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

10 In the Matter of

11 **GERWYN MAKAI**

12 Holder of License No. S016844
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 09-0044-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.*, Gerwyn Makai ("Respondent"),
19 holder of Pharmacist License Number S016844 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.

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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. 3637 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

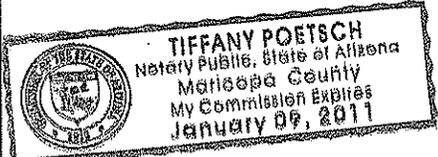
20 
21 _____
Gerwyn Makai

Dated: 24th FEB 2009

22 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
23 this 24 day of February, 2009, by Gerwyn Makai.

24 
25 _____
NOTARY PUBLIC

26 My Commission expires: January 09, 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 S016844 to practice as a
5 pharmacist in the State of Arizona.

6 3. On December 6, 2008, Respondent ingested methamphetamine.

7 4. Respondent reported his use of methamphetamine to the Board.
8 Respondent also reported that he had been charged with possession of drug
9 paraphernalia.

10 5. Methamphetamine is a dangerous drug. A.R.S. § 13-3401(6)(b)(xiii).

11 **CONCLUSIONS OF LAW**

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

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

16 3. The conduct described above constitutes a violation of A.R.S. § 13-
17 3407(A)(1) (A person shall not knowingly use a dangerous drug).

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

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

3 **ORDER**

4 Based upon the above Findings of Fact and Conclusions of Law, the Board issues
5 the following Order:

6 1. Respondent's Pharmacist License No. S016844, which was issued to
7 Respondent for the practice of Pharmacy in the State of Arizona, is hereby
8 **SUSPENDED**, subject to the following terms and conditions:

9 A. Respondent's license is suspended for at least six (6) months from
10 January 9, 2009, the date Respondent began inpatient treatment. The period of
11 suspension shall be determined by the Board after reviewing (i) information from
12 Pharmacists Assisting Pharmacists of Arizona ("PAPA") regarding Respondent's
13 compliance with the terms of the PAPA program/contract; (ii) a progress report
14 from Respondent's PAPA counselor, which may be submitted in writing to the
15 Board; and (iii) any input from Respondent.

16 B. No sooner than six (6) months from January 9, 2009, Respondent
17 may request in writing that the Board terminate the suspension. Respondent's
18 request to terminate suspension will be considered at the Board's next regularly
19 scheduled Board meeting. Respondent is required to personally appear at that
20 Board meeting.

21 C. Respondent shall, within ten (10) days of the effective date of this
22 Order, return his pharmacist license to the Board office for the period of
23 suspension.

24 D. On February 5, 2009, Respondent signed a five (5) year contract
25 with PAPA. Respondent shall abide by each and every requirement of the PAPA
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1 contract. Failure to abide by the PAPA contract's terms is a violation of this
2 Order.

3 2. Upon termination of the period of suspension by the Board, Respondent's
4 reinstated license shall immediately be placed on **PROBATION**. Respondent's
5 probation is subject to the following conditions:

6 A. No sooner than five (5) years from the beginning of Respondent's
7 probationary period, Respondent shall request in writing that the Board terminate
8 his probation. Respondent's request for termination will be considered at the
9 Board's next regularly scheduled Board meeting. Respondent is required to
10 personally appear at that Board meeting. Respondent's probationary period will
11 continue until Respondent's request for termination is received and the Board
12 terminates the probation.

13 B. Respondent shall continue to comply with the terms of his PAPA
14 contract.

15 C. Respondent shall furnish all pharmacy employers with a copy of this
16 Consent Agreement. Respondent shall ensure that all pharmacy employers submit
17 to the Board a written acknowledgement that they have received a copy of this
18 Consent Agreement within ten (10) days of entering into an employment
19 relationship with Respondent.

20 D. Respondent shall not serve as a preceptor pharmacist or pharmacist
21 in charge.

22 E. Respondent shall advise the Board within ten (10) days of any
23 change in pharmacy employment status.

24 F. Within five (5) years from the beginning of Respondent's
25 probationary period, Respondent shall complete 400 hours of community service
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1 approved by Board staff. Respondent shall ensure that all entities to which he
2 provides community service verify in writing to the Board the number of hours
3 completed within 30 days of completing the community service.

4 3. Respondent shall pay all necessary fees and complete all continuing
5 education requirements throughout the term of his suspension and probation.

6 4. Throughout the term of Respondent's suspension and probation,
7 Respondent shall personally appear before the Board when requested to do so by the
8 Board or Board staff.

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

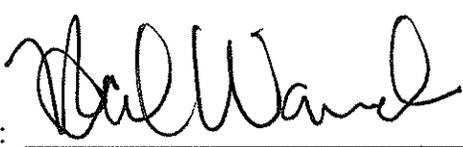
12 6. Respondent shall obey all federal and state laws and rules governing the
13 practice of pharmacy.

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

19 DATED this 19th day of MARCH, 2009.

20 ARIZONA STATE BOARD OF PHARMACY

21 (Seal)

22 By: 
23 HAL WAND, R.Ph.
24 Executive Director
25
26

1 ORIGINAL OF THE FORGOING FILED
this 19 day of March, 2009, with:

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

5 EXECUTED COPY OF THE FOREGOING MAILED
6 BY FIRST-CLASS and CERTIFIED MAIL
this 19 day of March, 2009, to:

7 Gerwyn Makai
8 20100 N. 78th Place #2156
9 Scottsdale, Arizona 85255

10 EXECUTED COPY OF THE FOREGOING MAILED
11 this 19 day of March, 2009, to:

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

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