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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 **GLORIA MARTINEZ HOWELL,**

12 Holder of License No. 16379
As a Pharmacy Technician Trainee
13 In the State of Arizona

Board Case No. 09-0018-PHR

**CONSENT AGREEMENT
FOR REVOCATION**

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.*, Gloria Martinez Howell
19 ("Respondent"), holder of Pharmacy Technician Trainee License Number 16379 in the
20 State of Arizona, and the Board enter into the following Recitals, Findings of Fact,
21 Conclusions of Law and Order ("Consent Agreement") as a final disposition of this
22 matter.

23 1. Respondent has read and understands this Consent Agreement and has had
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
25 opportunity to discuss this Consent Agreement with an attorney.
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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. 3584 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
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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, 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 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(C)(16), -1927.01(A)(1).

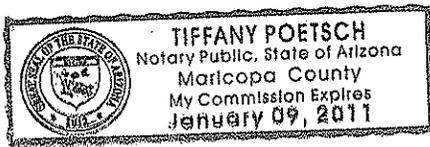
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1 ACCEPTED AND AGREED BY RESPONDENT

2 *Gloria Martinez Howell*
3 Gloria Martinez Howell

Dated: 1/14/2009

4 Subscribed and sworn to before me in the County of _____, State of _____,
5 this _____ day of _____, 2008, by Gloria Martinez Howell.



Tiffany Poetsch
NOTARY PUBLIC

My Commission expires: January 09, 2011

10 **FINDINGS OF FACT**

- 11 1. The Board is the duly constituted authority for licensing and regulating the
12 practice of pharmacy in the State of Arizona.
- 13 2. Respondent holds Arizona Pharmacy Technician Trainee License Number
14 16379.
- 15 3. During all times relevant to this Complaint, Respondent was employed as a
16 pharmacy technician trainee at CVS Pharmacy #6718 in Phoenix, Arizona and CVS
17 Pharmacy #5937 in Glendale, Arizona (the "Pharmacies").
- 18 4. In September 2008, the CVS loss prevention personnel interviewed
19 Respondent concerning a loss of controlled substances. Respondent admitted diverting
20 the following controlled substances from the Pharmacies: 4 bottles plus 35 tablets of
21 hydrocodone/APAP 10/325; 1 bottle of hydrocodone/APAP 10/500; 70 tablets of
22 hydrocodone/APAP 7.5/325; 30 tablets of hydrocodone/APAP 5/325; 23 tablets of
23 alprazolam; 10 tablets of lorazepam; 50 tablets of Valium (diazepam); 70 tablets of Soma
24 (carisoprodol) 250 mg; 50 tablets of Soma (carisoprodol) 300 mg; 15 tablets of Soma
25 (carisoprodol) 350 mg; 6 tablets of Ambien (zolpidem) 10 mg; and 3 tablets of zolpidem
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1 5 mg. Respondent admitted to taking the controlled substances for personal use and for
2 resale. Respondent was terminated from employment.

3 5. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-
4 2514(A)(5)(d).

5 6. Alprazolam is a Schedule IV controlled substance. A.R.S. § 36-
6 2515(A)(2)(a).

7 7. Lorazepam is a Schedule IV controlled substance. A.R.S. § 36-
8 2515(A)(2)(aa).

9 8. Diazepam is a Schedule IV controlled substance. A.R.S. § 36-
10 2515(A)(2)(n).

11 9. Carisoprodol is a Schedule IV controlled substance. A.R.S. § 36-
12 2515(A)(5)(a).

13 10. Zolpidem is a Schedule IV controlled substance. A.R.S. § 36-
14 2515(A)(2)(xx).

15 11. On or about September 16, 2008, the Pharmacies reported the theft of
16 controlled substance drugs to the Board.

17 12. A subsequent Board controlled substance audit documented shortages of
18 the following at CVS Pharmacy #6718: 1569 tablets of lorazepam 0.5 mg; 240 tablets of
19 hydrocodone 5/500; 975 tablets of hydrocodone 10/325; 518 tablets of hydrocodone
20 7.5/325; 103 tablets of hydrocodone 5/325; 17 tablets of diazepam 10 mg; and 1176
21 tablets of hydrocodone 10/500. The audit did not disclose who was responsible for the
22 shortages. The Board investigator was unable to audit the Soma 250 mg and the
23 carisoprodol 350 mg as these were not included in the annual inventory conducted on
24 April 30, 2008.

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1 sale). Illicit possession of a prescription-only drug for sale is a class 6 felony. A.R.S. §
2 13-3406(B)(2).

3 6. The conduct described in the Findings of Fact constitutes a violation of
4 A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain
5 possession of a controlled substance by means of forgery, fraud, deception or subterfuge).
6 A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-
7 2531(E).

8 7. The conduct described in the Findings of Fact constitutes a violation of
9 A.R.S. § 36-2525(D) (Except in emergency situations, on faxed written prescription
10 order, or when dispensed by a medical practitioner to a ultimate user, a controlled
11 substance in schedule II shall not be dispensed without the written prescription order in
12 ink, or indelible pencil or typewritten and manually signed by the medical practitioner).

13 8. The conduct described in the Findings of Fact constitutes a violation of
14 A.R.S. § 36-2525(H) (Except when dispensed directly by a medical practitioner to an
15 ultimate user, a controlled substance included in schedule III or IV that requires a
16 prescription order as determined under state or federal laws shall not be dispensed
17 without a written or oral prescription order of a medical practitioner).

18 9. The conduct described in the Findings of Fact constitutes a violation of
19 A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521
20 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in
21 violation of section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of
22 a class 4 felony. A.R.S. § 36-2531(B).

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

14 11. The conduct and circumstances described above constitutes unprofessional
15 conduct pursuant to A.R.S. § 32-1901.01(C)(6) (“Committing a felony, whether or not
16 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
17 related offense. In either case, conviction by a court of competent jurisdiction or a plea
18 of no contest is conclusive evidence of the commission.”).

19 12. The conduct and circumstances described above constitute unprofessional
20 conduct pursuant to A.R.S. § 32-1901.01(C)(8) (“Violating a federal or state law or
21 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
22 drugs, controlled substances or precursor chemicals when determined by the board or by
23 conviction in a federal or state court.”)

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ORDER

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

IT IS HEREBY ORDERED THAT License No. 16379, which was issued to Gloria Martinez Howell to practice as a Pharmacy Technician Trainee in the State of Arizona, is hereby **REVOKED**. Respondent shall immediately return her Pharmacy Technician Trainee License to the Board.

DATED this 30th day of January 2008

(Seal)

ARIZONA STATE BOARD OF PHARMACY

By: 
HAL WAND, R.Ph.
Executive Director

1 ORIGINAL OF THE FORGOING FILED
this 30 day of Jan, 2008, with:

2 Arizona State Board of Pharmacy ^{2009 TUP}
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL

6 this 30 day of Jan, 2008, to: ^{2009 TUP}

7 Gloria Martinez Howell
8 5331 W. Hubbell St.
9 Phoenix, AZ 85035
Respondent

10 EXECUTED COPY OF THE FOREGOING MAILED
this 30 day of Jan, 2008, to: ²⁰⁰⁹

11 Elizabeth A. Campbell
12 Assistant Attorney General
13 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorneys for the State of Arizona

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