

1 2004-07-H

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

3 In the Matter of:

4 ALBERTSON'S INC. )  
5 DBA ALBERTSON'S #983 )  
6 Holder of Non-Prescription Drug )  
7 Permit No. 8342 )  
8 In the State of Arizona, )  
9 Respondent )

Case Number 2004-07-PHR

**CONSENT AGREEMENT AND ORDER  
FOR PROBATION**

9 TO: ALBERTSON'S INC.  
10 DBA ALBERTSON'S #983  
11 11475 E. Via Linda  
12 Scottsdale, Arizona 85259

12 **RECITALS**

13 In the interest of a prompt and judicious settlement of this case, consistent with the public interest,  
14 statutory requirements and responsibilities of the Arizona State Board of Pharmacy ("Board"), and under  
15 A.R.S. § 32-1928, *et seq.* and 41-1092(F)(5), ALBERTSON'S INC., DBA ALBERTSON'S #983, holder  
16 of permit number 8342 to sell, retail, stock, expose or offer for sale at retail non-prescription drugs in the  
17 original package in the State of Arizona ("Respondent"), and the Board enter into the following Recitals,  
18 Finding of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this  
19 matter.

20 1. Respondent has read and understands this Consent Agreement as set forth herein, and has  
21 had the opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters  
22 into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative  
23 hearing.

24 2. Respondent understands that it has a right to a public administrative hearing concerning the  
25 above-captioned matter, at which administrative hearing it could present evidence and cross-examine  
26 witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all

1 rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal,  
2 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 3. Respondent understands that this Consent Agreement or any part of the agreement may  
5 be considered in any future disciplinary action against it.

6 4. Respondent understands that this Consent Agreement does not constitute a dismissal or  
7 resolution of other matters currently pending before the Board, if any, and does not constitute any waiver,  
8 express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future  
9 investigation, action or proceeding. Respondent understands that acceptance of this Consent Agreement  
10 does not preclude any other agency, subdivision or officer of this state from instituting any other civil or  
11 criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

12 5. Respondent understands that this Consent Agreement deals with Board Investigation Case  
13 No. 2004-07 involving allegations of misconduct against Respondent. The investigation into these  
14 allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

15 6. All admissions made by Respondent in this Consent Agreement are made solely for the final  
16 disposition of this matter, and any related administrative proceedings or civil litigation involving the Board  
17 and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are not  
18 intended for any other use, such as in the context of another regulatory agency proceedings, or civil or  
19 criminal proceedings, whether in the State of Arizona or in any other state or federal court.

20 7. Respondent acknowledges and agrees that, upon signing this Consent Agreement and  
21 returning this document to the Board's Executive Director, Respondent may not revoke its acceptance  
22 of the Consent Agreement or make any modifications to the document, regardless of whether the Consent  
23 Agreement has been issued by the Board's Executive Director. Any modification to this original  
24 document is ineffective and void unless mutually approved by the parties in writing.

25 8. Respondent understands that the foregoing Consent Agreement shall not become effective  
26 unless and until adopted by the Board and signed by its Executive Director.

1 9. Respondent understands and agrees that if the Board does not adopt this Consent  
2 Agreement, it will not assert as a defense that the Board's consideration of this Consent Agreement  
3 constitutes bias, prejudice, prejudgment or other similar defense.

4 10. Respondent understands that this Consent Agreement is a public record that may be  
5 publicly disseminated as a formal action of the Board, and shall be reported as required by law to the  
6 National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

7 11. Respondent understands that any violation of this Consent Agreement constitutes  
8 unprofessional conduct under A.R.S. §32-1927(A)(17) ( the licensee violated a formal order, terms of  
9 probation, a consent agreement or a stipulation issued or entered into by the board or its executive  
10 director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

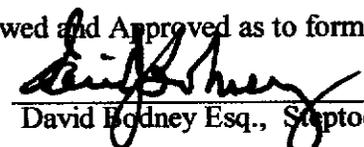
11 ALBERTSON'S INC.  
12 DBA ALBERTSON'S #983

13  
14 DATED: 4/21/04

15 By 

16 **Charles F. Cole**  
17 **Group Vice President**  
18 **Litigation and Regulatory Affairs**

19 Reviewed and Approved as to form:

20 By:   
21 David Bodney Esq., Stoptoe & Johnson, LLP

22 Attorney for Respondent

23 **FINDINGS OF FACT**

24 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the  
25 matters described therein. Respondent admits to the following Finding of Fact:

26 12. Under A.R.S. § 32-1901, *et seq.*, the Board possesses jurisdiction over the subject  
matter and over Respondent as a permittee of the Board.

13. The Board is the duly constituted authority for the regulation and control of the  
practice of pharmacy and supplying of drugs in the State of Arizona.

14. Respondent is the holder of Permit No. 8342 to sell, retail, stock, expose or offer for

1 sale at retail non-prescription drugs in the original package in the State of Arizona.

2 15. On or about May 16, 2000, Respondent offered for sale to the public fifty-eight (58)  
3 non-prescription drug items in the non-prescription drug department of the store that had exceeded the  
4 manufacturer's expiration date.

5 16. On or about May 21, 2001, Respondent offered for sale to the public one hundred and  
6 thirty-nine (139) non-prescription drug items in the non-prescription drug department of the store that  
7 had exceeded the manufacturer's expiration date.

8 17. On May 11, 2001, Respondent entered into a Consent to Entry of Order 2001-07-  
9 PHR, whereby Respondent was placed on probation for one year and a thirteen thousand nine hundred  
10 dollar (\$13, 900.00) fine was imposed.

11 18. On or about March 14, 2003, Respondent offered for sale to the public twenty (20)  
12 non-prescription drug items as listed in APPENDIX A in the non-prescription drug department of the  
13 store that had exceeded the manufacturer's expiration date.

14 19. On or about February 5, 2004, Respondent offered for sale to the public ninety-one  
15 (91) non-prescription drug items as listed in APPENDIX B in the non-prescription drug department  
16 of the store that had exceeded the manufacturer's expiration date.

17 20. The conduct described in paragraphs fifteen (15) through seventeen (17) of the  
18 Findings of Fact above can be considered as aggravating circumstances in determining a penalty if the  
19 Board finds the Respondent guilty of the conduct alleged in paragraphs eighteen (18) and nineteen  
20 (19).

#### 21 CONCLUSIONS OF LAW

22 21. Under A.R.S. § 32-1901, *et seq.*, the Board is the duly constituted authority for the  
23 regulation and control of the practice of pharmacy and supplying of drugs in the State of Arizona.

24 22. The conduct and circumstances described in paragraphs eighteen (18) and nineteen (19)  
25 constitute violations of A.A.C. § R4-23-603(F)(2) to wit:

26 A.C.C. R4-23-603(F)(2) A non-prescription drug permittee shall:

1 2. Develop and implement a program to ensure that :

- 2 *a. Any expiration-dated drug is reviewed regularly;*  
3 *b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or*  
4 *does not comply with federal law, is moved to a quarantine area and not sold*  
5 *or distributed; and*  
6 *c. Any quarantined drug is destroyed or returned to its source of supply.*

7 23. The conduct and circumstances described in paragraphs eighteen (18) and nineteen (19)  
8 constitute grounds for discipline under A.R.S. § 32-1932(A)(1) to wit:

9 *A.R.S. § 32-1932(A): The board after notice and hearing, may impose a civil penalty*  
10 *of not more than one thousand dollars for each offense and deny, suspend or revoke*  
11 *any permit issued under this chapter or place a permittee on probation if at any time*  
12 *any of the following occurs:*

- 13 *(1) On examination or inspection it is found that the place is not being*  
14 *conducted according to the federal act and this chapter relating to the*  
15 *manufacturing, sale and distribution of drugs, devices, poisons or hazardous*  
16 *substances.*

17 **ORDER**

18 Based upon the above Findings of Fact and Conclusions of Law and under the authority granted  
19 to the Board by A.R.S. § 32-1928, 41-1092.07(F)(5), and A.A.C. R4-23-104(G),

20 **IT IS HEREBY ORDERED** that:

21 24. Permit No. 8342 which was issued to Respondent to sell, retail, stock, expose or offer for  
22 sale at retail non-prescription drugs in the original package in the State of Arizona, is hereby placed on  
23 **PROBATION** for six (6) months upon adoption of this Consent Agreement by the Board. The  
24 **PROBATION** is subject to the following conditions:

25 25. Respondent shall pay a civil penalty of three hundred dollars (\$300.00) for each of the  
26 ninety-seven (97) violations itemized in APPENDIX B, for a total of twenty seven thousand three hundred  
dollars (\$27,300.00) by certified check or cashier's check within 60 days of the date of this order.

27 26. Respondent shall obey all federal and state laws and rules governing the selling, stocking,  
28 exposing or offering for sale at retail non-prescription drugs.

29 27. Respondent shall pay all fees to maintain Permit No. 8342 throughout the term of  
30 probation.



1 ORIGINAL of the foregoing  
filed this 12<sup>th</sup> day of May,  
2 2004, with:

3 Arizona State Board of Pharmacy  
4 4425 W. Olive Avenue, Suite 140  
Glendale, Arizona 85302

5 COPY of the foregoing mailed by  
US Certified Mail #  
6 this 18<sup>th</sup> day of May, 2004, to:

7 Richard Mazzone, RPh  
C/O ALBERTSON'S INC.  
8 DBA ALBERTSON'S #983  
15100 N. 90<sup>th</sup> Street  
9 Scottsdale, Arizona 85260

10 COPY of the foregoing mailed  
this 18<sup>th</sup> day of May, 2004, to:

11  
12 ***David Bodney Esq.,***  
***C/O Steptoe & Johnson LLP***  
13 ***201 E. Washington Street, 16<sup>th</sup> Floor***  
***Phoenix, AZ 85004***

14  
15 Roberto Pulver  
Assistant Attorney General  
1275 W. Washington, CIV/LES  
16 Phoenix, Arizona 85007  
Attorney for the State

17  
18 \_\_\_\_\_  
19 Board Operations

20  
21  
22  
23  
24  
25  
26

ARIZONA STATE BOARD OF PHARMACY

STEP TOE & JOHNSON LLP

ATTORNEYS AT LAW

04 APR 30 AM 8:54

David J. Bodney  
Tel 602.257.5212  
Fax 602.452.0910  
dbodney@steptoe.com

Collier Center  
201 East Washington Street  
Suite 1600  
Phoenix, AZ 85004-2382  
Tel 602.257.5200  
Fax 602.257.5299  
steptoe.com

April 28, 2004

Hal Wand  
Deputy Director  
Arizona State Board of Pharmacy  
P. O. Box 6389  
Glendale, Arizona 85312-6389

RE: Albertsons, Inc. / Arizona State Board of Pharmacy (Case No. 2004-07-PHR)

Dear Mr. Wand:

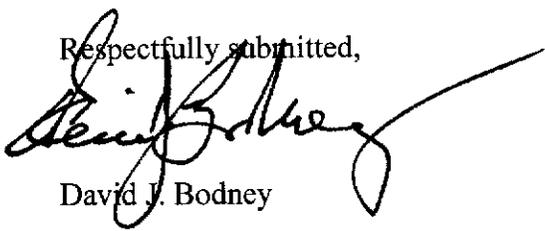
Following up on our recent conversations, I enclose for your review and signature the original Consent Agreement and Order for Probation (the "Agreement"), signed by my client on April 21, 2004, in the above matter. The Agreement also bears my signature, as having reviewed and approved it as to form.

If you find this document to be in order, as I trust you will, please send me a fully-executed copy of the Agreement and Order for our files.

Of course, if you have any questions or concerns about the enclosed Agreement, please feel free to call.

Thank you.

Respectfully submitted,



David J. Bodney

DJB/aw  
Enclosure

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Richard Mazzone Rph  
C/O Albertson's INC.  
15100 N 90<sup>th</sup> Street  
Scottsdale AZ 85260**

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  
 Addressee
- B. Received by (Printed Name) C. Date of Delivery
- DANIEL SANDERS 4-7-04
- D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type
- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number

(Transfer from service label)

7000 11670 0006 4396 2740

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540



May 21, 2004

Hal Wand  
Deputy Director  
Arizona State Board of Pharmacy  
PO Box 6389  
Glendale, AZ 85312-6389

*Handwritten:*  
OK  
5/24/03

RE: Albertsons, Inc.  
Case No. 2004-07-PHR - P08342

Dear Mr. Wand:

Enclosed is Albertsons check no. 2177420 in the amount of \$27,300.00 as payment of the fine in the referenced matter. Thank you for your assistance and cooperation in resolving this matter.

Sincerely,

ALBERTSONS, INC.

Toni A. Orth, CLA  
Certified Legal Assistant

cc: Bruce Gordon  
Rich Mazzoni  
David Bodney

ASBP RECEIPT INFORMATION (BY: \_\_\_\_\_)  
PAID BY: CASH CHECK 8141 5/3/04  
AMOUNT: \$ 27,300<sup>00</sup>  
FOR: Civil Penalty  
Receipt date: May 24, 2004  
Receipt No: 4219

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Bodney Esq.  
 C/O Steptoe & Johnson LLP  
 201 E. Washington St. 16<sup>th</sup> Floor  
 Phoenix AZ 85004

2. Article Number (Copy from service label)

7000 1670 0006 4396 2658

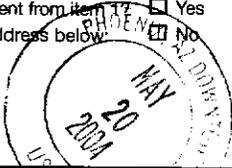
PS Form 3811, July 1999

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) **Jay Hopkins** B. Date of Delivery

C. Signature **Dr. #32 Hot Shot Delivery**  
 Agent  
 Addressee

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No



3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7000 1670 0006 4396 2658

Domestic Return Receipt 102595-00-M-0952

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Richard Mazzoni, Rph  
 C/O Albertson's #983  
 15100 N 90<sup>th</sup> Street  
 Scottsdale AZ 85260

2. Article Number (Copy from service label)

7000 1670 0006 4396 2610

PS Form 3811, July 1999

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) **DANIEL SANDERS** B. Date of Delivery **5-19-04**

C. Signature **Daniel Sanders**  
 Agent  
 Addressee

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7000 1670 0006 4396 2610

Domestic Return Receipt 102595-00-M-0952