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BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of **DANIEL MAY,** Holder of License No. S006345 As a Pharmacist In the State of Arizona	Board Case No. 09-0019-PHR **CONSENT AGREEMENT FOR PROBATION WITH CIVIL PENALTY AND CONTINUING EDUCATION**

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") under A.R.S. § 32-1901, *et. seq.*, Daniel May ("Respondent"), holder of Pharmacist License Number S006345 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 he has a right to a public administrative hearing concerning the above-captioned matter, at which hearing he 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 him.

5. Respondent understands this Consent Agreement deals with Board Complaint No. 3589 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.

7. 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.

8. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, he may not revoke his 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, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment 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 and may result in disciplinary action. A.R.S. §§ 32-1901.01(B)(20), -1927(A)(1).

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RECEIVED
12-29-08

ACCEPTED AND AGREED BY RESPONDENT

Daniel T. May
Daniel May

Dated: 12/26/08

Subscribed and sworn to before me in the County of Maricopa, State of Arizona, this 26th day of December, 2008, by Daniel May.

NOTARY PUBLIC

My Commission expires: 11/1/2011

FINDINGS OF FACT

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

2. Respondent is the holder of license number S006345 to practice as a pharmacist in the State of Arizona.

3. During all relevant times to these findings, Respondent worked as a pharmacist at Sam's Club Pharmacy #6608 (the "Pharmacy") in Phoenix, Arizona.

4. Complainant had a prescription for a three-month supply (90 tablets) of Lovastatin 40 mg filled at the Pharmacy. Complainant received three containers containing thirty tablets each. One of the containers was Lovastatin 40 mg, but the other two containers were Lisinopril 40 mg.

5. Respondent was the verifying pharmacist, but did not catch the error at verification.

6. The complainant returned the medication and received the correct medication. The patient did not take any of the incorrect medication.

CONCLUSIONS OF LAW

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

2. The Board may discipline a pharmacist who has engaged in unprofessional conduct. A.R.S. § 32-1927(A)(1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy).

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(10) (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).

5. The conduct described above violated Arizona Administrative Code R4-23-402(A)(11) (A pharmacist shall make a final accuracy check on the completed prescription medication).

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ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

1. Respondent's pharmacist's license number S006345 is placed on PROBATION for a six-month period beginning on the effective date of this Order. During the term of probation Respondent shall:

   a. Pay a civil penalty of $1,000.00; and

   b. Successfully complete and provide proof of successful completion to the Board of eight (8) contact hours (0.8 C.E.U.) of American Council on Pharmaceutical Education (ACPE) courses. The courses shall be pre-approved by Board staff, shall be limited to topics dealing with prescription error prevention, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

2. Upon payment of the civil penalty required under 1(a) above and presentation of proof of successful completion of the continuing education required under 1(b) above, Respondent's probation shall terminate.

DATED this 30th day of January, 2008

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By: _____
HAL WAND, R.Ph.
Executive Director

ORIGINAL OF THE FORGOING FILED
this 30 day of Jan., ~~2008~~, with:
2009 TWP

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

EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
this 30 day of Jan., ~~2008~~, to:
2009

Daniel May
38029 N. 3rd Street
Phoenix, Arizona 85086
Respondent

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

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