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DID NOT
SIGN - NOT.
OF HEAR. 3/25/09

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Attorney General
2 (Firm State Bar No. 14000)

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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 **JOSHUA ADAMS,**
12 Holder of License No. T006970
As a Pharmacy Technician
13 In the State of Arizona

Board Case No. 09-0040-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.*, Joshua Adams ("Respondent"),
19 holder of Pharmacy Technician License Trainee Number T006970 in the State of
20 Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions
21 of Law 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. 3632 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 ACCEPTED AND AGREED BY RESPONDENT

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19 _____ Dated: _____
Joshua Adams

20 Subscribed and sworn to before me in the County of _____, State of _____,
21 this ____ day of _____, 2009, by Joshua Adams.

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23 _____
NOTARY PUBLIC
24 My Commission expires: _____
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FINDINGS OF FACT

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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 holds Arizona Pharmacy Technician License Number
5 T006970.

6 3. During all times relevant to this Complaint, Respondent was employed as a
7 Pharmacy Technician at Wal-Mart Pharmacy #10-2113 in Phoenix, Arizona (the
8 "Pharmacy").

9 4. In September and October 2008 Respondent was observed on surveillance
10 video removing narcotic bottles from the pharmacy shelf, pouring the pills into his hands,
11 and then placing the pills in his pocket.

12 5. In October 2008, Wal-Mart loss prevention personnel interviewed
13 Respondent concerning a loss of controlled substances. Respondent admitted diverting
14 hydrocodone (hydrocodone/APAP) for personal consumption. Respondent admitted
15 stealing hydrocodone from the Pharmacy on at least 20 occasions. Respondent was
16 terminated from his employment with Wal-Mart.

17 6. A subsequent audit by the Pharmacy documented shortages of the
18 following: 685 tablets of hydrocodone/APAP 10/325; 1,588 tablets of
19 hydrocodone/APAP 0/500; 416 tablets of hydrocodone/APAP 10/650; 650 tablets of
20 hydrocodone/APAP 10/660; and 293 tablets of hydrocodone/APAP 7.5/750. The audit
21 did not disclose who was responsible for the shortages.

22 7. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-
23 2514(A)(5)(d).

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

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

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

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1 transmitted refill order that is documented promptly and filed by the pharmacist or by an
2 oral refill order that is documented promptly and filed by the pharmacist.”)

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

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

13 **ORDER**

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

15 IT IS HEREBY ORDERED THAT License No. T006970, which was issued to
16 Joshua Adams to practice as a pharmacy technician in the State of Arizona, is hereby
17 **REVOKED**. Respondent shall immediately return his pharmacy technician license to
18 the Board. Respondent shall not reapply for licensure with the Board or petition for
19 reinstatement of his Arizona pharmacy technician license for a period of at least five (5)
20 years from the effective date of this Consent Agreement.

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1 DATED this ____ day of _____, 2009.

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ARIZONA STATE BOARD OF PHARMACY

4 (Seal)

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

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ORIGINAL OF THE FORGOING FILED
this ____ day of _____, 2009, with:

11

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

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EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL

15

this ____ day of _____, 2009, to:

16

Joshua Adams
3313 W. Constitution Drive
Chandler, AZ 85226
Respondent

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EXECUTED COPY OF THE FOREGOING MAILED
this ____ day of _____, 2009, to:

20

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

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#402676

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