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

10 In the Matter of

11 **DONALD STEVEN MERKEL**

12 Holder of License No. S009366
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 12-0010-PHR

**AMENDED CONSENT AGREEMENT
AND ORDER FOR PROBATION**

14 **RECITALS**

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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.*, Donald Steven Merkel
19 ("Respondent"), holder of Pharmacist License Number S009366 in the State of Arizona,
20 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law
and Order ("Amended Consent Agreement") as a final disposition of this matter.

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22 1. Respondent has read and understands this Amended Consent Agreement
23 and has had the opportunity to discuss this Amended Consent Agreement with an
24 attorney, or has waived the opportunity to discuss this Amended Consent Agreement with
25 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 Amended Consent
4 Agreement, Respondent knowingly and voluntarily relinquishes all right to such an
5 administrative hearing, as well as rights of rehearing, review, reconsideration, appeal,
6 judicial review or any other administrative and/or judicial action, concerning the matters
7 set forth herein.

8 3. Respondent affirmatively agrees that this Amended Consent Agreement
9 shall be irrevocable.

10 4. Respondent understands that this Amended Consent Agreement or any part
11 of the agreement may be considered in any future disciplinary action by the Board against
12 him.

13 5. Respondent understands this Amended Consent Agreement deals with
14 Board Complaint No. 4008 involving allegations of unprofessional conduct against
15 Respondent. The investigation into these allegations against Respondent shall be
16 concluded upon the Board's adoption of this Amended Consent Agreement.

17 6. Respondent understands that this Amended Consent Agreement does not
18 constitute a dismissal or resolution of any other matters currently pending before the
19 Board, if any, and does not constitute any waiver, express or implied, of the Board's
20 statutory authority or jurisdiction regarding any other pending or future investigation,
21 action or proceeding.

22 7. Respondent also understands that acceptance of this Amended Consent
23 Agreement does not preclude any other agency, subdivision, or officer of this State from
24 instituting any other civil or criminal proceedings with respect to the conduct that is the
25 subject of this Amended Consent Agreement.

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1 8. Respondent acknowledges and agrees that, upon signing this Amended
2 Consent Agreement and returning this document to the Board's Executive Director, he
3 may not revoke his acceptance of the Amended Consent Agreement or make any
4 modifications to the document regardless of whether the Amended Consent Agreement
5 has been signed by the Executive Director. Any modification to this original document is
6 ineffective and void unless mutually agreed by the parties in writing.

7 9. Respondent understands that the Amended Consent Agreement shall not
8 become effective unless and until adopted by the Board and signed by its Executive
9 Director.

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

13 11. Respondent understands and agrees that if the Board does not adopt this
14 Amended Consent Agreement, he will not assert as a defense that the Board's
15 consideration of this Amended Consent Agreement constitutes bias, prejudice,
16 prejudgment or other similar defenses.

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

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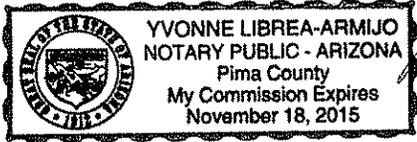
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ACCEPTED AND AGREED BY RESPONDENT

Donald Steven Merkel
Donald Steven Merkel

Dated: 8/14/12

Subscribed and sworn to before me in the County of Pima, State of Arizona,
this 14 day of August, 2012, by Donald Steven Merkel.



Yvonne Librea-Armiijo
NOTARY PUBLIC

My Commission expires: Nov 18, 2015

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 license number S009366 to practice as a pharmacist in the State of Arizona.
3. On August 20, 2010 Respondent surrendered his California pharmacist license No. RPH 43281 pursuant to a Stipulated Surrender of License and Order in California Pharmacy Board Case Nos. 3306 and 3682.
4. The Stipulated Surrender of License and Order entered by the California Pharmacy Board was the final disposition of allegations that Respondent was charged with and convicted of the criminal offense of driving under the influence of controlled substances and violation of laws regarding the possession and consumption of controlled substances.
5. Respondent did not report being charged with or being convicted of driving under the influence of controlled substances until July 2011.
6. On November 17, 2011 the Board accepted and issued a Consent Agreement and Order for Surrender with Respondent for the surrender of his license to

1 practice pharmacy in the State of Arizona. On June 27, 2012 the Board voted to accept
2 Respondent's request for reinstatement of his license in an Amended Consent Agreement
3 which would include a period of probation of not less than five (5) years and participation
4 in the Pharmacists Assisting Pharmacists Program ("PAPA").

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 practice and conduct, as described in the Findings of Fact,
11 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B) (5) ("Denial or
12 discipline of a licensee's license to practice pharmacy in another jurisdiction and the
13 license was not reinstated.").

14 4. Respondent's practice and conduct, as described in the Findings of Fact,
15 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B) (13) ("Failing to
16 report in writing to the board any evidence that a pharmacist, pharmacy intern or graduate
17 intern is or may be professionally incompetent, is or may be guilty of unprofessional
18 conduct or is or may be mentally or physically unable to safely engage in the practice of
19 pharmacy.").

20 5. Respondent's practice or conduct as described in the Findings of Fact,
21 constitutes a violation of A.R.S. § 32-1901.01(B) (16) ("Committing an offense in
22 another jurisdiction that if committed in this state would be grounds for discipline.").

23 6. Respondent's practice or conduct as described in the Findings of Fact,
24 constitute a violation of A.R.S. § 32-3208 (A) ("A health professional who has been
25 charged with a misdemeanor involving conduct that may affect patient safety or a felony
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1 after receiving or renewing a license or certificate must notify the health professional's
2 regulatory board in writing within ten working days after the charge is filed.”).

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 License No. S009366, which was surrendered to the Board
7 on November 17, 2011 is reinstated and is placed on probation effective November 11,
8 2011 for a period of five (5) years subject to the following terms and conditions:

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

17 B. Respondent shall continue to comply with the terms of his PAPA
18 contract.

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

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1 D. Respondent shall not serve as a preceptor pharmacist or pharmacist
2 in charge.

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

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

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

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

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

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

20 7. Respondent shall execute all appropriate release of information forms to
21 permit the Respondent's treatment professionals and PAPA to communicate with the
22 Board regarding Respondent's treatment.

23 8. Respondent shall pay all costs associated with complying with this
24 Amended Consent Agreement, including all expenses associated with PAPA.

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