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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 **RUSSELL NEWMAN**

12 Holder of License No. S011954  
13 To Practice as a Pharmacist in the State of  
Arizona

Board Case No. 12-0005-PHR

**CONSENT AGREEMENT  
AND ORDER FOR SUSPENSION  
AND PROBATION**

14  
15 In the interest of a prompt and judicious settlement of this case, consistent with the  
16 public interest, statutory requirements and the responsibilities of the Arizona State Board  
17 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Russell Newman  
18 ("Respondent"), holder of Pharmacist License Number S011954 in the State of Arizona,  
19 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law  
20 and Order ("Consent Agreement") as a final disposition of this matter.

21 **RECITALS**

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.  
25  
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1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning this matter, at which hearing he could present evidence and cross  
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly  
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights  
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative  
6 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 number 3963 involving allegations of unprofessional conduct against  
13 Respondent. The investigation into these allegations against Respondent shall be  
14 concluded upon the 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  
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. This Consent Agreement is subject to the approval of the Board and is  
5 effective only when accepted by the Board and signed by the Executive Director. In the  
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall  
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by  
8 any party, except that the parties agree that should the Board reject this Consent  
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the  
10 Board was prejudiced by its review and discussion of this document or any records  
11 relating thereto.

12       10. If a court of competent jurisdiction rules that any part of this Consent  
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
14 shall remain in full force and effect.

15       11. Respondent understands that this Consent Agreement is a public record that  
16 may be publicly disseminated as a formal action of the Board and may be reported as  
17 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
18 Protection Data Bank.

19       12. Respondent understands that any violation of this Consent Agreement  
20 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
21 1901.01(B)(20), -1927(A)(1).

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

24 ...

25 ...

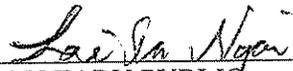
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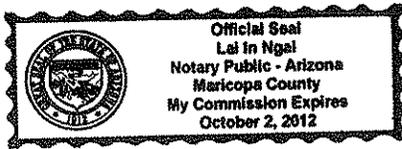
1 ACCEPTED AND AGREED BY RESPONDENT

2   
3 Russell Newman

Dated: 9/21/11

4 Subscribed and sworn to before me in the County of MARICOPA, State of ARIZONA,  
5 this 21ST day of SEPTEMBER, 2011, by Russell Newman.

6   
7 NOTARY PUBLIC



8 My Commission expires: OCT 2, 2012

9 FINDINGS OF FACT

- 10 1. The Board is the duly constituted authority for licensing and regulating the  
11 practice of pharmacy in the State of Arizona.
- 12 2. Respondent is the holder of license number S011954 to practice as a  
13 pharmacist in the State of Arizona.
- 14 3. At all times relevant to these findings, Respondent worked as a pharmacist  
15 at Fry's #56 in Peoria, Arizona (the "Pharmacy").
- 16 4. On May 3, 2011, Respondent admitted to diverting approximately 1,000  
17 tablets of hydrocodone/APAP 10-325 mg from the Pharmacy. Respondent's employment  
18 was terminated.
- 19 5. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-  
20 2514(A)(5)(d).
- 21 6. An audit by the Pharmacy documented shortages of the following: 480  
22 tablets of morphine sulfate 30 mg, 487 tablets of hydrocodone/APAP 5-500 mg, 100  
23 tablets of morphine sulfate 15 mg SA, 99 tablets of morphine sulfate 30 mg, 284 tablets  
24 of morphine sulfate 60 mg SA, 431 tablets of morphine sulfate 100 mg SA, 302 tablets of  
25 oxycodone HCL 30 mg, 2,448 tablets of hydrocodone/APAP 10-325 mg, and 100 tablets  
26

1 of morphine sulfate 60 mg SA. The audit did not disclose who was responsible for the  
2 shortages.

3 7. On June 15, 2011, Respondent entered in-patient treatment for his  
4 substance abuse issues. Respondent has successfully completed the in-patient program.

### 5 CONCLUSIONS OF LAW

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

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

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

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

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

15 B. Respondent shall continue to comply with the terms of his PAPA  
16 contract.

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

22 D. Respondent shall not serve as a preceptor pharmacist or pharmacist  
23 in charge.

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

26

1           3.       Within five (5) years from the execution date of this Consent Agreement,  
2 Respondent shall complete 400 hours of community service approved by Board staff.  
3 Respondent shall ensure that all entities to which he provides community service verify  
4 in writing to the Board the number of hours completed within 30 days of Respondent  
5 completing the community service.

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

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

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

14          7.       Respondent shall obey all federal and state laws and rules governing the  
15 practice of pharmacy.

16          8.       Respondent shall execute all appropriate release of information forms to  
17 permit the Respondent's treatment professionals and PAPA to communicate with the  
18 Board regarding Respondent's treatment.

19          9.       Respondent shall pay all costs associated with complying with this Consent  
20 Agreement, including all expenses associated with PAPA.

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

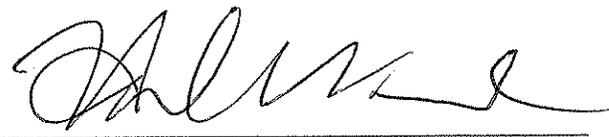
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DATED this 27<sup>th</sup> day of September, 2011.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By:   
HAL WAND, R.Ph.  
Executive Director

ORIGINAL OF THE FORGOING FILED  
this 27 day of Sept, 2011, with:

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

EXECUTED COPY OF THE FOREGOING MAILED  
BY FIRST-CLASS and CERTIFIED MAIL  
this 27 day of Sept, 2011, to:

Russell Newman  
21537 N. 86<sup>th</sup> Dr.  
Peoria, AZ 85382  
Respondent

EXECUTED COPY OF THE FOREGOING MAILED  
this 27 day of Sept, 2011, to:

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

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