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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 **ARLEEN KAIZER**

12 Holder of License No. S006122  
For the Practice of Pharmacy  
13 In the State of Arizona

Board Case No. 08-0051-PHR

**CONSENT AGREEMENT  
AND ORDER FOR 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.*, Arleen Kaizer ("Respondent"),  
19 holder of Pharmacist License Number S006122 in the State of Arizona, and the Board  
20 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
21 ("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.  
25  
26

1           2.     Respondent understands that she has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing she 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 her.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3535 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, she may not  
25 revoke her acceptance of the Consent Agreement or make any modifications to the  
26

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.

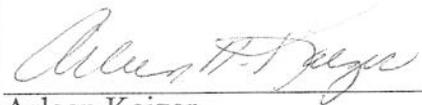
6 10. If a court of competent jurisdiction rules that any part of this Consent  
7 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
8 shall remain in full force and effect.

9 11. Respondent understands and agrees that if the Board does not adopt this  
10 Consent Agreement, she 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 disciplinary and is  
13 a public record that may be publicly disseminated as a formal action of the Board and  
14 may be reported as required by law to the National Practitioner Data Bank and the  
15 Healthcare Integrity and 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).

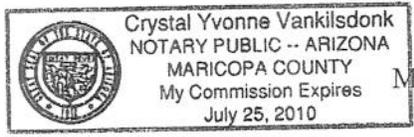
19 ACCEPTED AND AGREED BY RESPONDENT

20   
21 Arleen Kaizer

Dated: 1/23/09

22 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,  
23 this 26<sup>th</sup> day of January, 2008, by Arleen Kaizer.

24   
25 NOTARY PUBLIC



26 My Commission expires: July 25, 2010

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 S006122 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 Walmart Pharmacy 10-2113 in Phoenix Arizona, Arizona (the  
8 “Pharmacy”).

9 4. Respondent admits that on one occasion she diverted 30 10 mg Lipitor  
10 tablets and 30 Plavix tablets from the Pharmacy.

11 5. Lipitor and Plavix are both prescription-only drugs.

12 6. At the time Respondent diverted the prescription-only medication, she was  
13 suffering from a medical condition that may have impaired her cognition. That medical  
14 condition has now been resolved. According the Respondent’s treating psychologist,  
15 Respondent was also experiencing a psychological crisis.

16 CONCLUSIONS OF LAW

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

19 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist  
20 who has engaged in unprofessional conduct.

21 3. Respondent’s practice and conduct, as described in the Findings of Fact,  
22 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any  
23 federal or state law, rule or regulation relating to the manufacture or distribution of drugs  
24 and devices or the practice of pharmacy).

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

6           5.       Respondent's practice and conduct, as described in the Findings of Fact,  
7 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) (Knowingly  
8 dispensing a drug without a valid prescription order as required pursuant to section 32-  
9 1968, subsection A).

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

1 ORDER

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

3 IT IS HEREBY ORDERED THAT Pharmacist License No. S006122, which was  
4 issued to Respondent for the practice of Pharmacy in the State of Arizona, is hereby  
5 placed on **PROBATION** for a period of not less than twelve (12) months. Respondent's  
6 PROBATION is subject to the following conditions:

7 1. Respondent shall enter treatment with a Board Staff approved psychologist  
8 and shall comply with any and all treatment recommendations.<sup>1</sup> Respondent shall instruct  
9 the treating psychologist to submit quarterly written reports to Board Staff regarding  
10 diagnosis, prognosis, recommendation for continuing care and treatment, and ability to  
11 safely practice pharmacy. The reports shall be submitted on or before the 15<sup>th</sup> day of  
12 March, June, September, and December of each year, beginning March 2009.  
13 Respondent shall provide the psychologist with a copy of this Consent Agreement.  
14 Respondent shall pay the expenses of all the care and be responsible for paying for the  
15 preparation of the quarterly reports.

16 2. Respondent shall promptly comply with requests from Board staff to  
17 submit to biological fluid collection. The collection may be witnessed. For the purposes  
18 of this paragraph, in the case of an in-person request, "promptly comply" means  
19 "immediately." In the case of a telephonic request, "promptly comply" means that,  
20 except for good cause shown, Respondent shall appear and submit to specimen collection  
21 not later than four hours after telephonic notice of appear is given.<sup>2</sup> The Board in its sole  
22 discretion shall determine good cause. Respondent shall not consume any food or  
23

24 \_\_\_\_\_  
25 <sup>1</sup> Respondent's treating psychologist, Angela Bowers, Ph.D., is hereby approved to serve  
as Respondent's psychologist for purposes of this Consent Agreement.

26 <sup>2</sup> Telephonic notice is complete upon contact with Respondent or leaving a message on  
Respondent's answering device.

1 substance containing poppy seeds. Respondent shall pay the costs of biological fluid  
2 testing.

3 3. Respondent shall provide Board staff with a number where she can be  
4 reached at all times. Respondent shall immediately notify Board staff in writing of any  
5 change in this number.

6 4. Respondent shall maintain copies of the prescriptions for all prescription  
7 medications taken by or administered to Respondent. Upon the request of Board staff,  
8 Respondent shall provide the Board with a copy of the prescription for any prescription  
9 medication taken by or administered to Respondent.

10 5. At the expiration of twelve months (12) or anytime thereafter Respondent  
11 may submit a written request to the Executive Director requesting termination of  
12 Respondent's probation, including the requirement that Respondent remain in treatment  
13 with a psychologist. The decision to terminate will be based in part upon the treating  
14 psychologist's recommendation for continued care and treatment. Respondent's request  
15 for termination will be considered at the Board's next regularly scheduled Board meeting.  
16 Respondent is required to personally appear at that Board meeting. Respondent's  
17 probationary period will continue until Respondent's request for termination is received  
18 and the Board terminates the probation.

19  
20 DATED this 30<sup>th</sup> day of January, 2009.

21  
22 ARIZONA STATE BOARD OF PHARMACY

23 (Seal)

24 By: 

25 HAL WAND, R.Ph.  
26 Executive Director

1 ORIGINAL OF THE FOREGOING FILED  
this 30 day of Jan, 2009, with:

2 Arizona State Board of Pharmacy  
3 1700 West Washington, Suite 250  
Phoenix, Arizona 85007

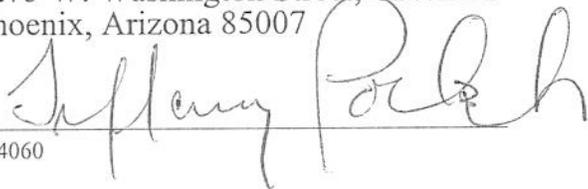
4 EXECUTED COPY OF THE FOREGOING MAILED  
5 BY FIRST-CLASS and CERTIFIED MAIL  
this ~~31~~ <sup>30</sup> day of January, 2009, to:

6 Arleen Kaizer Jan  
7 7008 E. Gold Dust Ave. #135  
Scottsdale, Arizona 85253

8 EXECUTED COPY OF THE FOREGOING MAILED  
9 this 30 day of Jan, 2009, to:

10 Kenneth R. Baker  
11 RENAUD COOK DRURY MESAROS, P.A.  
12 Phelps Dodge Tower  
13 One North Central, Suite 900  
Phoenix, Arizona 85004  
Attorney for Respondent

14 Elizabeth A. Campbell  
15 Assistant Attorney General  
16 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007

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