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ARIZONA STATE BOARD
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1 03-0008-PHR

2 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

3 In the Matter of:

4 EVAN DAVIS
5 Pharmacist License
6 Number 10537
_____)

**CONSENT AGREEMENT AND
STIPULATED ORDER
03-0008-PHR**

7 DIRECTED TO: EVAN DAVIS
8 526 W. Vernon Avenue
9 Phoenix, Arizona 85003

9 **RECITALS**

10 In the interest of a prompt and judicious settlement of this case, consistent with the public interest,
11 statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and
12 pursuant to A.R.S. §§ 32-1901 *et seq* and 41-1092.07(F)(5), EVAN DAVIS ("Respondent"), holder
13 of pharmacist license number 10537 to practice pharmacy in the State of Arizona, and the Board enter
14 into the following Recitals, Findings of Fact, Conclusions of Law and Order ("CONSENT
15 AGREEMENT") as a final disposition of this matter.

16 1. Respondent has read and understands this CONSENT AGREEMENT and has had the
17 opportunity to discuss this CONSENT AGREEMENT with an attorney, or has waived the opportunity
18 to discuss this CONSENT AGREEMENT with an attorney.

19 2. Respondent understands that he has a right to a public administrative hearing concerning each
20 and every allegation set forth in the above-captioned matter, at which hearing he could present evidence
21 and cross-examine witnesses. By entering into this CONSENT AGREEMENT, Respondent freely and
22 voluntarily relinquishes all right to such an administrative hearing, as well as rights of rehearing, review,
23 reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the
24 matters set forth herein. Respondent affirmatively agrees that this CONSENT AGREEMENT shall be
25 irrevocable.

26 3. Respondent understands that this CONSENT AGREEMENT or any part of the agreement may

1 be considered in any future disciplinary action against him.

2 4. Respondent understands that this CONSENT AGREEMENT does not constitute a dismissal
3 or resolution of any other matters currently pending before the Board, if any, and does not constitute any
4 waiver, express or implied, of the Board statutory authority or jurisdiction regarding any other pending
5 or future investigation, action or proceeding. Respondent also understands that acceptance of this
6 CONSENT AGREEMENT does not preclude any other agency, subdivision, or officer of this State from
7 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
8 CONSENT AGREEMENT.

9 5. Respondent acknowledges and agrees that upon signing this CONSENT AGREEMENT and
10 returning this document to the Board's Executive Director, Respondent may not revoke his acceptance
11 of the CONSENT AGREEMENT or make any modifications to the document regardless of whether the
12 CONSENT AGREEMENT has been signed by the Executive Director. Any modification to this original
13 document is ineffective and void unless mutually agreed by the parties in writing.

14 6. Respondent understands that the foregoing CONSENT AGREEMENT shall not become
15 effective unless and until adopted by the Board and signed by its Executive Director.

16 7. Respondent understands and agrees that if the Board does not adopt this CONSENT
17 AGREEMENT, he will not assert as a defense that the Board's consideration of this CONSENT
18 AGREEMENT constitutes bias, prejudice, prejudgement or other similar defense.

19 8. Respondent understands that this CONSENT AGREEMENT is a public record that may be
20 publicly disseminated as a formal action of the Board and may be reported as required by law to the Health
21 Care Integrity and Protection Data Bank.

22 9. Respondent understands that if he violates this Order in any way or fails to fulfill the
23 requirements of this Order, the Board, after giving him notice and the opportunity to be heard, may
24 revoke, suspend or take other disciplinary action against him. The sole issue at such hearing shall be
25 whether or not he violated this Order.

26 . . .

1 REVIEWED AND ACCEPTED BY:

2 
3 EVAN DAVIS

7-7-03
DATE



6 
Notary Public



8 FINDINGS OF FACT

9 By stipulation of the parties, this CONSENT AGREEMENT is entered into for final disposition
10 of the matters described herein. Respondent acknowledges that sufficient evidence exists for the Board
11 to make the following Findings of Fact:

12 10. Respondent is the holder of license 10537 which permits him to engage in the practice of
13 pharmacy in the State of Arizona

14 11. Respondent was employed as a pharmacy manager between the dates of June 1, 2002 and
15 February 24, 2003 at Walgreens Drug #5893, located at 705 E. McDowell Road, Phoenix, Arizona.

16 12. Between the dates of April 24, 2003 and May 20, 2003, two Compliance Officers employed
17 by the Board conducted an investigation that included a controlled substance audit and interviews of
18 medical practitioners. The results of the investigation show the following:

19 13. Between the dates of November 6, 2002 and December 24, 2002, Respondent transcribed and
20 dispensed seven (7) original prescriptions and one (1) refill prescription, listed in Appendix A, from
21 Walgreens Drug #5893, to patient T.W., subsequently listed in the Walgreen's computer system as T.M.,
22 without valid prescription orders from a medical practitioner, in violation of A.R.S. § 32-1968 (A), A.R.S.
23 §36-2525 (D) and (E), and 21 C.F.R. § 1306.21 (a) to wit:

24 **A.R.S. § 32-1968 (A)** : A prescription-only drug shall be dispensed only under one of the
25 following conditions:

26 1. By a medical practitioner in conformance with A.R.S. § 32-1921.

2. On a written prescription order.

3. On an oral prescription order which is reduced promptly to writing and filed by the pharmacist.

4. By renewing any written or oral prescription order if a renewal is authorized by the prescriber either in the original prescription order or by an oral order that is reduced promptly to writing and filed by the pharmacist.

1 **A.R.S. § 36-2525 (D)** : Except when dispensed directly by a medical practitioner to an ultimate
2 user, a controlled substance included in schedule III or IV which requires a prescription order as
3 determined under state or federal laws shall not be dispensed without a written or oral prescription
4 order of a medical practitioner. The prescription order shall not be filled or refilled more than six
5 months after the date on which such prescription order was issued. No such prescription order
6 authorized to be refilled may be refilled more than five times. Additional quantities may only be
7 authorized by the prescribing medical practitioner through issuance of a new prescription order
8 which shall be treated by the pharmacist as a new and separate prescription order.

9 **A.R.S. § 36-2525 (E)** : Except when dispensed directly by a medical practitioner to an ultimate
10 user, a controlled substance that is included in schedule V and that requires a prescription order
11 as determined under state or federal laws shall not be dispensed without a written or oral
12 prescription order of a medical practitioner. The prescription order may be refilled as authorized
13 by the prescribing medical practitioner but shall not be filled or refilled more than one year after
14 the date of issuance.

15 **21 C.F.R. § 1306.21(a)** : A pharmacist may dispense directly a controlled substance listed in
16 Schedule III, IV, or V which is a prescription drug as determined under the Federal Food, Drug,
17 and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a
18 facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent
19 to the pharmacy or pursuant to an oral prescription made by an individual practitioner and
20 promptly reduced to writing by pharmacist containing all information required in § 1306.05, except
21 for the a nature of the practitioner.

22 One (1) of the prescriptions was for temazepam 30mg, a Class IV Controlled Substance as defined in
23 A.R.S. 32-1901(12), A.R.S. § 36-2515(A)(2) and C.F.R. § 1308.14. One (1) of the prescriptions was for
24 promethazine with codeine syrup, a Class V Controlled Substance as defined in A.R.S. 32-1901(12),
25 A.R.S. § 36-2516(1)(a) and C.F.R. § 1308.15.

26 **A.R.S. 32-1901(12)** "Controlled substance" means a drug, substance or immediate precursor
identified, defined or listed in title 36, chapter 27, article 2.

Six (6) of the prescriptions were prescription-only drugs as defined in A.R.S. § 32-1901(65).

A.R.S. § 32-1901(65) "Prescription-only drug" does not include a controlled substance but does
include:

(a) Any drug which because of its toxicity or other potentiality for harmful effect, the method of
its use, or the collateral measures necessary to its use is not generally recognized among experts,
qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use
except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or §
32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate
directions for use by the consumer.

1 (d) Any drug, other than a controlled substance, required by the federal act to bear on its label the
2 legend "Rx Only".

3 Further, A.R.S. § 32-1901(66)(b) defines an oral prescription order as:

4 (b) An order transmitted to a pharmacist through word of mouth, telephone or other means of
5 communication directed by that medical practitioner. Prescription orders received by word of mouth,
6 telephone, telegraph or other means of communication shall be recorded in writing by the pharmacist and
7 the record so made by the pharmacist constitutes the original prescription order to be dispensed by the
8 pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written
9 prescription order.

10 14. On or about the first week of January 2003, Respondent, at the request of T.W. and under the pretense
11 of hiding potential evidence that could be used against T.W., changed the name on T.W.'s profile to T.M.

12 15. Between the dates of June 16, 2002 and November 6, 2002, Respondent dispensed two (2)
13 original prescriptions and four (4) refill prescriptions, listed in Appendix B, from Walgreens #5893, to
14 patient T.W. without valid prescription orders from a medical practitioner, in violation of A.R.S. § 32-1968
15 (A).

16 16. Respondent filled and billed the six (6) prescriptions listed in Appendix B under patient A.B.'s
17 prescription profile and insurance, however the prescriptions were actually dispensed or given to T.W.

18 17. On June 16, 2002, Respondent fraudulently billed to A.B.'s prescription insurance, an original
19 prescription, number 104286-5893, for Lantus U-100 insulin, quantity of 20 milliliters.

20 18 On July 12th, September 11th, October 10th, and November 6th, 2002, Respondent fraudulently
21 billed to A.B.'s prescription insurance, a refill of prescription number 104286-5893 for Lantus U-100
22 insulin, quantity of 20 milliliters.

23 19. On June 25, 2002, Respondent fraudulently billed to A.B.'s prescription insurance, an original
24 prescription, number 105456-5893, for dicyclomine 20mg tablets, quantity of sixty (60).

25 CONCLUSIONS OF LAW

26 20. The conduct and circumstances described in the factual allegations above constitutes grounds
for disciplinary action pursuant to A.R.S. §32-1927(A)(10), A.R.S. §32-1927(B)(2), and A.R.S. §32-1927
(B)(3)(d)(e) to wit:

1 A.R.S. §32-1927(A)(10) The license of any pharmacist or pharmacy intern may be revoked or suspended
2 or a pharmacist or pharmacy intern may be placed on probation by the board when:

3 The licensee is found by the board to be guilty of violating any Arizona or federal law, rule or
4 regulation relating to the manufacture and distribution of drugs, devices or the practice of pharmacy.

5 A.R.S. §32-1927(B)(2) and (3)(d)(e) The license of any pharmacist or pharmacy intern may be revoked
6 or suspended or the pharmacist or pharmacy intern may be placed on probation or censured and a civil
7 penalty of not more than five hundred dollars (\$500.00) for each offense may be imposed by the board when:

8 The licensee is found by the board, or is convicted in a federal or state court, of having
9 violated federal or state laws or administrative rules pertaining to marijuana, prescription-
only drugs, narcotics, dangerous drugs or controlled substances.

10 The licensee is found by the board to be guilty of unprofessional conduct. For the purpose
11 of this paragraph, the following acts constitute unprofessional conduct

- 12 (d) Fraudulently claiming to have performed a professional service.
- 13 (e) Fraudulently charging a fee for a professional service.

14 ORDER

15 Based on the foregoing Findings of Fact and Conclusions of Law, the Board imposes the following:

16 21. It is ordered that the Respondent's license number 10537 to practice pharmacy in the State
17 of Arizona be SUSPENDED for a period of one (1) year commencing April 18, 2003.

18 22. Respondent shall have initiated a five year contract with the Pharmacists Assisting
19 Pharmacists of Arizona (PAPA) and comply with each and every requirement of that contract.

20 23. Respondent may appear before the Board at a regularly scheduled Board meeting on or after
21 April 18, 2004, to request termination of the suspension at which time a positive recommendation for
22 termination of the suspension and a return to practice with probationary status from the PAPA Steering
Committee shall be required.

23 24. Respondent shall submit to a minimum of twenty-four (24) annual random biological fluid
24 screenings for the presence of drugs in the system as determined by PAPA for the period of suspension
25 and the first twenty-four (24) months of probation. The annual random biological fluid screenings for the
26 presence of drugs in the system shall increase to a minimum of forty-eight (48) when Respondent

1 accepts employment as a pharmacist and shall continue for the first twenty-four (24) months of
2 probation.

3 25. Respondent shall pay a civil penalty of two hundred dollars (\$200.00) to the Board for each
4 of the fourteen (14) prescription-only drugs or Controlled Substances dispensed as listed in the Findings
5 of Fact for a total of seven thousand dollars (\$2,800.00) within ninety (90) days of the date of this
6 Order.

7 26. Respondent shall pay all fees and complete all Continuing Education requirements to
8 maintain Pharmacist License number 10537 throughout the term of suspension.

9 27. Respondent shall not serve as a pharmacist in charge nor a pharmacy intern preceptor during
10 the term of the probation.

11 28. Respondent shall have performed four hundred (400) hours of Board approved community
12 service before the probation will be terminated.

13 **DATED and EFFECTIVE** this 28th day of August, 2003

14
15 **ARIZONA STATE BOARD OF PHARMACY**

16
17 

18 Hal Wand
19 Executive Director

20 **ORIGINAL** of the foregoing, fully executed,
21 filed this 28th day of August, 2003, with:

22 Arizona State Board of Pharmacy
23 4425 W. Olive Avenue, #140
24 Glendale, AZ 85302

25 Fully Executed Copy of the foregoing sent
26 via Certified US mail this 2nd day
of September 2003, to:

EVAN DAVIS
526 W. Vernon Avenue
Phoenix, Arizona 85003