for consideration, and reasons therefor.

3. Any submissions will be reviewed by the Board, and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through the submission by respondent during the thirty-day period, or if the Board is not persuaded that the submitted materials merit further consideration or mitigation of the penalties set forth herein a Final Order of Discipline will be entered.

4. In the event that respondent's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing, respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegation in such proceeding. However, the Board shall not be limited to the sanctions herein and may seek to recoup costs to the State.

NEW JERSEY STATE BOARD OF PHARMACY

By: Pamela Allen, RPh

Pamela Allen, R.P.
Board President

U.S. Department of Justice

United States Attorney
District of New Jersey

970 Broad Street, Suite 700
Newark NJ 07102

973/645-2700

JMM/PL AGR
2003R00091

March 3, 2005

Shalom D. Stone, Esq.
WALDER, HAYDEN & BROGAN, P.A.
5 Becker Farm Road
P.O. Box 901
Roseland, NJ 07068

5-396 (GEB)

Re: Plea Agreement with Daniel Shack

Dear Mr. Stone:

This letter sets forth the plea agreement between your client, Daniel Shack, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Daniel Shack to a one-count Information which charges him with conspiracy to: (i) defraud the United States and its agency, the Food and Drug Administration, and (ii) purchase and sell prescription drug samples contrary to Title 21, United States Code, Sections 333(b)(1)(B) and 353 (c)(1), in violation of 18 U.S.C. § 371. If Daniel Shack enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Daniel Shack for purchasing and selling drug samples from in or about July 2000 through in or about June 2003. However, in the event that the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Daniel Shack may be commenced against him, notwithstanding the expiration of the limitations period after Daniel Shack signs the agreement. Daniel Shack agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Daniel Shack signs the agreement.

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Sentencing

The violation of 18 U.S.C. § 371 to which Daniel Shack agrees to plead guilty carries a statutory maximum prison sentence of five (5) years, and a statutory maximum fine equal to the greatest of: (1) $250,000 (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Daniel Shack is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Daniel Shack ultimately will receive.

Further, in addition to imposing any other penalty on Daniel Shack, the sentencing judge: (1) will order Daniel Shack to pay an assessment of $100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Daniel Shack to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Daniel Shack, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) may order Daniel Shack to pay the costs of prosecution; and (5) pursuant to 18 U.S.C. § 3583, may require Daniel Shack to serve a term of supervised release of at least two (2) years and up to three (3) years, which will begin at the expiration of any term of imprisonment imposed. Should Daniel Shack be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Daniel Shack may be sentenced to not more than two (2) years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Daniel Shack by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Daniel Shack's activities and relevant conduct with respect to this case.

Stipulations

This Office and Daniel Shack agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Daniel Shack from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Daniel Shack waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Daniel Shack. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against Daniel Shack.

No Other Promises

This agreement constitutes the plea agreement between Daniel Shack and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney

Joyce M. Malliet
By: Joyce M. Malliet
Assistant U.S. Attorney

APPROVED:

Robert M. Hanna
Acting Unit Chief, Criminal Division

I have received this letter from my attorney, Shalom Stone, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:

Daniel Shack

Date: 4/21/2005

Shalom D. Stone, Esq.

Date: 4/22/2005

Plea Agreement With Daniel Shack

Schedule A

1. This Office and Daniel Shack recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Daniel Shack nevertheless agree to the stipulations set forth herein, and agree that the Court should sentence Daniel Shack within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and Daniel Shack further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2. The version of the United States Sentencing Guidelines effective November 1, 2004 applies in this case. This offense involved conspiracy to purchase prescription drug samples. The applicable guideline to this offense is U.S.S.G. § 2N2.1(a). Because the offense involved fraud, the applicable guideline is U S.S.G. § 2B1.1. See U.S.S.G. § 2N2.1(b)(1). This guideline carries a Base Offense Level of 6. See U.S.S.G. § 2B1.1 (a)(2).

3 The parties do not agree as to the applicability of U.S.S.G. § 3B1.3, and both sides reserve the right to argue their respective positions at sentencing. The government's position is that Daniel Shack abused a position of trust in a manner that significantly facilitated the commission of the relevant criminal activity, which would result in a 2-level enhancement pursuant to U.S.S.G. § 3B1.3. The position of Daniel Shack is that he did not abuse a position of trust in a manner that significantly facilitated the commission of the relevant criminal activity, and that therefore, no enhancement should apply pursuant to U.S.S.G. § 3B1.3.

4. As of the date of this letter, Daniel Shack has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Daniel Shack's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

5. In accordance with the above, the parties agree that (a) if the Court finds that Daniel Shack did not abuse a position of trust in a manner that significantly facilitated the commission of the relevant criminal activity, the total Guidelines offense level applicable to Daniel Shack will be 4, and that (b) if the Court finds that Daniel Shack did abuse a

position of trust in a manner that significantly facilitated the commission of the relevant criminal activity, the total Guidelines offense level applicable to Daniel Shack will be 6 (collectively, "the agreed total Guidelines offense level").

6. Daniel Shack reserves the right to move for a downward departure on the grounds that he is involved in the caretaking of his infirm mother. The government reserves the right to oppose such a motion. The parties agree not to seek or argue for any upward or downward departure or any upward or downward adjustment not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

7. Daniel Shack knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 4. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 6. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

8. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK
By _____
Deputy Clerk