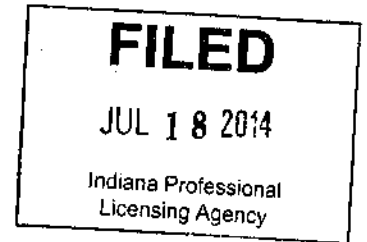


**BEFORE THE INDIANA  
BOARD OF PHARMACY  
2014 IBP 0012**

**IN THE MATTER OF THE LICENSE OF:**

**STEPHEN P. DAY, R.PH.  
LICENSE NO. 26013076A**

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**FINAL ORDER ACCEPTING  
PROPOSED SETTLEMENT AGREEMENT**

The State of Indiana ("State"), by the Office of the Attorney General, by Maritza K. Webb, Deputy Attorney General, and Stephen P. Day, R. Ph. ("Respondent") signed and filed before the Indiana Board of Pharmacy ("Board") a proposed Settlement Agreement ("Agreement") which purports to resolve all issues surrounding a Complaint filed on March 21, 2014 regarding the Respondent's license and has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the July 14, 2014 meeting held in the Auditorium of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204, now finds it has been entered into fairly and without fraud, duress, or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement, which is attached hereto and incorporated herein as Exhibit A, and approves and adopts in full the Agreement as a final resolution of this matter. The Board approved this Agreement by a vote of 6 to 0. Incorporated into the Agreement was the consensus of both parties to Findings of Fact, Conclusions of Law, and Order.

**WHEREFORE**, the Board hereby accepts and approves the Agreement, settling all matters in this case consistent with the terms of the Agreement between the parties, and Respondent is hereby **ORDERED** to abide by all the terms of the Agreement.

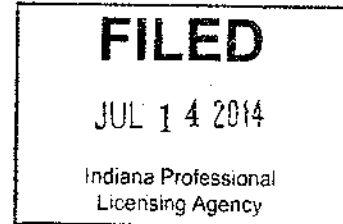
**SO ORDERED**, this 18<sup>th</sup> day of July, 2014

INDIANA BOARD OF PHARMACY

By: Maureen Bennett  
for Nicholas W. Rhoad  
Executive Director  
Indiana Professional Licensing Agency

**BEFORE THE INDIANA  
BOARD OF PHARMACY  
2014 IBP 0012**

**IN THE MATTER OF THE LICENSE OF )  
STEPHEN P. DAY, R.PH. )  
LICENSE NO. 26013076A (ACTIVE) )**



**PROPOSED SETTLEMENT AGREEMENT**

The State of Indiana ("Petitioner"), by Maritza K. Webb, Deputy Attorney General, and Stephen P. Day, R.Ph. ("Respondent"), hereby execute this Agreement to a disposition of the Complaint filed in this cause. This Agreement is subject to the review and approval of the Indiana Board of Pharmacy ("Board") pursuant to Ind. Code ch. 25-1-9 and the Administrative Orders and Procedures Act, Ind. Code art. 4-21.5.

**STIPULATED FACTS**

1. Respondent's address on file with the Indiana Professional Licensing Agency is P.O. Box 61, Tipton, Indiana 46072.
2. Respondent is a licensed pharmacist in the State of Indiana having been issued license number 26013076A on July 8, 1974.
3. At all times relevant herein, Respondent was the owner of The Medicine Shoppe in Tipton, Indiana and Day's Healthy Living Pharmacy in Cicero, Indiana.
4. In March 2013, Respondent signed a civil settlement with the United States government and the Indiana Medicaid Fraud Control Unit, agreeing to pay \$300,000 as a resolution to an investigation of Respondent's Indiana Medicaid billings for Activase 50 mg vials. Respondent was also placed on the Federal exclusion list for no less than five years.

5. Activase is a high-end injectable drug and anti-clotting agent used for the treatment of blood clots and improving heart functions immediately after a heart attack.

6. The settlement agreement included the following recital:

“The United States and the State of Indiana contend that they have certain civil claims against Day arising from the submission of claims for payment for the drug Activase that were never dispensed during the period from July 1, 2008, through January 31, 2011.”

7. Beginning in November 2005, Respondent dispensed Activase to Patient A, who was then nine years old. Patient A had a rare clotting disorder that caused his bronchioles to start bleeding at any given time and prevented him from expelling mucus secretions from the lungs, which resulted in hospitalizations. Patient A used Activase with a nebulizer to help liquefy bronchial-secretions.

8. Patient A received ten vials a week from Respondent. Each vial cost between \$1,100 and \$1,900.

9. Respondent only dispensed Activase to Patient A.

10. According to Respondent, there were difficulties in getting reimbursed from the Indiana Medicaid program, and in an effort to improve cash flow, Respondent billed for one month's worth of Activase vials. Respondent continued to dispense the vials on a weekly basis.

11. During the Indiana Medicaid Fraud Control Unit and the United States governments' investigation, it was discovered that Respondent billed the Indiana Medicaid program for 370 vials more than it had purchased for dispensing. Medicaid asserted that this represented a loss of \$693,444.14.

#### **STIPULATED CONCLUSIONS OF LAW**

The parties further stipulate:

1. Respondent violated Ind. Code § 25-1-9-4(a)(1)(D) in that Respondent has been assessed a civil penalty involving fraudulent billing practices, including fraud under:

- a. Medicaid (42 U.S.C. 1396 et seq.);
- b. Medicare (42 U.S.C. 1395 et seq.);
- c. The children's health insurance program under IC 12-17.6; or
- d. Insurance claims.

This is evidenced by Respondent's civil settlement with the United States government and the Indiana Medicaid Fraud Control Unit, in which Respondent agreed to pay a civil penalty of \$300,000.

2. Respondent violated Ind. Code § 25-1-9-4(a)(1)(B) in that Respondent has engaged in fraud or material deception in the course of professional services or activities, as evidenced by Respondent billing the Indiana Medicaid program for Activase that Respondent did not purchase or dispense. Medicaid asserts that it was billed for 370 vials of Activase.

#### **AGREED DISPOSITION**

It is now therefore agreed by the Respondent and Petitioner as follows:

1. The Board has jurisdiction over the Respondent and the subject matter in this disciplinary action.
2. The parties execute this Agreement voluntarily.
3. Both parties voluntarily waive their rights to a public hearing on the Complaint.
4. Petitioner agrees that the terms of this Agreement will resolve any and all pending claims or allegations relating to disciplinary action against the Respondent's Indiana pharmacist license.

5. Respondent's license shall be placed on **INDEFINITE PROBATION** with no right to petition for withdrawal or modification of probation for three (3) years.

6. After three years from the date of this order placing Respondent's license on probation, Respondent may petition the Board to conduct a hearing and decide whether to withdraw or modify the probation.

7. Respondent shall be governed by the following **TERMS** and **CONDITIONS** while he is on probation:

- a. Within six (6) months of the Board's Order, Respondent shall complete twelve (12) hours of continuing education related to ethics at Respondent's expense and shall submit verification of said hours to the Board within seven (7) days of completing the course. These continuing education units are in addition to those required for licensure renewal.
- b. Respondent shall keep the Board apprised of his current residence, mailing address, email address, and residential telephone number; and his place of employment and employment telephone number.
- c. Respondent shall appear before the board on a quarterly basis. The initial appearance will be at the meeting after this order is issued.
- d. Respondent shall keep the board of apprised of any criminal, civil, or licensing matters filed against him personally, his pharmacy, or his pharmacist license.

8. Within thirty (30) days of the date of the Board's Order, Respondent shall pay a **FINE** in the amount of **TWO THOUSAND DOLLARS (\$2,000.00)** payable to the Indiana Professional Licensing Agency.

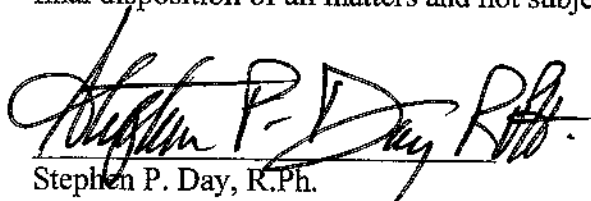
~~9. Within thirty (30) days of the date of the Board's Order, Respondent shall,~~

pursuant to Indiana Code 4-6-14-10 (b), pay a fee of Five Dollars (\$5.00) within thirty (30) days of the date of the Final Order in this matter, to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund. This fee shall be paid by check or money order made payable to the State of Indiana, and submitted to the following address:

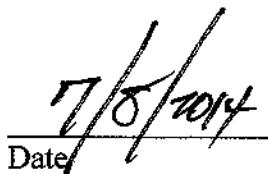
Indiana Office of the Attorney General  
Attn: Kathy Shively  
302 West Washington Street, 5<sup>th</sup> Floor  
Indianapolis, IN 46204

10. The Respondent further understands that a violation of the Final Order, any non-compliance with the statutes or regulations regarding the practice of pharmacy, or any violation of the Agreement may result in the Petition requesting an emergency suspension of the Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4, and or all of which could lead to additional sanctions, up to and including a revocation of the Respondent's license.

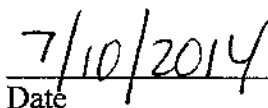
11. The Respondent has carefully read and examined this Agreement and fully understands its terms and that, subject to a final order issued by the Board, this Agreement is a final disposition of all matters and not subject to further review.



Stephen P. Day, R.Ph.  
Respondent  
License Number: 26013076A

  
Date

Sarah Steele Riordan  
Attorney for the Respondent  
Atty. No. 17517-53

  
Date

Thomas Farlow

Thomas Farlow  
Attorney for the Respondent  
Atty. No. 7908-49

7/15/14  
Date

Maritza K. Webb

Maritza K. Webb  
Deputy Attorney General  
Atty. No. 30904-49

7/14/14  
Date

**CERTIFICATE OF SERVICE**

I certify that a copy of the "Final Order Accepting Proposed Settlement Agreement" has been duly served upon:


Stephen P. Day  
P.O. Box 61  
Tipton, Indiana 46072  
**Service by US Mail.**

Sarah S. Riordan  
Frost Brown Todd LLC  
201 North Illinois Street, Suite 1900  
P.O. Box 44961  
Indianapolis, IN 46244-0961  
**Service by US Mail.**

Thomas Farlow  
Frost Brown Todd LLC  
201 North Illinois Street, Suite 1900  
P.O. Box 44961  
Indianapolis, IN 46244-0961  
**Service by US Mail.**

Maritza K. Webb  
Deputy Attorney General  
Office of the Attorney General  
Indiana Government Center South  
302 West Washington Street, Fifth Floor  
Indianapolis, IN 46204  
**Service by Email**

7/18/14  
Date

  
Jessi N. Rager, Litigation Specialist

Indiana Board of Pharmacy  
Indiana Government Center South  
402 West Washington St., Room W072  
Indianapolis, IN 46204  
Office: 317-234-2067  
Fax: 317-233-4236  
Email: pla4@pla.IN.gov

**Explanation of Service Methods**

**Personal Service:** by delivering a true copy of the aforesaid document(s) personally.

**Service by U.S. Mail:** by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

**Service by Email:** by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.