

1 03-0009-HO

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

3 In the Matter of:

4 HARRY JOO CHUNG)
5 Non-Prescription Retail)
6 Permit Number 4132)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND BOARD ORDER
NO. 2003-09-PHR**

7 **DIRECTED TO:** HARRY JOO CHUNG
8 2810 E. Bell Road
9 Phoenix, Arizona 85032

10 Pursuant to Notice of Hearing Number 2003-09-PHR ("Notice") this matter came before the
11 Arizona State Board of Pharmacy ("Board") on August 28, 2003.

12 Paul T. Draugalis, president, presided with members Dennis K. McAllister, Eugene Drake, Daniel
13 Ketcherside, Linda McCoy, Chuck Dutcher and William E. Jones in attendance.

14 The State was represented by the Office of the Attorney General, Roberto Pulver, Assistant
15 Attorney General, Licensing and Enforcement Section, and Victoria Mangiapane, Assistant Attorney
16 General, Solicitor General and Opinions Section represented the Board by telephone speaker phone.

17 The respondent HARRY JOO CHUNG (Respondent) was present and was represented by
18 counsel S. Magnus Erikksen, Attorney at Law.

19 The Board, after consideration of the evidence and testimony presented, hereby makes the
20 following Findings of Fact and Conclusions of Law.

21 **FINDINGS OF FACT**

22 **I**

23 The evidence and testimony presented in this matter sustained the factual allegations in Paragraph
24 IV of the Notice. The Board finds that:

25 1. HARRY JOO CHUNG is the owner of, and has owned for the past thirteen years, the Unocal
26 Self-Serve Mart ("USSM"), located at 2810 East Bell Road, Phoenix, Arizona and is the holder of Non-
Prescription Retail Permit Number 4132 issued by the Arizona State Board of Pharmacy which permits
the holder to sell, at retail, non-prescription drugs in the State of Arizona.

1 2. On September 15, 2000, two Drug Enforcement Administration ("DEA") diversion
2 investigators met with Alan Chung, the Respondent's son and employee of USSM, and Edward
3 Carpenter, USSM's store manager. The diversion investigators told Alan Chung that the USSM had
4 made large purchases of ephedrine and pseudoephedrine products over the past few months. The
5 diversion investigators informed Alan Chung that pseudoephedrine and ephedrine were used to make
6 illicit drugs, that threshold amounts have been imposed on the sale of ephedrine and pseudoephedrine by
7 State and Federal law and that the threshold amounts are the amounts that can be sold or that must be
8 reported to federal and state authorities. They also told him that "smurfing" was one method of purchasing
9 large quantities of the products. A pre-registration packet that included all of the chemical notices, record
10 keeping requirements, a list of offenses and penalties, and a list of the regulated chemicals under the
11 Chemical Diversion and Trafficking Act was given to Alan Chung

12 3. On January 5, 2001, Detective Ron Swanson of the Glendale Police Department conducted
13 two undercover purchases of pseudoephedrine products during a twenty minute time span that totaled
14 twenty-seven (27) grams of pseudoephedrine. The first purchase made by Detective Swanson was for one
15 (1) bottle of pseudoephedrine 60mg tablets, quantity of one hundred (100) tablets. The second purchase
16 made by Detective Swanson was for seven (7) bottles of pseudoephedrine 30mg tablets, quantity of one
17 hundred (100) tablets each.

18 4. The January 5, 2001 sale by USSM was a regulated transaction as defined in 21 U.S.C. 802
19 (39)(A)(iv)(II). The statute reads as follows:

20 (39) The term "regulated transaction" means -

21 (A) a distribution, receipt, sale, importation, or exportation of, or an international transaction
22 involving shipment of, a listed chemical, or if the Attorney General establishes a threshold amount
23 for a specific listed chemical, a threshold amount, including a cumulative threshold amount for
multiple transactions (as determined by the Attorney General, in consultation with the chemical
industry and taking into consideration the quantities normally used for lawful purposes), of a listed
chemical, except that such term does not include -

24 (iv) any transaction in a listed chemical that is contained in a drug that may be marketed
or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic
Act (21 U.S.C. 301 et seq.) unless

25 (II) the quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other
26 listed chemical contained in the drug included in the transaction or multiple
transactions equals or exceeds the threshold established for that chemical by the
Attorney General, except that the threshold for any sale of products containing

1 pseudoephedrine or phenylpropanolamine products by retail distributors or by
2 distributors required to submit reports by section 830 (b)(3) of this title shall be 9
3 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single
4 transaction and sold in package sizes of not more than 3 grams of pseudoephedrine
5 base or 3 grams of phenylpropanolamine base.

6 5. Respondent did not report the regulated transaction of January 5, 2001 to the Drug
7 Enforcement Administration in violation of 21 U.S.C. 830(b)(1)(A) and 21 C.F.R §1310.03 and
8 §1310.05. Those statutes read as follows:

9 **21 U.S.C. 830 - Regulation of listed chemical and certain machines**
10 (b) Reports to Attorney General

11 (1) Each regulated person shall report to the Attorney General, in such form and manner
12 as the Attorney General shall prescribe by regulation -

13 (A) any regulated transaction involving an extraordinary quantity of a listed
14 chemical, an uncommon method of payment or delivery, or any other circumstance
15 that the regulated person believes may indicate that the listed chemical will be used
16 in violation of this subchapter[.][]

17 **21 C.F.R. §1310.03(a):** Each regulated person who engages in a regulated transaction involving
18 a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the
19 transaction as specified by Sec. 1310.04 and file reports as specified by Sec. 1310.05. However,
20 a non-regulated person who acquires listed chemicals for internal consumption or "end use" and
21 becomes a regulated person by virtue of infrequent or rare distribution of a listed chemical from
22 inventory, shall not be required to maintain receipt records of listed chemicals under this section.

23 **21 C.F.R. §1310.05(a):** Each regulated person shall report to the Special Agent in Charge of the
24 DEA Divisional Office for the area in which the regulated person making the report is located, as
25 follows: (1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an
26 uncommon method of payment or delivery, or any other circumstance that the regulated person
believes may indicate that the listed chemical will be used in violation of this part.

6. On February 13, 2001, Detective Ron Swanson of the Glendale Police Department and
Detective Steve Symes of the Phoenix Police Department conducted an undercover purchase of
pseudoephedrine products that totaled forty-eight (48) grams of pseudoephedrine. During the purchase
Detective Swanson attempted to purchase five (5) bottles of pseudoephedrine, the clerk limited the
purchase to four (4) bottles, but allowed Detective Swanson to purchase an additional four bottles for
Detective Symes who was not involved in the purchase or conversation between the clerk and Detective
Swanson. The sale was a regulated transaction as defined in 21 U.S.C. 802 (39). Respondent did
not report the regulated transaction to the Drug Enforcement Administration in violation of 21 U.S.C.

1 830(b)(1)(A) and 21 C.F.R §1310.03 and §1310.05. The sale was a structured transaction in
2 violation of A.R.S. 13-3404.01(A)(10) to wit:

3 **A.R.S. §13-3404.01(A)(10)** : A person shall not do any of the following:

4 10. Knowingly participate in any transaction or series of transactions that is structured by
any person with the intent to avoid or circumvent the prohibitions or limits on sales
established by this section.

5 7. Testimony from Jennifer Pinnow, a detective with the Arizona Department of Public Safety
6 (DPS), substantiates that on December 10, 2002, pursuant to a search warrant, DPS, along with other
7 Maricopa County Detectives, searched USSM, Respondent's residence, and the vehicles registered to the
8 Respondent and his wife. The results of the search and interviews of the Respondent and his wife showed
9 the following:

10 (a). Detectives found eight (8) pre-packaged brown paper bags containing forty-eight (48), sixty
11 (60) milligram pseudoephedrine tablets that were folded over and taped shut by the Respondent, in
12 violation of R4-23-603 (D)(1)(2) to wit:

13 **R4-23-603 (D) : Nonprescription Drugs, retail**

14 Drug sales: A nonprescription drug permittee:

- 15 1. Shall sell a drug only in the original container packaged and labeled by the
manufacturer; and
2. Shall not package, repackage, label, or relabel any drug;

16 (b). Detectives found one (1) box of Good Sense Nasal Decongestant sixty (60) milligram
17 tablets, quantity of forty eight (48), that had been opened, additional blister packs of pseudoephedrine
18 added, re-labeled with the quantity of one hundred and forty four (144) tablets, and resealed with tape
19 by the Respondent, in violation of R4-23-603 (D)(1)(2);

20 (c). Detectives found a letter in the Respondent's office desk that indicated a USSM employee
21 had sold forty-eight (48) bottles to another USSM employee described as a "middle man," and that
22 \$1037.00 was paid for the forty-eight (48) bottles. Detectives also found a letter from the alleged
23 "middle man" that denied his "middle man" status. The exchange was a suspicious transaction as defined
24 in A.R.S. 13-3401(35)(b)& (c) to wit:

25 **A.R.S. 13-3401(35)** "Suspicious transaction" means a transaction to which any of the following
26 applies:

1 (b) The circumstances would lead a reasonable person to believe that any person is attempting to
2 possess a precursor chemical or regulated chemical for the purpose of unlawful manufacture of
3 a dangerous drug or narcotic drug, based on such factors as the amount involved, the method of
4 payment, the method of delivery and any past dealings with any participant.

5 (c) The transaction involves payment for precursor or regulated chemicals in cash or money order
6 in a total amount of more than two hundred dollars.

7 (d). Respondent did not report the suspicious transaction to the Department of Public Safety in
8 violation of A.R.S. 13-3404 (F) and 13-3404(P)(1) to wit:

9 **A.R.S. 13-3404 (F)** : Any manufacturer, wholesaler, retailer or other person who sells, transfers
10 or otherwise furnishes any precursor chemical or regulated chemical to any person in this state in
11 a suspicious transaction shall report the transaction in writing to the department of public safety.

12 **A.R.S. 13-3404 (P) (1)**: It is unlawful for a person to knowingly:
13 1. Fail to submit a report that is required by this section.

14 (e). Detectives seized approximately two thousand two hundred and eighty (2280) packages of
15 pseudoephedrine, approximately three hundred twenty-five (325) blister packs of pseudoephedrine that
16 had been removed from the original packages by the Respondent, approximately one hundred and seventy
17 (170) packages of ephedrine/ephedra, and an approximate total of three hundred and fifty (350) bottles
18 of ephedrine/ephedra; and an approximate total of 80,000 ephedrine and pseudoephedrine tablets;
19 and

20 (f). Detectives gathered sales records that indicated that from April 7, 2000 to December 31, 2000,
21 USSM sold approximately 27,515 packages of pseudoephedrine for \$367,919.85; in 2001, USSM sold
22 approximately 22,803 packages of pseudoephedrine for \$343,688.22; and in 2002, USSM sold
23 approximately 6,148 packages of pseudoephedrine for \$109,267.33. No suspicious transaction has ever
24 been reported to the Department of Public Safety by the Respondent.

25 CONCLUSIONS OF LAW

26 II

1. The conduct and circumstances described in paragraphs two (2) through seven (7) of the
Findings of Fact constitute violations of professional conduct as set forth in grounds for disciplinary action
as defined in A.R.S. § 32-1932(A)(1) as follows:

1 The board, after notice and a hearing, may impose a civil penalty of not more than one thousand
2 dollars for each offense and deny, suspend or revoke any permit issued under this chapter or place
a permittee on probation if at any time any of the following occurs:

3 1. On examination or inspection it is found that the place is not being conducted according
4 to the federal act and this chapter relating to the manufacturing, sale and distribution of
drugs, devices, poisons or hazardous substances.

5 2. The conduct and circumstances described in paragraphs 3, 4, 6 and 7 of the Findings of Fact
6 constitute a violation of A.R.S. § 32-1932(A)(9) in that Respondent failed to maintain effective controls
7 against the diversion of precursor chemicals to unauthorized persons or entities.

8 3. The conduct and circumstances described in paragraphs 3, 5, 6, and 7 of the Findings of Fact
9 constitutes a violation of A.R.S. § 32-1932 (A)(10) in that Respondent violated state or federal reporting
10 or record keeping requirements on transactions relating to precursor chemicals.

11 **ORDER**
12 **III**

13 Based on the Findings of Fact and Conclusions of Law, it is ordered that the Non-Prescription
14 Retail Permit Number 4132 issued to HARRY JOO CHUNG is hereby REVOKED and a civil penalty
15 of one thousand (\$1,000.00) is imposed for each of the following violations:

16 1. One thousand dollars (\$1,000.00) for the illegal sale of precursor chemicals on January 5, 2001
17 to Ron Swanson of the Glendale Police Department.

18 2. One thousand dollars (\$1,000.00) for the illegal sale of precursor chemicals on February 13,
19 2001 to Ron Swanson of the Glendale Police Department.

20 3. One thousand dollars (\$1,000.00) for each of the eight (8) repackaged boxes of precursor
21 chemicals found pursuant to the search warrant served on December 10, 2002, for a total of eight
22 thousand dollars (\$8,000.00).

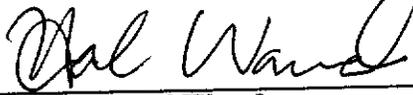
23 4. One thousand dollars (\$1,000.00) for the box of Good Sense Nasal Decongestant sixty (60)
24 milligram tablets, quantity of forty eight (48), that had been opened, additional blister packs of
25 pseudoephedrine added, re-labeled with the quantity of one hundred and forty four (144) tablets, and
26 resealed with tape by the Respondent, in violation of R4-23-603 (D)(1)(2).

1 DATED this 8th day of September, 2003

ARIZONA STATE BOARD OF PHARMACY

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SEAL

By 
Hal Wand
Executive Director

Copies of the foregoing Findings
of Fact, Conclusions of Law and
Board Order sent by Certified Mail
this 9th day of September, 2003 to:

HARRY JOO CHUNG
2810 E. Bell Road
Mesa, AZ 85205

and

S. Magnus Erikksen Esq.
C/O Philips & Associates
3030 N. 3rd Street, Suite 1100
Phoenix, AZ 85012

and by Courier Mail to:

Roberto Pulver
Assistant Attorney General
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007
Attorney for the State

and

Victoria Mangiapane
Assistant Attorney General
Solicitor General's Office
1275 W. Washington
Phoenix, AZ 85007