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7 Attorneys for the Arizona State Board of Pharmacy

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

9
10 In the Matter of

11 **DAVID WAMBOLDT**

12 Holder of License No. S013400
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 08-0050-PHR

**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

14
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the
17 public interest, statutory requirements and the responsibilities of the Arizona State Board
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, David Wamboldt
19 ("Respondent"), holder of Pharmacist License Number S013400 in the State of Arizona,
20 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law
21 and Order ("Consent Agreement") as a final disposition of this matter.

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

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

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

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

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3534 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, he may not
25 revoke his acceptance of the Consent Agreement or make any modifications to the
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1 document regardless of whether the Consent Agreement has been signed by the
2 Executive Director. Any modification to this original document is ineffective and void
3 unless mutually agreed by the parties in writing.

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

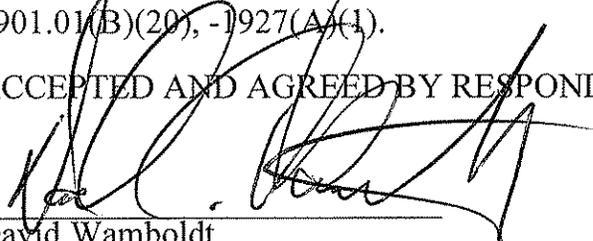
6 10. If a court of competent jurisdiction rules that any part of this Consent
7 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
8 shall remain in full force and effect.

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

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

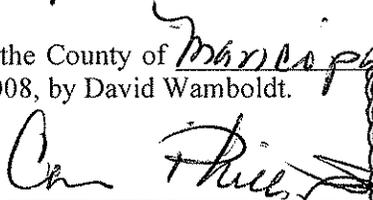
16 13. Respondent understands that any violation of this Consent Agreement
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
18 1901.01(B)(20), -1927(A)(1).

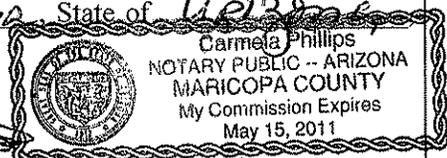
19 ACCEPTED AND AGREED BY RESPONDENT

20 
21 _____
David Wamboldt

Dated: 6/12/08

22 Subscribed and sworn to before me in the County of Maricopa State of Arizona
23 this 12 day of June, 2008, by David Wamboldt.

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25 _____
NOTARY PUBLIC



26 My Commission expires: May 15, 2011

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating the
3 practice of pharmacy in the State of Arizona.

4 2. Respondent is the holder of license number S013400 to practice as a
5 pharmacist in the State of Arizona.

6 3. During all times relevant to these Findings, Respondent worked as a
7 pharmacist at CVS Pharmacy #5950 in Tempe, Arizona (the "Pharmacy").

8 4. In February 2008, the Board received information from the Pharmacy that
9 Respondent had diverted hydrocodone APAP 10/660; hydrocodone APAP 10/325;
10 hydrocodone APAP 10/500; hydrocodone APAP 7.5/325; hydrocodone APAP 7.5/500;
11 hydrocodone pennitic 7.5/5 ml; and carisoprodol for his own personal use.

12 5. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-
13 2514(A)(5)(d).

14 6. Hydrocodone pennitic is a Schedule III controlled substance. A.R.S. § 36-
15 2514(A)(5)(d).

16 7. Carisoprodol is a Schedule IV controlled substance. A.R.S. § 36-
17 2515(A)(5)(a).

18 8. On January 18, 2008, Respondent began in-patient treatment. On February
19 21, 2008, Respondent signed an agreement with Pharmacists Assisting Pharmacists of
20 Arizona ("PAPA").

21 **CONCLUSIONS OF LAW**

22 1. The Board possesses jurisdiction over the subject matter and over
23 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

24 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist
25 who has engaged in unprofessional conduct.
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1 3. Respondent's practice and conduct, as described in the Findings of Fact,
2 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) ("Violating
3 any federal or state law, rule or regulation relating to the manufacture or distribution of
4 drugs and devices or the practice of pharmacy.").

5 4. Respondent's practice and conduct, as described in the Findings of Fact,
6 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) ("Knowingly
7 dispensing a drug without a valid prescription order as required pursuant to section 32-
8 1968, subsection A.").

9 5. Respondent's conduct as described in the Findings of Fact constitutes a
10 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only
11 under one of the following conditions: (1) By a medical practitioner in conformance with
12 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical
13 practitioner's manual signature; (3) On an electronically transmitted prescription order
14 containing the prescribing medical practitioner's electronic or digital signature that is
15 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription
16 order generated from electronic media containing the prescribing medical practitioner's
17 electronic or manual signature. A prescription order that contains only an electronic
18 signature must be applied to paper that uses security features that will ensure the
19 prescription order is not subject to any form of copying or alteration; (5) On an oral
20 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By
21 refilling any written, electronically transmitted or oral prescription order if a refill is
22 authorized by the prescriber either in the original prescription order, by an electronically
23 transmitted refill order that is documented promptly and filed by the pharmacist or by an
24 oral refill order that is documented promptly and filed by the pharmacist.")

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1 6. The conduct and circumstances described in the Findings of Fact constitute
2 a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful
3 authority, the person knowingly controls another person's property with the intent to
4 deprive that other person of such property). Theft is a crime of moral turpitude. *State v.*
5 *Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978)
6 (shoplifting involves moral turpitude and bears a close relationship to the common law
7 crime of larceny).

8 7. The conduct and circumstances described in the Findings of Fact constitute
9 a violation of A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a
10 prescription-only drug unless the person obtains the prescription-only drug pursuant to a
11 valid prescription of a licensed prescriber). Furthermore, a person may not knowingly
12 obtain or procure the administration of a prescription-only drug by fraud, deceit,
13 misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal
14 acquisition, possession or procurement of a prescription-only drug is a class 1
15 misdemeanor. A.R.S. § 13-3406(B)(1). "The sale or dispensing or prescribing of
16 narcotic drugs, except for medicinal use and under strict surveillance, [involves] moral
17 turpitude." *Du Vall v. Board of Medical Examiners of Arizona*, 49 Ariz. 329, 337, 66
18 P.2d 1026, 1030 (1939).

19 8. The conduct and circumstances described above constitutes unprofessional
20 conduct pursuant to A.R.S. § 32-1901.01(B)(8) ("Committing a felony, whether or not
21 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
22 related offense. In either case, conviction by a court of competent jurisdiction or a plea
23 of no contest is conclusive evidence of the commission.").

24 9. The conduct and circumstances described above constitute unprofessional
25 conduct pursuant to A.R.S. § 32-1901.01(B)(10) ("Violating a federal or state law or
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1 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
2 drugs, controlled substances or precursor chemicals when determined by the board or by
3 conviction in a federal or state court.”).

4 **ORDER**

5 Based upon the above Findings of Fact and Conclusions of Law,

6 IT IS HEREBY ORDERED THAT Pharmacist License No. S013400, which was
7 issued to Respondent for the practice of Pharmacy in the State of Arizona, is hereby
8 placed on **SUSPENSION** for a period of not more than six (6) months. The period of
9 suspension shall be determined by the Board after reviewing (a) information from PAPA
10 regarding Respondent’s compliance with the terms of the PAPA program/contract; (b) a
11 progress report from Respondent’s PAPA counselor, which may be submitted in writing
12 to the Board; and (c) any input from Respondent. Thereafter, Respondent’s license shall
13 be placed on **PROBATION** for a period of at least four (4) years, but not more than four
14 and one-half (4.5) years from the final date of suspension. Respondent’s disciplinary
15 period under the suspension and probation shall not exceed five (5) years, unless
16 Respondent affirmatively fails to petition the Board to terminate the probation in
17 accordance with paragraph 10 below.

18 The **SUSPENSION** and **PROBATION** are subject to the following conditions:

- 19 1. Respondent shall return his pharmacist license to the Board for the
20 period of suspension.
- 21 2. Respondent signed a PAPA contract on February 21, 2008. Failure
22 to abide by the PAPA contract’s terms is a violation of this Order.
- 23 3. Respondent shall pay all necessary fees and complete all Continuing
24 Education requirements throughout the term of his probation to maintain
25 Pharmacist License No. S013400.

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4. Respondent shall furnish all pharmacy employers with a copy of this Board Order throughout the term of his probation.

5. Respondent shall not serve as a preceptor pharmacist or pharmacist in charge throughout the term of his probation.

6. Respondent shall advise the Board immediately of any change in pharmacy employment status throughout the term of his probation.

7. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or has maintained licensure in the profession of pharmacy along with the registration numbers of said licenses.

8. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

9. If Respondent violates this order in any way or fails to fulfill the requirements of this order, the Board, after giving the respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against the Respondent's license. The issue at such a hearing will be limited solely to whether this order has been violated.

10. Respondent shall appear before the Board at a regularly scheduled Board meeting five years after the effective date of this Order to request that the probation imposed by this order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

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1 DATED this 9th day of July, 2008.

2 ARIZONA STATE BOARD OF PHARMACY

3 (Seal)

4 By: Hal Wand
5 HAL WAND, R.Ph.
6 Executive Director

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8
9 ORIGINAL OF THE FORGOING FILED
10 this 10 day of July, 2008, with:

11 Arizona State Board of Pharmacy
12 1700 West Washington, Suite 250
13 Phoenix, Arizona 85007

14 EXECUTED COPY OF THE FOREGOING MAILED
15 BY FIRST-CLASS and CERTIFIED MAIL
16 this 10 day of July, 2008, to:

17 David Wamboldt
18 15639 E. Cholla Drive
19 Fountain Hills, Arizona 85268

20 EXECUTED COPY OF THE FOREGOING MAILED
21 this 10 day of July, 2008, to:

22 Elizabeth A. Campbell
23 Assistant Attorney General
24 1275 W. Washington Street, CIV/LES
25 Phoenix, Arizona 85007

26 217329