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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 **TERRI BIRKHOLOZ,**

12 Holder of License No. S007029
As a Pharmacist
13 In the State of Arizona

Board Case No. 10-0013-PHR

**CONSENT AGREEMENT
FOR CIVIL PENALTY AND
CONTINUING EDUCATION**

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.*, Terri Birkholz ("Respondent"),
19 holder of Pharmacist License Number S007029 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 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. 3685 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 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.

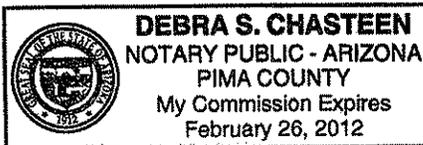
16 13. Respondent understands that any violation of this Consent Agreement
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
18 1901.01(B)(20), -1927(A)(1).

19 ACCEPTED AND AGREED BY RESPONDENT

20
21 
22 _____
23 Terri Birkholz

Dated: 7-29-09

24
25 Subscribed and sworn to before me in the County of Pima, State of Arizona,
26 this 29 day of July, 2009, by Terri Birkholz.



Debra S. Chasteen
NOTARY PUBLIC

My Commission expires: 02/26/2012

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 S007029 to practice as a
5 pharmacist in the State of Arizona.

6 3. During all relevant times to these findings, Respondent worked as a
7 pharmacist at CVS #9336 (the "Pharmacy") in Tucson, Arizona.

8 4. In May 2009, a patient's mother had a prescription for Clonidine 0.1 mg ½
9 TID filled for the patient at the Pharmacy. The prescription was incorrectly filled with
10 the directions: "Take 1 tablet by mouth 3 times a day." The prescription label also had
11 the wrong doctor's name. The Respondent failed to catch the errors at verification or
12 during counseling. After taking a whole tablet, the patient was excessively sleepy and
13 was taken to the emergency room for assessment.

14 **CONCLUSIONS OF LAW**

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

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

19 3. The conduct and circumstances described above constitutes unprofessional
20 conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or
21 regulation relating to the manufacture or distribution of drugs and devices or the practice
22 of pharmacy).
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1 4. The conduct described above violated Arizona Administrative Code R4-23-
2 402(A)(10)(d) (In dispensing a prescription medication from a prescription order, a
3 pharmacist shall check prescription order data entry to ensure that the data input is for the
4 correct medical practitioner by verifying the medical practitioner's name, address, and
5 telephone number).

6 5. The conduct described above violated Arizona Administrative Code R4-23-
7 402(A)(11) (In dispensing a prescription medication from a prescription order, a
8 pharmacist shall make a final accuracy check on the completed prescription medication).

9 **ORDER**

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

12 1. Pay a civil penalty of \$2,000.00 within **90 days** of the effective date of this
13 Order; and

14 2. Successfully complete and provide proof of successful completion to the
15 Board of eight (8) contact hours (0.8 C.E.U.) of American Council on Pharmaceutical
16 Education (ACPE) courses within **6 months** of the effective date of this Order. The
17 courses shall be pre-approved by Board staff, shall be limited to topics dealing with error
18 prevention, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C.
19 R4-23-204.

20 DATED this 10th day of September, 2009.

21
22 ARIZONA STATE BOARD OF PHARMACY

23 (Seal)

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

1 ORIGINAL OF THE FORGOING FILED
this 10 day of Sept., 2009, with:

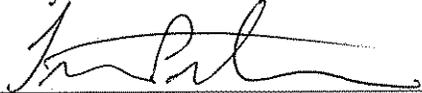
2 Arizona State Board of Pharmacy
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
6 this 10 day of Sept., 2009, to:

7 Terri Birkholz
8 10801 E. Placita Melate
9 Tucson, Arizona 85749
10 Respondent

11 EXECUTED COPY OF THE FOREGOING MAILED
12 this 10 day of Sept., 2009, to:

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



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