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AZ BOARD OF PHARMACY

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Attorneys for the Arizona State Board of Pharmacy

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of, **WALGREENS DRUG #4046,** Holder of Pharmacy Permit No. Y002059 in the State of Arizona	Board Case No. 11-0043-PHR **CONSENT AGREEMENT FOR CIVIL PENALTY**

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.*, Walgreens Drug #4046, holder of Pharmacy Permit Number Y002059 in the State of Arizona ("Respondent"), 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.

RECITALS

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 it has a right to a public administrative hearing concerning this matter, at which hearing it 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.

5. Respondent understands this Consent Agreement deals with Board Complaint No. 3922 involving allegations of unethical 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, it may not revoke its 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. This Consent Agreement is subject to the approval of the Board and is effective only when accepted by the Board and signed by the Board's Executive Director. In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

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 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.

12. Respondent understands that any violation of this Consent Agreement constitutes unethical conduct and may result in disciplinary action. A.R.S. §§ 32-1901.01(A)(19), -1927.02(A)(1).

13. While Respondent neither admits nor denies the following Findings of Fact and Conclusions of Law, Respondent acknowledges that, should this matter proceed to hearing, that the Board would be able to establish by a preponderance of the evidence that Respondent engaged in unprofessional conduct.

14. Respondent agrees that the Board will adopt the following Findings of Fact, Conclusions of Law and Order.

ACCEPTED AND AGREED BY RESPONDENT

Dated: 4/22/2011

EXECUTIVE DIRECTOR - PHARMACY, on behalf of Walgreens Drug #4046

Subscribed and sworn to before me in the County of LAKE, State of ILLINOIS, this 22nd day of APRIL, 2011, by RICK GATES, on behalf of Walgreens Drug #4046.

OFFICIAL SEAL
KAREN A KESSLER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/24/13

NOTARY PUBLIC

My Commission expires: 9/24/13

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 Pharmacy Permit Number Y002059 allowing it to operate as a pharmacy in Arizona.

3. In December 2010, a physician sent an electronic prescription for sertraline to the Respondent Pharmacy. An unknown pharmacy technician at Respondent Pharmacy incorrectly matched the sertraline prescription to the profile of complainant's daughter instead of the patient listed on the prescription. Once the prescription was matched to the profile, it was sent to Respondent Pharmacy's central facility in Florida to be entered.

4. The sertraline was dispensed to the complainant, but the complainant discovered the error before her daughter ingested 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 permittee who has engaged or whose employee has engaged in unethical conduct. A.R.S. § 32-1927.02(A)(1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(A)(5) (Violating any federal or state law, rule or regulation relating to the manufacture, sale or distribution of drugs, devices, poisons, hazardous substances or precursor chemicals).

4. The conduct described above violated Arizona Administrative Code R4-23-621(D)(1) (A pharmacy permittee engaged in shared services shall maintain manual or electronic records that identify, individually for each order processed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the order interpretation, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, or refill authorization functions performed at that pharmacy).

ORDER

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

1. Respondent shall pay a civil penalty of $1,000 within ninety (90) days of the effective date of this Consent Agreement; and

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

DATED this 4 day of May, 2011.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

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

ORIGINAL OF THE FORGOING FILED
this 4 day of May, 2011, with:

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

EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
this 4 day of May, 2011, to:

Walgreens Drug #4046
c/o Dwayne A. Pinon, R.Ph.
Senior Attorney, Litigation & Regulatory Law
Walgreen Co.
104 Wilmot Road, MS #1434
Deerfield, IL 60015

EXECUTED COPY OF THE FOREGOING MAILED
this 4 day of May, 2011, to:

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

TMP

#1684109