

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement"), dated April 20, 2012, is by and among the National Association of Boards of Pharmacy ("NABP"); the University of Georgia (including its College of Pharmacy), the Board of Regents of the University System of Georgia, and members of the Board of Regents of the University System of Georgia acting in their official capacities as board members (collectively, "University"); and Flynn Warren, Jr. in his individual capacity ("Warren"). The parties are sometimes referred to collectively as the "Parties."

WHEREAS, NABP develops and administers for its member Boards national pharmacy licensing examinations including the North American Pharmacist Licensure Examination ("NAPLEX") and the Multistate Pharmacy Jurisprudence Examination ("MPJE");

WHEREAS, NABP's copyrighted examinations are an important component of the pharmacist licensure process in Georgia and throughout the United States;

WHEREAS, for many years, through the Office of Continuing Education and Outreach of the College of Pharmacy, the University offered a pharmacy board review course to review with pharmacy school graduates their course work to prepare graduates to take these licensure exams;

WHEREAS, in 1995, NABP alleged that content from its examinations was obtained and distributed to University board review course participants by Warren and to resolve the matter, the Board of Regents of the University System of Georgia, Warren, and NABP entered a settlement agreement ("1995 Settlement Agreement");

WHEREAS, in 2007, NABP became aware of facts suggesting that Warren obtained and distributed actual or closely paraphrased questions from the NAPLEX and MPJE ("Questions"), which NABP contends infringed on its copyright and ownership rights in the examinations, and that such Questions were included with other course materials distributed through the University of Georgia College of Pharmacy Office of Continuing Education and Outreach to registrants of the pharmacy board review course taught by Warren at the University of Georgia and that such Questions were included in course materials distributed by other colleges of pharmacy where Warren taught a board review course;

WHEREAS, upon learning of these contentions, the College of Pharmacy immediately discontinued use of the disputed materials and took numerous specific precautions to ensure that such materials would not be used in future pharmacy board review courses;

WHEREAS, NABP has pursued relief in two separate legal actions, *National Association of Boards of Pharmacy v. Board of Regents of the University System of Georgia, et al.*, Case No. 3:07-CV-84 (Middle District of Georgia), and *National Association of Boards of Pharmacy v. Board of Regents of the University System of Georgia and Flynn Warren, Jr.*, Case No. 2008 CV 150371 (Superior Court of Fulton County, Georgia) (collectively, the "Lawsuits");

WHEREAS, prior to execution of this Agreement, the NABP has agreed to voluntarily dismiss with prejudice Henry Cobb ("Cobb") as a defendant in the action in the Middle District

of Georgia, conditioned on the execution of this Agreement, within one business day of the execution of this Agreement, by filing a motion to drop Cobb as a party, which will be joined in by all Parties;

WHEREAS, the Parties wish to avoid the expense and the uncertain outcome associated with any further litigation over this matter, including in the two actions named above;

NOW, THEREFORE, in consideration of the foregoing recitals, the acknowledgements set forth below, and the mutual promises contained in this Agreement, the Parties agree to the following terms and conditions.

1. Public Statement.

The Parties agree to issue the Joint Public Statement attached to this Agreement as Exhibit 1 within two weeks after the execution of this Agreement by the Parties as set forth in Paragraph 12 and the dismissal with prejudice of the legal actions identified above.

2. Representations

a. The University and Warren agree to respect and not knowingly infringe upon the copyright interests of NABP in the NAPLEX, MPJE, its future examinations, or in any other NABP copyrighted materials.

b. The University attests that none of the Questions or NABP-related materials from the pharmacy board review courses previously taught by Warren are being or will be disclosed or used in any course offered by or through any university, college, department, office, or entity of the University or for any other purpose.

c. Warren attests that to his knowledge none of the Questions or NABP-related materials from the pharmacy board review courses he taught at the University or any other university, college, or other entity are being used, and further attests that no such Questions or materials will be disclosed or used by him in any course or presentation or for any other purpose.

d. The University and Warren agree not to knowingly transcribe, copy or disseminate any NAPLEX or MPJE questions or any other NABP copyrighted materials, without the prior express written approval of the NABP Executive Director or his designee, and not to elicit NAPLEX, MPJE, or other NABP examination questions, answers, or content from students or others who have had access to such NABP copyrighted materials. Such prohibition shall not prevent any of these Parties from fulfilling educational responsibilities associated with any courses or teaching positions, if any, nor inhibit discussions related to preparing students for careers in pharmacy related professions, nor prohibit the University from utilizing NABP sponsored materials, such as curriculum assessment tools, with the prior express written approval of the NABP Executive Director or his designee. This prohibition is designed to protect NABP copyrighted materials, maintain the integrity of the NAPLEX, MPJE, and any similar NABP exams, and also instill ethics in pharmacy education and in the profession.

e. The Parties represent that the representatives signing on behalf of each organization have all requisite authority to enter this Agreement and bind their respective organizations to its

terms. The Parties further represent that the terms of this Agreement comply with applicable local, state, and federal laws and rules.

f. The Parties understand and agree that by entering into this Agreement neither the Board of Regents of the University System of Georgia nor any of the Members of the Board or the University of Georgia intend to waive their sovereign immunity, including immunity from suit in Federal Court under the Eleventh Amendment to the United States Constitution, or intend to consent to be sued in Federal Court on any claim arising from or related to this Agreement, and that by entering into this Agreement the Board of Regents of the University System of Georgia, the Members of the Board of Regents and the University of Georgia have not waived their sovereign immunity, including immunity from suit in Federal Court under the Eleventh Amendment to the United States Constitution, and have not consented to be sued in Federal Court.

3. Policies and Procedures

a. The University will require that all pharmacy board review courses offered by or through any university, college, department, office, or entity of the University include specific warnings at the outset of the course about the confidentiality of the NAPLEX and MPJE, NABP examinations, the prohibitions on use and disclosure of materials from these exams (even if requested by faculty, university staff, or students), and the consequences of violating this confidentiality obligation.

b. The University does and will continue to require its students and faculty to report all activities that infringe upon NABP's copyrighted examinations or interests and/or threaten the integrity of the licensure examination process, whether such activities are conducted by students, faculty, or university staff.

c. The University agrees to maintain policies and procedures to ensure compliance with this Agreement, protection of NABP's copyright interests, and retention of documents reasonably necessary to facilitate and confirm such compliance and protection.

d. The University agrees to maintain policies and procedures to ensure appropriate communication within the College of Pharmacy and between the College and the University Administration as well as to assure effective transfer of key information, including this Agreement, to relevant officials when changes in leadership take place.

e. The University agrees to ensure that an attorney in the Office of Legal Affairs will be assigned to monitor compliance with this Agreement and to maintain this Agreement on file.

f. The University agrees that when a new person assumes the position of Provost, the Director of the Office of Legal Affairs will brief the new Provost on key legal issues relating to this Agreement.

4. Monetary Compensation

The University and Warren jointly agree to pay NABP Three Hundred Thousand Dollars (\$300,000.00), in a singular payment, other than cash, within ten (10) days of the Effective Date of this Agreement.

5. Compliance with Protective Orders

Warren and the University agree to return or destroy, and certify the return or destruction of, all of the documents produced to them by NABP during discovery in either the Fulton County Superior Court action or the action pending in the U.S. District Court for the Middle District of Georgia in accordance with the terms of the Protective Orders entered in each action. The Parties further agree to observe and comply with the protective order entered in the Fulton County Superior Court case on July 20, 2009 as to the confidentiality of information, and to observe and comply with the restrictions in the order entered in the U.S. District Court for the Middle District of Georgia case on August 27, 2007 [Docket No. 52] including the restriction on the use or dissemination of any material or information obtained in the seizure of documents from the University and Warren in August 2007 pursuant to the TRO and Seizure order entered by the District Court on August 3, 2007, and the University, and its employees and staff, and Warren shall maintain the confidentiality of confidential information produced to them by the NABP, subject to the University's duties and obligations under Georgia's Open Records Act, OCGA 50-18-70 et seq. and the aforementioned orders.

6. Dismissal of Lawsuits and Releases by Each Party

a. The Parties will file for dismissal with prejudice of both Lawsuits.

b. Upon completion of the Parties' obligation to issue the joint public statement attached hereto as Exhibit 1 and payment of the monetary compensation due to NABP under Paragraph 4 of this Agreement, the following releases shall take effect:

i. Releases by NABP. It is understood and agreed that by executing and entering into this Agreement, NABP, on behalf of itself, its partners, any entity that it owns or controls, and its predecessors, successors, subsidiaries, heirs, executors and assigns, and also on behalf of each of its present or former officers, directors, employees, agents, and representatives, hereby releases and forever discharges and covenants not to sue Warren, Cobb, or the University or any of their predecessors, successors, affiliates, parents, subsidiaries, heirs, executors and assigns, or any of the University's present or former officers, directors, managers, shareholders, members, employees, attorneys, accountants, insurers, agents, and representatives, and releases them from any and all claims, liabilities, demands, causes of action, lawsuits, sanctions, judgments, obligations, damages, costs, fees, and expenses of any kind or character, and debts, whether legal, equitable, statutory, or of any other type or form, whether individual, derivative, class, representative or in any other capacity, whether known or unknown, asserted or unasserted, accrued or unaccrued, foreseen or unforeseen, contingent, actual, liquidated, or unliquidated, based in any way on or arising from any acts, omissions, or occurrences up to and including the Effective Date of this Agreement, including but in no wise limited to all claims of any nature or kind which were asserted, or could have been asserted in the Lawsuits. This release does not apply to any claim for infringement of NABP copyrighted materials that may accrue subsequent

to the Effective Date of this Agreement, nor does it apply to any claim by any party for a breach of this Agreement.

ii. Releases by Warren and the University. It is understood and agreed that by executing and entering into this Agreement, Warren and the University on behalf of itself, any entity that it owns or controls, and its predecessors, successors, subsidiaries, heirs, executors, and assigns, and also on behalf of each of its present or former officers, directors, employees, agents, and representatives, hereby release and forever discharge and covenant not to sue NABP or any of its predecessors, successors, affiliates, parents, subsidiaries, heirs, executors and assigns, or any of its present or former officers, directors, managers, shareholders, members, partners, employees, accountants, attorneys, agents, insurers, and representatives, and release them from any and all claims, liabilities, demands, causes of action, lawsuits, sanctions, judgments, obligations, damages, costs, fees, and expenses of any kind or character, and debts, whether legal, equitable, statutory, or of any other type or form, whether individual, derivative, class, representative or in any other capacity, whether known or unknown, asserted or unasserted, accrued or unaccrued, foreseen or unforeseen, contingent, actual, liquidated, or unliquidated, based in any way on or arising from any acts, omissions, or occurrences up to and including the Effective Date of this Agreement, including but in no wise limited to all claims of any nature or kind which were asserted, or could have been asserted, in the Lawsuits. This release does not apply to any claim by any party for a breach of this Agreement.

7. Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Georgia. Venue for any action hereunder shall be in the Superior Court of Fulton County, Georgia. Nothing in the Agreement shall be construed as a waiver of the University's Eleventh Amendment immunity, including the sovereign immunity enjoyed by the University of Georgia (including its College of Pharmacy), the Board of Regents of the University System of Georgia, and members of the Board of Regents of the University System of Georgia.

8. Attorneys' Fees and Costs

The Parties agree to bear all of their own attorneys' fees and costs incurred in connection with their disputes resulting in this Agreement, including the negotiation and preparation of this Agreement.

9. Confidentiality

a. The Parties agree to mutual non-disparagement and to make no public statement concerning the claims in the Lawsuits or the terms of the settlement of the Lawsuits other than the Joint Public Statement referenced above; that the Lawsuits were filed, settled through compromise and dismissed with prejudice; or, in response to inquiries about the Lawsuits or the subject matter of the Lawsuits, referral to the applicable law or courts for publicly available information. The Parties also agree they will not issue separate press releases with language different than that stated in the Joint Public Statement. NABP acknowledges that this settlement and the Lawsuits in general are subject to Georgia's Open Records Act, O.C.G.A. §50-18-70 et

seq. and there is no intent by the University to agree to any terms that would be unenforceable thereunder. University and Warren acknowledge that documents and information concerning the Lawsuits may be publicly available via the applicable court, court record system, or the Open Records Act. NABP and the University agree to instruct their managing committees and/or Boards of their obligations and responsibilities under this Confidentiality provision.

b. The agreement of Warren and NABP to observe and comply with the confidentiality provisions of Paragraph 9(a) are material inducements to Warren and NABP to enter into this Agreement and to pay and accept the monetary compensation payable to NABP under Paragraph 4 of this Agreement. Warren and NABP agree that the damages sustained by the non-breaching party upon a breach of the obligations and agreements contained in Paragraph 9(a) would be substantial, but difficult to calculate, and that the non-breaching party shall be entitled to liquidated damages from the breaching party for each breach thereof as follows:

i. Fifty Thousand Dollars, (\$50,000.00) to the extent that the breach involves a disclosure in violation of the requirements of Paragraph 9(a) to any media, publisher, reporter or persons supplying information, directly or indirectly, to any such media, publisher or reporter; or

ii. Twenty-Five Thousand Dollars (\$25,000.00) in all other circumstances.

10. Cooperation

Each of the Parties hereto agrees to reasonably cooperate in effectuating this Agreement, including taking all steps, signing all documents, and otherwise acting as reasonably necessary to accomplish the transactions contemplated hereunder.

11. Responsibility for Drafting; Headings

This Agreement and all prior drafts hereto have been reviewed by the respective attorneys for the Parties hereto, and this Agreement shall be deemed to be the joint product of all such Parties. No one party, through its attorneys or otherwise, has drafted this Agreement, and in construing this Agreement, none of the Parties hereto shall be treated as the drafter of this Agreement. Bolded paragraph headings in this Agreement are provided only for convenience of reference, and are not intended to be a part of or affect the meaning or interpretation of this Agreement.

12. Effective Date and Execution of Agreement

The "Effective Date" of this Agreement shall be the date upon which the final party hereto executes the Agreement and delivers a copy thereof to counsel for the opposing party. Delivery by NABP shall be made to Alan E. Lubel, Law Office of Alan E. Lubel, P.C., 3423 Piedmont Road, NE, Suite 200, Atlanta, Georgia 30305, fax number (404) 233-1943. Delivery by the University and Warren shall be made to Thomas Gallo, Barnes & Thornburg, LLP, Prominence in Buckhead, Suite 1700, 3475 Piedmont Road, N.E., Atlanta, Georgia 30305-2954, fax number (404) 264-4033. Delivery of an executed copy by facsimile constitutes acceptable delivery for purposes of this Agreement, provided, however, that additional delivery of a signed original is made within two (2) business days thereafter. This Agreement may be executed in

one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement and shall become binding on the Effective Date of this Agreement.

13. Severability

If any part or any provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this Agreement.

14. Sole Agreement

This Agreement is the sole and entire agreement of the Parties on the subject matter of this Agreement and supersedes any prior agreements or understandings, including the 1995 Settlement Agreement and Release. Any changes or modifications to this Agreement must be in writing signed by all Parties.

15. No Admission.

Nothing herein shall be deemed to be evidence of an admission or concession on the part of any of the Parties hereto of any liability or wrongdoing whatsoever.

IN WITNESS WHEREOF, the Parties hereto have caused multiple originals of this Agreement to be executed the day and year first above written.

Dated: 23 April 12

**THE NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY**

By:  _____

Dated: _____

**THE BOARD OF REGENTS OF THE
UNIVERSITY SYSTEM OF GEORGIA**

By: _____

Dated: _____

Flynn Warren, Jr.

EXHIBIT 1

Today the National Association of Boards of Pharmacy (“NABP”) and the Board of Regents of the University System of Georgia entered into a settlement agreement that resolves a four-year dispute.

The NABP develops and administers for its member Boards national pharmacy licensing examinations including the North American Pharmacist Licensure Examination (“NAPLEX”) and the Multistate Pharmacy Jurisprudence Examination (“MPJE”). The NABP copyrighted examinations are an important component of the pharmacist licensure process in Georgia and throughout the United States.

For many years, as part of the University of Georgia College of Pharmacy’s Office of Continuing Education and Outreach, a professor employed by the University offered a pharmacy board review course to review with pharmacy school graduates their course work to prepare graduates to take these licensure exams. In 1995, NABP alleged that content from its examinations was obtained and distributed by this professor to University board review course participants; and to resolve the matter, the Board of Regents of the University System of Georgia, the University faculty member, and NABP entered a settlement agreement.

In 2007, NABP became aware of facts suggesting that the now former University faculty member obtained and distributed, at the University and at other colleges of pharmacy where he taught a board review course, actual or closely paraphrased questions from the NAPLEX and MPJE which allegedly infringed on the NABP ownership rights in the examinations. Upon learning of this, the College of Pharmacy immediately discontinued use of the disputed materials and took numerous specific precautions to ensure that such materials would not be used in future pharmacy board review courses at the University of Georgia. In the settlement, the University has affirmed its commitment to work with the NABP to ensure respect for the NABP’s rights and for the confidentiality of the NABP examinations among pharmacy school faculty and students.