

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

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COMMONWEALTH OF MASSACHUSETTS,)
)
	Plaintiff,)
v.)
)
INJURED WORKERS PHARMACY, LLC)
)
	Defendant.)
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CONSENT JUDGMENT

WHEREAS, Plaintiff, the Commonwealth of Massachusetts (“Commonwealth”), acting by and through the Attorney General, alleges that Defendant Injured Workers Pharmacy (“IWP”) violated the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2 by, *inter alia*: (a) failing to implement adequate policies and procedures to safeguard against improper and unlawful dispensing of controlled substances; (b) filling controlled substance prescriptions without sufficient regard for whether they were issued for a legitimate medical purpose; and (c) engaging in unfair sales tactics, including paying certain third parties to refer patients to IWP;

WHEREAS, the Commonwealth and IWP (collectively, the “Parties”) have agreed to resolve the claims alleged in the Complaint by entering into this Consent Judgment (hereinafter, the “Judgment”); and

WHEREAS, for the reasons set forth in the contemporaneously filed Joint Motion for Entry of Judgment by Consent and for the purpose of avoiding prolonged and costly

litigation, and in furtherance of the public interest, the Parties consent to the entry of this Judgment;

NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED:

I. JURISDICTION AND VENUE

1. Defendant consents to this Court's continuing subject matter and personal jurisdiction solely for the purposes of entry, enforcement, and modification of this Judgment or granting such further relief as the Court deems just and proper.

2. Defendant consents to venue in this Court for the purposes of entry, enforcement, and modification of this Judgment.

3. Defendant hereby accepts and expressly waives any defect in connection with service of process in this action and further consents to service of all process in this action in the manner set forth in Section V herein.

II. EFFECT OF JUDGMENT

4. This Judgment fully and finally resolves and disposes of the claims alleged in the Complaint in this matter.

5. The Judgment will, upon its Effective Date, constitute a fully binding and enforceable agreement between the Parties, and the Parties consent to its entry as a final judgment by the Court.

III. MONETARY RELIEF

6. Judgment shall enter against IWP in the amount of \$11,000,000 ("the Judgment Amount") to be paid as follows: \$6,000,000 within ten business days of the Effective Date; \$3,000,000 within one year of the Effective Date; and \$2,000,000 upon the earlier of: (a) a transaction resulting in (i) a change of control with respect to the ownership of IWP; (ii) transfer of all or substantially all of the assets of IWP; or (iii) a recapitalization or other transaction in

which the owners of IWP immediately prior to such transaction do not own a majority of the equity interests of the surviving entity after the closing of such transaction; or (b) five years of the Effective Date. IWP covenants and agrees that it shall not make any distributions to any of the owners of IWP or any related entities or affiliates until such time as the Judgment Amount has been paid in full and satisfied. The Judgment Amount shall be allocated as follows: (a) \$9,000,000 as civil penalties pursuant to G.L. c. 93A, § 4; (b) \$1,500,000 to be deposited to an account or accounts held by the Office of the Attorney General (“AGO”) for the purpose of assisting the AGO to discharge its duties, in accordance with G.L. c. 12 § 4A, and to be used in the sole discretion of the AGO to: (i) promote initiatives designed to improve care and treatment related to prescription medications or otherwise assist Massachusetts health care consumers, or (ii) support efforts to enforce compliance with state and federal laws and regulations that protect such individuals, including, but not limited to, through grants or other distributions to one or more political subdivisions of the Commonwealth, non-profit organizations, or to the Local Consumer Aid Fund, as established by G.L. c 12, § 11G; and (c) \$500,000 for the reasonable attorney’s fees and expenses incurred in investigating and resolving this matter.

7. If IWP fails to pay the Judgment Amount in accordance with this Judgment, it shall be in default of this Judgment. Upon receipt of written notice of the default from the AGO, IWP shall have the opportunity to cure such default within 5 business days from the date of receipt of the notice. If IWP fails to cure such default within 5 business days of receiving the notice of default, the remaining unpaid balance of the Judgment Amount and any interest then accrued shall become accelerated and immediately due and payable, and interest shall accrue at a simple rate of 12 percent per annum from the date of default until the date of payment.

8. The Effective Date of this Judgment shall be deemed the date that this Judgment

is entered on the Court docket (“Effective Date”).

9. If within 91 days of the Effective Date of this Judgment or of any payment made under this Judgment, IWP or a third party commences any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking an order for relief of IWP’s debts, or seeking to adjudicate IWP as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for IWP or for all or any substantial part of IWP’s assets, IWP shall not argue or otherwise take the position, directly or indirectly, that: (a) its obligations under this Judgment may be avoided under 11 U.S.C. § 547; (b) it was insolvent at the time this Judgment was entered into, or became insolvent as a result of a payment made pursuant to the Judgment; or (c) the mutual promises, covenants, and obligations set forth in this Judgment do not constitute a contemporaneous exchange for new value given to IWP.

10. If IWP’s obligations under this Judgment are avoided for any reason, including, but not limited to, through the exercise of a trustee’s avoidance powers under the Bankruptcy Code, the Commonwealth, at its option, may rescind the releases in this Judgment and bring any claim, action, or proceeding against IWP for the claims that would otherwise be covered by the release provided herein. IWP shall not argue or otherwise take the position that the Commonwealth’s claims are subject to stay, including pursuant to 11 U.S.C. §§ 105 or 362(a), or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, except to the extent such defenses were available on the date this Judgment entered.

IV. PERMANENT INJUNCTIVE RELIEF

The following injunctive relief shall apply to IWP and those otherwise bound pursuant Mass. R. Civ. P. 65(d):

A. DEFINITIONS

11. “At-Risk Patient” means any patient in one or more of the following categories:
 - a. A patient with one or more opioid prescriptions that, in aggregate, total 100 MME/day or more;
 - b. A patient with one or more opioid prescriptions who has also been prescribed a benzodiazepine, either simultaneously or within an overlapping duration; or
 - c. A patient who has been prescribed opioids for use every day for at least 90 consecutive days.
12. “Audit Report” refers to the report, together with any attachments thereto, prepared by the Independent Auditor, pursuant to Section IV.H herein.
13. “Independent Auditor” refers to the person hired to audit and report on IWP’s compliance with this Judgment, consistent with the terms described in Section IV.H herein.
14. “Audit Period” refers to the one-year period from the Effective Date.
15. “Corresponding Responsibility” shall be interpreted as it is used in state and federal law governing the practice of pharmacy. *See* G.L. c. 94C, § 19(a); 21 CFR § 1306.04(a).
16. “Dispensing Pharmacist” refers to the IWP pharmacist responsible for authorizing the dispensing of a particular prescription, including fulfilling Corresponding Responsibility obligations.

17. “Initial High-Risk Prescription” means any prescription for a Schedule II opioid that includes at least one of the following, as confirmed via IWP fill history and a patient’s PDMP profile:

- a. An initial prescription for an opioid that exceeds a 7-day supply for an opioid-naïve patient;
- b. An initial prescription for an extended-release or long-acting opioid for an opioid-naïve patient;
- c. An initial prescription for an opioid that exceeds 50 MME/day for an opioid-naïve patient; or
- d. A set of prescriptions that together initiate a patient on a combination of a benzodiazepine and an opioid.

18. “MME” means morphine milligram equivalents, as used by the U.S. Centers for Disease Control and Prevention. *See* Guideline for Prescribing Opioids for Chronic Pain, U.S. CDC, available at <https://www.cdc.gov/drugoverdose/prescribing/guideline.html>.

19. “MME/day” means the total MME of all prescribed doses of opioid medications that a patient may take in a single day, when taking medications as directed.

20. “Opioid-Naïve” means a patient who has not been prescribed and/or dispensed opioids for use on more than seven consecutive days during the previous thirty days.

21. “Referral Source” refers to any person or entity that refers or may refer patients to IWP, including prescribers and lawyers.

B. GENERAL TERMS

22. IWP shall not engage in unfair or deceptive acts or practices.

23. IWP shall implement adequate policies and procedures to safeguard against improper and unlawful dispensing.

24. IWP shall not fill any controlled substance prescription that IWP knows was not issued for a legitimate medical purpose, or that, with reasonable best efforts consistent with the provisions of this agreement, IWP should have identified was not issued for a legitimate medical purpose.

25. IWP shall not fill any controlled substance prescription without verifying it, as required by, *inter alia*, G.L. c. 94C, § 18.

26. IWP shall not fill any new prescription without conducting a Drug Utilization Review pursuant to 247 CMR 9.07.

27. IWP shall not fill any prescription without verifying the patient's address.

28. IWP shall not offer or pay any remuneration, including any bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to induce any person to recommend a patient fill a prescription at IWP. Nothing in this paragraph shall be interpreted to prohibit IWP from compensating persons or entities under the safe harbor provision of 42 U.S.C. § 1320a-7b(b)(3).

29. The requirements of this injunction are in addition to, and not in lieu of, any other requirements of state or federal law, including requirements concerning pharmacists' Corresponding Responsibility. Nothing in this injunction shall be construed as relieving IWP of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of the provisions of this injunction be deemed as permission for IWP to engage in any acts or practices prohibited by such laws, regulations, or rules.

30. IWP shall use reasonable best efforts to meet the deadlines herein and shall report any delays to the AGO, including delays in implementation resulting from the COVID-19 pandemic.

31. IWP shall provide a copy of this Consent Judgment to its officers, directors, and supervisors in IWP's verification, enrollment and pharmacy departments promptly following the Effective Date. IWP shall provide the AGO with signed acknowledgements of receipt from all such officers, directors, and supervisors within 30 days of the Effective Date. In addition, upon hiring, IWP shall ensure that appropriate IWP personnel necessary to fulfill IWP's obligations under this Judgment are aware of the relevant provisions.

C. POLICIES AND PROCEDURES FOR DISPENSING

32. IWP shall not dispense an Initial High-Risk Prescription unless and until the Dispensing Pharmacist has:

- a. Verified that the prescription is authentic, if a written prescription is presented;
- b. Ascertained the circumstances necessitating the Initial High-Risk Prescription; and
- c. Ascertained whether a less-risky alternative treatment plan was considered.
- d. Documented each of (a)-(c) in writing in the patient's records.

33. Except as otherwise permitted herein, IWP shall not dispense an Initial High-Risk Prescription unless and until the Dispensing Pharmacist contacts the patient (and documents the contact) to attempt to:

- a. Advise the patient of the risks associated with the Initial High-Risk Prescription, including risks of addiction, overdose and death;
 - b. Counsel the patients on safe consumption and storage practices; and
 - c. Offer to dispense to the patient a naloxone rescue kit pursuant to Board of Registration in Pharmacy Policy No. 2018-04: Naloxone Dispensing via Standing Order, at no cost to the patient, consistent with IWP billing practices for the underlying Initial High-Risk Prescription.
34. IWP may dispense an Initial High-Risk Prescription after making an unsuccessful attempt using reasonable best efforts to contact and verbally counsel the patient in accordance with Paragraph 33, provided that IWP makes such counseling available upon patient request and effectively communicates to the patient that such counseling is available.
35. IWP shall continue to provide written counseling to every patient who receives any prescription for a Schedule II or III drug (whether an Initial High-Risk Prescription or not), by providing an Opioid Prescription Drug Fact Sheet with each prescription delivery, as mandated by Massachusetts law, as well as a written offer to dispense to the patient a Naloxone Rescue Kit pursuant to Board of Registration in Pharmacy Policy No. 2018-04: Naloxone Dispensing via Standing Order, at no cost to the patient, consistent with IWP billing practices for the underlying prescription.
36. Nothing in this Judgment precludes IWP from: (a) seeking reimbursement from insurers for Naloxone Rescue Kits it dispenses to patients; or (b) seeking to amend this Judgment to allow it to charge patients the cost of the Naloxone Rescue Kits it dispenses pursuant to the Standing Order, if a change in reimbursement practices results in widespread denial of coverage for such Naloxone Rescue Kits.

37. IWP shall not dispense a controlled substance prescription unless and until the Dispensing Pharmacist, either manually or through an automated system, verifies the DEA number and the state license(s) for the prescriber immediately prior to dispensing the drugs.

38. IWP shall not dispense a controlled substance prescription unless and until the Dispensing Pharmacist consults the applicable state's Prescription Drug Monitoring Program (except as permitted by 105 CMR 700.012(H) or similar state regulations), where the applicable state allows pharmacists to do so.

39. IWP shall not dispense a Schedule II narcotic prescription written by a physician, nurse practitioner, or physician assistant from any Massachusetts pharmacy location unless the prescriber is licensed to practice medicine and registered in the same state or a contiguous state to where the prescription is to be delivered, in accordance with G.L. c. 94C, § 18(d^{1/2})(2).

40. IWP shall enable all pharmacy staff to access a provider's entire IWP dispensing history without the need to request a special report from other departments.

41. IWP shall make any necessary changes to its pharmacy software to comply with the obligations in this Judgment within a reasonable time, including changes that block pharmacists from dispensing opioid prescriptions in violation of these sections.

D. MAINTENANCE OF RECORDS

42. IWP shall maintain records reflecting its compliance with the injunctive relief in this Judgment, including any and all information and documentation received from prescribers and patients, for every controlled substance prescription for at least ten years, in a manner that is accessible to IWP staff and consistent with applicable privacy laws. This provision shall not apply to the maintenance of telephone call recordings pursuant to paragraph 44 herein.

43. IWP shall request and record in its pharmacy software ICD-10 codes and physician specialty information for all patients filling Initial High-Risk Prescriptions. Provided however, that IWP may dispense a Schedule II prescription other than an Initial High-Risk Prescription in the absence of receipt of an ICD-10 Code if in the professional judgment of the Dispensing Pharmacist, the ICD-10 code is not required to fulfill his or her Corresponding Responsibility with respect to that prescription.

44. IWP shall record all phone calls between pharmacists and prescribers and all phone calls between pharmacists and patients. IWP shall advise prescribers and patients at the beginning of each phone call that the phone calls are being recorded. The audio recordings of all phone calls shall be maintained for at least two years in a manner that is accessible to IWP staff and consistent with applicable privacy laws.

45. IWP shall ensure that the primary pharmacist who was charged with exercising professional judgment as to the propriety and appropriateness of filling a prescription is recorded in its pharmacy software as a Dispensing Pharmacist.

46. IWP shall make any necessary changes to ensure it uses pharmacy software that implements the record keeping obligations in this Judgment.

E. CHANGES TO STAFFING

47. Within 90 days of the Effective Date, IWP shall hire a sufficient number of full-time Pain Management Specialty Pharmacists and supporting data analytics resources to accurately and reasonably identify and counsel At-Risk Patients. The Pain Management Specialty Pharmacist(s) shall report to the Pharmacist Manager of Record as defined by IWP's Massachusetts pharmacy license, but shall have specific and independent direct access to the Chief Compliance Officer and shall have full independent access to IWP's pharmacy software, as

well as the ability to sort the data by characteristics such as dosage, patient state, prescriber state, and payer.

48. The Pain Management Specialty Pharmacist(s) shall work with supporting data analytics resources to:

- a. Review dispensing data at least monthly, as necessary to timely identify At-Risk Patients;
- b. Review dispensing data at least monthly, as necessary to timely identify prescribers exhibiting suspicious or dangerous prescribing patterns and behaviors and notify the Chief Compliance Officer, the Dispensing Pharmacist(s) and the Pharmacist in Charge, in writing, of any findings; and
- c. Prepare and issue monthly reports to the Chief Compliance Officer and all pharmacy staff concerning Initial High-Risk Prescriptions, At-Risk Patients, and suspected suspicious prescriber behavior, including failure or refusal by prescribers to meaningfully engage with the Pain Management Specialty Pharmacist(s). IWP may also use these reports to assist with training efforts as appropriate.

49. The Pain Management Specialty Pharmacist(s) shall use reasonable best efforts to promptly speak with and counsel each At-Risk Patient and his or her prescriber(s) no later than 30 days after dispensing the prescription at issue, except as permitted in paragraph 50, to discuss: the risks of addiction, overdose and death associated with their existing prescriptions; a treatment plan to, where appropriate, safely lower the patient's opioid dosage over time, safely remove dangerous drug combinations, and/or taper the patient off opioids completely, consistent with evidence-based guidelines and in consultation with relevant specialists; and the advisability of co-

prescribing/co-dispensing Naloxone Rescue Kits. The Pain Management Specialty Pharmacist(s) shall document these efforts. To the extent At-Risk Patients are also patients receiving Initial High-Risk Prescriptions, paragraphs 32 and 33 shall also apply.

50. With respect to preexisting At-Risk Patients (i.e., At-Risk Patients as of the time of the Effective Date) and their prescribers, the obligations in paragraph 49 shall be satisfied if the Pain Management Specialty Pharmacist(s) makes the required contact attempts, by the following deadlines, provided that IWP agrees to use reasonable best efforts to make these contacts as set forth below:

- a. By 180 days after the Effective Date, the Pain Management Specialty Pharmacist(s) shall have satisfied the requirements of paragraph 49 for all At-Risk Patients who satisfy all three definitional criteria in Paragraph 11.
- b. Within 270 days of the Effective Date, in addition to those At-Risk Patients who satisfy all three criteria of the definition in Paragraph 11, the Pain Management Specialty Pharmacist(s) shall also have satisfied the requirements of paragraph 49 with respect to all other At-Risk Patients who satisfy Paragraph 11(c).
- c. Within one year of the Effective Date, the Pain Management Specialty Pharmacist(s) shall have satisfied the requirements of paragraph 49 with respect to all preexisting At-Risk Patients.

51. For avoidance of doubt, nothing in this Judgment relieves IWP or its Dispensing Pharmacists from exercising Corresponding Responsibility when dispensing an Initial High-Risk Prescription or a prescription to an At-Risk Patient.

52. Reports prepared by the Pain Management Specialty Pharmacist shall be available to the AGO upon request and shall be treated as confidential consistent with paragraph 73, below.

53. IWP shall hire a full-time Chief Compliance Officer who reports directly to IWP's Board to oversee and direct IWP's compliance with the law and with this injunction, together with adequate staff, in training and in number. The Chief Compliance Officer shall also have a dotted-line reporting relationship with the Chief Executive Officer. The Chief Compliance Officer, or those working under her supervision, shall:

- a. Track all relevant laws, rules, and regulations for each state into which IWP dispenses controlled substances, making changes to IWP's policies, procedures, and software to ensure compliance with such laws, and keep IWP's policies and procedures up to date with changes in such laws;
- b. Design and administer training programs for IWP staff on compliance-related topics; and
- c. Receive, investigate and document reports of suspicious prescriber behavior, help assess whether IWP should cease filling prescriptions for such suspicious prescribers, and, where appropriate, report such prescribers to an appropriate law enforcement agency.

54. IWP shall train all new employees – including pharmacy staff, sales representatives, enrollment specialists, and collection workers – on Corresponding Responsibility and identifying suspicious prescriber behavior, including but not limited to “red flags” identified by the Drug Enforcement Administration and the National Association of Boards of Pharmacy. Examples of such “red flags” include: (a) “pattern” prescribing – repeated

prescriptions from the same doctor to multiple patients for the same drugs and the same quantities, often for the same diagnosis; (b) prescribing certain dangerous combinations of controlled substances; (c) geographic anomalies such as unexplained distances between the patient, doctor, and pharmacy and shared addresses among multiple patients; (d) disproportionate prescribing of controlled substances relative to other drugs; (e) quantity and strength of the prescription; (f) customers paying cash; and (g) prescriptions written by doctors for diagnoses inconsistent with their specialty.

55. All pharmacy, enrollment, sales, and collections employees shall receive quarterly training on problematic prescribing trends identified by the Pain Management Specialty Pharmacist and other employees.

56. IWP shall require all employees who become aware of suspicious or dangerous prescriber behavior or patterns to report it to the Chief Compliance Officer.

F. BAN ON PAYMENTS TO REFERRAL SOURCES

57. IWP shall comply with all applicable federal and state laws governing compensation for referrals.

58. IWP shall implement a written reporting system for its relationships with Referral Sources, which will require IWP employees interacting with a Referral Source to report the following information:

- a. Descriptions of any meetings or communications with a Referral Source;
- b. Descriptions of any items of value given to a Referral Source; and
- c. Any patients referred by the Referral Source to IWP.

59. The Chief Compliance Officer shall be responsible for maintaining the reporting system in Paragraph 58.

G. OTHER POLICIES AND PROCEDURES

60. IWP shall not implement any incentive or bonus compensation plans that reward IWP employees and staff based on volume of Schedule II and III controlled substance prescriptions referred to or filled by IWP.

61. IWP shall not make any decision relating to a pharmacist's performance review, compensation, promotion, work hours, hiring, or termination that relies in whole or in part on dispensing rates, whether measured individually or in aggregate. This restriction shall not be interpreted to limit IWP's ability to reassign pharmacists to different responsibilities based on operational considerations, or to prohibit employment decisions based upon non-performance (e.g., absenteeism, failure to complete essential job responsibilities) or significant underperformance, as compared to peers and taking into account best dispensing practices.

62. IWP shall post notices advising employees of their rights and obligations. These notices shall include federal and state law establishing the pharmacist's Corresponding Responsibility, contact information for the Drug Enforcement Administration to report suspicious or dangerous prescriber behavior or patterns, contact information for the Attorney General's Health Care Division and the Board of Registration in Pharmacy to report violations of laws governing pharmacies, and specific examples of management practices that would inhibit pharmacists' ability to full their responsibility, including:

- a. pressure to increase dispensing rates through threats, intimidation, or the withholding of compensation or promotions;
- b. malfunctioning software, or software that does not comply with the other requirements of this injunction; and

- c. inadequate training for pharmacy or non-pharmacy staff in identifying red flags.

63. The above notice shall comply with the formatting and placement requirements of 29 CFR § 1903.2(a), which governs notices advising employees of their rights under the Occupational Safety and Health Act. These requirements include a minimum poster size of 8.5 inches by 14 inches, minimum heading caption font size of 36 points, minimum font size for all other text of 10 points, and placement of the poster in a “conspicuous place or places where notices to employees are customarily posted.” The phone number for the Drug Enforcement Administration, the Attorney General’s Health Care Division, and the Board of Registration in Pharmacy shall be printed in 36-point font or larger.

H. INDEPENDENT COMPLIANCE AUDIT

64. IWP shall engage, at its sole expense, an Independent Auditor to audit and report on IWP’s compliance with the Judgment during the Audit Period. The Independent Auditor shall deliver a final Audit Report to the AGO and IWP no later than sixty days after the Independent Auditor is engaged unless otherwise agreed to by IWP and the AGO.

65. By the one-year anniversary of the Effective Date of this Judgment, IWP shall propose to the AGO an Independent Auditor with: (a) experience related to the practice of pharmacy and knowledge of compliance programs addressing policies, procedures, and practices for dispensing controlled substances and (b) sufficient independence from IWP to ensure effective and impartial performance of the Independent Auditor’s duties. IWP shall provide the AGO with the proposed Independent Auditor’s name, resume or curriculum vitae, and contact information, and shall obtain information in response to inquiries from the AGO concerning the proposed Independent Auditor’s qualifications. If the AGO determines, in good faith, that the

proposed Independent Auditor is not qualified, or is otherwise not satisfied with IWP's proposed candidate, IWP shall propose alternate candidates until an Independent Auditor acceptable to both IWP and the AGO is chosen, provided that IWP and the AGO shall use best efforts to complete the selection process within thirty (30) days after the one-year anniversary of the Effective Date. The AGO shall not unreasonably withhold approval of IWP's proposed candidate.

66. Upon approval by the AGO, IWP shall engage the Independent Auditor to perform the duties set forth in this Judgment and on terms consistent with this Judgment. The terms of the engagement shall be subject to AGO approval. IWP shall designate the AGO a third-party beneficiary to its engagement agreement with the Independent Auditor.

67. The Independent Auditor shall audit and report on IWP's compliance with the terms contained in this Judgment. The Independent Auditor shall review IWP's actual ongoing operations, inside and outside the pharmacy. The Independent Auditor shall prepare a work plan for its audit and report, which shall be approved by the AGO and IWP. The Independent Auditor's review shall not be limited to reviewing IWP's stated policies and practices. IWP shall provide the Independent Auditor appropriate access to all data, documents and information necessary to complete the Audit Report, including, without limitation, reports by the Pain Management Specialty Pharmacist(s) and reports by licensing and law enforcement authorities.

68. IWP shall make available for meetings and/or interviews current employees, executives, and officers necessary for the completion of the Audit Report. Upon the Independent Auditor's request, IWP will use its reasonable best efforts to arrange meetings or interviews with former IWP employees, executives and officers and use its reasonable best efforts to provide the

Independent Auditor with access to IWP's third-party vendors, agents and consultants, if necessary, to complete the Audit.

69. IWP shall be under no obligation to provide or disclose to the Independent Auditor any documents, materials, or information subject to the Attorney Client Privilege or the Attorney Work Product Doctrine. IWP waives any confidentiality obligations owed to it on the part of any third party who may have records of IWP or other information that may be relevant to the Independent Auditor's work pursuant to this Judgment, except to the extent that such information is subject to the Attorney Client Privilege or the Attorney Work Product Doctrine.

70. The Audit Report shall, without limitation:

- a. describe in detail the work undertaken to produce the Audit Report, in accordance with the approved work plan described in paragraph 67;
- b. identify, for the Audit Period, the number of Initial High-Risk Prescriptions dispensed, the number of At-Risk Patients and related prescribers counseled, an accounting of all Naloxone kits requested and dispensed, and all prescribers IWP deactivated in its system;
- c. describe in detail the nature of any instance in which the Independent Auditor believes that IWP was or is not in compliance with the terms of this Judgment, and a detailed explanation as to why the Independent Auditor has formulated this conclusion; and
- d. describe in detail the nature of and basis for any concerns the Independent Auditor has regarding IWP's compliance or non-compliance with federal or state law, based on observations during the course of its Audit.

71. The Audit Report shall not contain Protected Health Information, as defined in 45 CFR § 160.103, unless such Protected Health Information is reasonably necessary to illustrate IWP's compliance or noncompliance with the terms of this Judgment.

72. The AGO may request from the Independent Auditor, and the Independent Auditor shall share, any documents or information related to the Independent Auditor's work, including confidential information obtained from IWP. The AGO agrees that it will provide confidential treatment for any IWP confidential information disclosed to it by the Independent Auditor, consistent with Paragraph 73. The AGO will notify IWP of any such contact with the Independent Auditor within five (5) days of any such contact.

73. Any report by the Independent Auditor provided pursuant to this paragraph and all information contained therein shall be treated by the AGO as confidential and exempt from public disclosure to the extent legally permissible or required under the relevant laws of the Commonwealth and the United States, provided, however, that nothing herein precludes the AGO from sharing the Audit Report with relevant state and federal licensing and law enforcement authorities or from using the Audit Report in an action to enforce this Judgment.

74. In the event that the AGO receives any public records request for the report from the Independent Auditor or other documents produced to the AGO under this Judgment and believes that such information is subject to disclosure under the relevant public records laws, the AGO agrees to provide IWP with at least ten (10) days' advance notice (consistent with Section V herein) before producing any information so that IWP may take appropriate action to defend against the disclosure of such information. Nothing contained in this subparagraph shall alter or limit the obligations of the AGO that may be imposed by the relevant public records laws of the Commonwealth, or by order of any court, regarding the maintenance or disclosure of documents

and information supplied to the AGO except with respect to the obligation to notify IWP of any potential disclosure.

75. The AGO's receipt of the report from the Independent Auditor, whether or not it represents that IWP is in compliance with laws relating to controlled substances and with the terms of this Judgment, shall not be construed as a ratification of IWP's policies or practices by the AGO, and shall not relieve IWP of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall a lack of immediate enforcement action by the AGO be deemed as permission for IWP to engage in any acts or practices prohibited by this injunction or by such laws, regulations, or rules.

V. REPORTING AND NOTICES

76. IWP shall promptly respond to the AGO's reasonable inquiries about relief set forth herein and shall provide the AGO with contact information for purposes of such inquiries.

77. Any notices required to be sent to the AGO or IWP under this Judgment may be sent by e-mail to the addresses provided below. The notices or documents shall be sent to the following addresses:

For the Commonwealth:

Gillian Feiner
Office of the Massachusetts Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Gillian.Feiner@mass.gov

For IWP:

Jayne Kresac
General Counsel
Injured Workers Pharmacy, LLC
300 Federal Street
Andover, MA 01810

With email copies to:

Brian Benjet (Brian.Benjet@dlapiper.com)
Eric Christofferson (Eric.Christofferson@dlapiper.com)
Frank Libby (falibby@libbyhoopes.com)

VI. RELEASES

78. Except as otherwise provided in paragraph 79, following full payment of the Judgment Amount, the Commonwealth shall release and discharge IWP and its current and former directors, officers, employees, affiliates, successors, and assigns from any and all claims which were or could have been brought under G.L. c. 93A or for common law claims concerning unfair, deceptive, or fraudulent trade practices resulting from the activities described in the Complaint, including but not limited to claims, actions or proceedings seeking restitution, injunctive relief, fines, penalties, multiple damages, attorney's fees, or costs.

79. The Judgment is without prejudice to and the Commonwealth expressly reserves:

- a. any administrative or licensing claims;
- b. any claims arising under Massachusetts tax laws;
- c. any claims for the violation of securities laws;
- d. any claims for the violation of antitrust laws;
- e. any claims for the violation of G.L. c. 12 § 5B, G.L. c. 118E §§ 39-41;
- f. any criminal liability; and
- g. any action to enforce this Judgment and subsequent, related orders or judgments.

80. IWP fully and finally releases the Commonwealth, its agencies, officers, agents, employees, and servants from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the Commonwealth, its agencies, officers, agents, employees, and servants related

to the AGO's investigation of the conduct alleged in the contemporaneously filed Complaint or this Judgment.

VII. NO ADMISSION OF LIABILITY

81. IWP's consent to entry of this Judgment is not an admission of liability or of any facts alleged in the Judgment or in the Complaint. IWP is consenting to entry of this Judgment solely for the purpose of settlement, and nothing contained herein may be taken or construed to be an admission, concession, disciplinary action, finding, or conclusion of any violation of law, rule, or regulation, or of any other matter of fact or law, or any adverse final action or other final action, or of any liability or wrongdoing, all of which IWP expressly denies.

VIII. MISCELLANEOUS

82. This Judgment shall be construed in accordance with the laws of the Commonwealth.

83. Nothing in this Judgment releases any private rights of action asserted by entities or persons not releasing claims under this Judgment.

84. This Judgment shall be enforceable by the Commonwealth.

85. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment.

86. This Judgment, which constitutes a continuing obligation, is binding upon the Commonwealth and IWP, and any of IWP's respective successors, assigns, or other entities or persons otherwise bound by law.

87. Aside from any action stemming from compliance with this Judgment, the Parties waive all rights of appeal or to re-argue or re-hear any judicial proceedings upon this Judgment,

any right they may possess to a jury trial, and any and all challenges in law or equity to the entry of this Judgment.

88. The terms of this Judgment may be modified only by a subsequent written agreement signed by the Parties and approved by the Court.

89. Consent to this Judgment does not constitute an approval by the Commonwealth of IWP's business acts and practices, and IWP shall not represent this Judgment as such an approval.

90. IWP shall not take any action or make any statement denying, directly or indirectly, the propriety of this Judgment, including by expressing the view that the Judgment or its substance is without factual basis.

91. Nothing in this Judgment shall preclude any party from commencing an action to pursue any remedy or sanction that may be available to that party upon its determination that another party has failed to comply with any of the requirements of this Judgment.

92. Nothing in this Judgment shall create or give rise to a private right of action of any kind or create any right in a non-party to enforce any aspect of this Judgment or claim any legal or equitable injury for a violation of this Judgment. The exclusive right to enforce any violation or breach of this Judgment shall be with the Parties to this Judgment and the Court.

93. Nothing in this Judgment shall relieve IWP of its obligation to comply with all federal, state or local law and regulations.

94. If any portion of this Judgment is held invalid by operation of law, the remaining terms of this Judgment shall not be affected and shall remain in full force and effect.

95. This Judgment supersedes all prior communications, discussions or understandings, if any, of the Parties, whether oral or in writing.

96. If the AGO reasonably believes that IWP has failed to comply with any of Paragraphs 6 to 75 of this Judgment, and if in the AGO's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Commonwealth and/or does not create an emergency requiring immediate action, the AGO shall provide notice to IWP of such alleged failure to comply and IWP shall have at least ten (10) days from receipt of such notice to provide a good faith written response, including either a statement that IWP believes it is in full compliance with the relevant provision or a statement explaining how the violation occurred, how it has been addressed or when it will be addressed, and what IWP will do to make sure the violation does not occur again. The AGO may agree to provide IWP with more than ten (10) days to respond. The AGO shall receive and consider the response from IWP prior to initiating a proceeding for any alleged failure to comply with this Judgment.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the foregoing.

By the Court:

JUSTICE, SUPERIOR COURT

Dated: _____