BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of: Elke Kohlke Holder of License No.6663 for Pharmacy Technician In the State of Arizona, Respondent.	)))))))))	Case Number 05-0018-PHR **CONSENT AGREEMENT AND ORDER FOR LETTER OF REPRIMAND**

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901, *et. seq.* and 41-1092.07(F)(5), Elke Kohlke ("Respondent"), holder of Pharmacy Technician License Number 6663 to work as a pharmacy technician in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that she has a right to a public administrative hearing concerning the above-captioned matter, at which hearing she could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

4. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against her.

5. Respondent understands this Consent Agreement deals with Board Investigation Case No. 05-0018-PHR involving allegations of unprofessional conduct against Respondent. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

7. All admissions made by Respondent in this Consent Agreement are made solely for the final disposition of this matter, and any related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are not intended for any other use, such as in the context of another regulatory agency's proceedings, or civil or criminal proceedings, whether in the State of Arizona or in any other state or federal court.

8. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, she may not revoke her acceptance of the Consent Agreement or make any modifications to the document regardless of

whether the Consent Agreement has been signed by the Executive Director. Any modification to this original document is ineffective and void unless mutually agreed by the parties in writing.

9. Respondent understands that the Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

10. If a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

11. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, she will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgement or other similar defenses.

12. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

13. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct under A.R.S. § 32-1901, *et seq.*

REVIEWED AND ACCEPTED BY:

Elke Kohlke

Elke Kohlke

9/7/05

DATE

Whitney Layton

Notary Public

WHITNEY LAYTON
Notary Public - Arizona
Maricopa County
My Commission Expires
February 2, 2008

FINDINGS OF FACT

By stipulation of the parties, this Consent Agreement is entered into for final disposition of the matters described herein. Respondent admits to the following Findings of Fact:

14. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona.

15. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee of the Board, under A.R.S. § 32-1901, *et seq.*

16. At the August 18, 2005 Board meeting, Respondent knowingly and voluntarily appeared before the Board to discuss a pending complaint against her.

17. At the Board meeting, Respondent admitted to the Board that pharmacist Daniel Osborn filled and dispensed prescription Rx 117093 without receiving proper prescribing authorization from a healthcare practitioner. The prescription was in Respondent's name, but was intended for her dying dog, and the medication was paid for by Respondent's health insurance.

18. Respondent further admitted to the Board that having the prescription in her name, but using the prescription on her dog, and having it paid for by her health insurance was wrong. Respondent stated that she was not thinking straight at the time of the incident and accepts responsibility for her misconduct.

19. Respondent further stated to the Board that Mr. Osborn filled and dispensed another prescription Rx 118833, but this prescription was for her. Mr. Osborn, however, failed to received proper authorization from a healthcare practitioner to dispense this prescription.

20. Respondent informed the Board that Mr. Osborne avowed to her the prescriber of the two prescriptions was Michael Bradstock, M.Sc., PA-C. Respondent stated she does not know Mr. Bradstock nor has she ever sought medical treatment from him.

21. Respondent informed the Board that her employer, CVS Pharmacy #5778, has disciplined her and she will reimburse her insurance carrier for the two prescriptions.

22. Respondent freely acknowledged before the Board that she would accept a Letter of Reprimand for her unprofessional conduct.

CONCLUSIONS OF LAW

23. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona, under A.R.S. § 32-1901, *et seq.*

24. The conduct and circumstances described in the above Findings of Fact constitute violations of A.R.S. § 32-1927.01(A)(1) to wit:

> The board determines that the licensee has committed an act of unprofessional conduct.

25. The conduct and circumstances described in the above Findings of Fact constitute unprofessional conduct and are grounds for disciplinary action under A.R.S. § 32-1901.01 (C)(8) and (C)(15) to wit:

> **A.R.S. § 32-1901.01 (C)(8):** In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacy technician or pharmacy technician trainee, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:
>
> Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.
>
> **A.R.S. 32-1901.01 (C)(15):** In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacy technician or pharmacy technician trainee, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:
>
> Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

26. The conduct and circumstances described in the above Findings of Fact constitute unprofessional conduct and are grounds for disciplinary action under A.R.S. § 32-1968(A) to wit:

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

1. By a medical practitioner in conformance with section 32-1921.
2. On a written prescription order.
3. On an oral prescription order that 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.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, and under the authority granted to the Board, under A.R.S. §§ 32-1927.01, 41-1092.07 (F)(5), and A.A.C. R4-23-122(C),

IT IS HEREBY ORDERED that:

27. Technician License No.6663, which was issued to Respondent to allow her to work as a pharmacy technician in the State of Arizona, is issued a **LETTER OF REPRIMAND.**

DATED and EFFECTIVE this 18th day of August, 2005

ARIZONA STATE BOARD OF PHARMACY

Hal Wand, RPh
Executive Director
Arizona State Board of Pharmacy

ORIGINAL of the foregoing, fully executed, filed this 9th day of September, 2005, with:

Arizona State Board of Pharmacy
4425 W. Olive Avenue, #140
Glendale, Arizona 85302

Fully Executed Copy of the foregoing sent via Certified US mail Number _____ this 9th day of September, 2005 to:

Elke Kohlke
8506 N. 12th Way
Phoenix, Arizona 85014

Copy of the foregoing mailed this 9th day of September, 2005 to:

Roberto Pulver
Assistant Attorney General
1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

By:_____

#453173