

1 2004-23-H

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

3 In the Matter of:

4 Kino Hospital Pharmacy)
5 Holder of Pharmacy Permit No. 125)
6 In the State of Arizona,)
7 Respondent)

Case Number 2004-23-PHR
**CONSENT AGREEMENT AND ORDER
FOR SURRENDER OF PERMIT**

8 TO: Enrique Serna
9 130 W. Congress, 10th Floor
10 Tucson, Arizona 85701

11 **RECITALS**

12 In the interest of a prompt and judicious settlement of this case, consistent with the public interest,
13 statutory requirements and responsibilities of the Arizona State Board of Pharmacy ("Board"), and under
14 A.R.S. § 32-1932, *et seq.* and 41-1092.07(F)(5), Kino Hospital Pharmacy, holder of permit number 125
15 which allows the holder to operate a pharmacy in the State of Arizona ("Respondent"), and the Board
16 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent
Agreement") as the final disposition of this matter.

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

21 2. Respondent understands that it has a right to a public administrative hearing concerning the
22 above-captioned matter, at which administrative hearing it could present evidence and cross-examine
23 witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all
24 rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal,
25 judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

26 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

1 3. Respondent understands that this Consent Agreement or any part of the agreement may
2 be considered in any future disciplinary action against it.

3 4. This Consent Agreement constitutes a dismissal and resolution of Board Investigative
4 Case No. 2004-23-PHR involving allegations against Respondent, and any other allegations or matters
5 relating to Respondent and its operation of Kino Hospital Pharmacy under Permit No. 125. The
6 investigation into the allegations against Respondent set forth herein shall be concluded upon the Board's
7 adoption of this Consent Agreement. This Consent Agreement does not constitute any waiver, express
8 or implied, of the Board's statutory authority or jurisdiction regarding any future investigation, action or
9 proceeding. Respondent understands that acceptance of this Consent Agreement does not preclude any
10 other agency, subdivision or officer of this state from instituting any other civil or criminal proceedings
11 with respect to the conduct that is the subject of this Consent Agreement.

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

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

22 7. Respondent understands that the foregoing Consent Agreement shall not become effective
23 unless and until adopted by the Board and signed by its Executive Director.

24 8. Respondent understands and agrees that if the Board does not adopt this Consent
25 Agreement, it will not assert as a defense that the Board's consideration of this Consent Agreement
26 constitutes bias, prejudice, prejudgment or other similar defenses.

1 15. On April 26, 2004, an employee of Respondent notified the Executive Director of
2 the Board that shortages of the controlled substances hydrocodone and diazepam had been discovered
3 at Kino Hospital Pharmacy.

4 16. From April 28, 2004 to June 11, 2004, a Board Compliance Officer conducted an
5 audit of selected controlled substances at Kino Hospital Pharmacy. (see **Exhibit A**)

6 17. From May 1, 2003 to May 1, 2004, Respondent failed to account for 35, 772 dosage
7 units of hydrocodone with APAP 5/500 tablets, a Class III Controlled Substance as defined in A.R.S.
8 § 36-2514 and 21 C.F.R. § 1308.13, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

9 18. From May 1, 2003 to May 1, 2004, Respondent failed to account for 147,006 dosage
10 units of hydrocodone with APAP 7.5/500 tablets, a Class III Controlled Substance as defined in
11 A.R.S. § 36-2514 and 21 C.F.R. § 1308.13, in violation of A.R.S. § 36-2523 and 21 C.F.R. §
12 1304.04.

13 19. From May 1, 2003 to May 1, 2004, Respondent failed to account for 33 dosage units
14 of diazepam 2 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and 21
15 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

16 20. From May 1, 2003 to May 1, 2004, Respondent failed to account for 13, 260 dosage
17 units of diazepam 10 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and
18 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

19 21. From May 1, 2003 to May 1, 2004, Respondent failed to account for 2,060 dosage
20 units of alprazolom 0.5mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515
21 and 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

22 22. From May 1, 2003 to May 1, 2004, Respondent failed to account for 6,916 dosage
23 units of alprazolam 1mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and
24 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

25 23. From May 1, 2003 to May 1, 2004, Respondent failed to account for 4,726 dosage
26 units of phenobarbital 60 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515

1 and 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

2 24. From May 1, 2003 to May 1, 2004, Respondent failed to account for 211 dosage
3 units of phentermine 15 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515
4 and 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

5 25. From May 1, 2003 to May 1, 2004, Respondent failed to account for 3,220 dosage
6 units of phentermine 30 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515
7 and 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

8 26. From May 1, 2003 to May 1, 2004, Respondent failed to account for 107 dosage
9 units of Ambien 5 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and
10 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

11 27. From May 1, 2003 to May 1, 2004, Respondent failed to account for 16 dosage units
12 of Ambien 10mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and 21
13 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

14 28. From May 1, 2003 to May 1, 2004, Respondent failed to account for 60 ml. of
15 injectable morphine 15mg./ml., a Class II Controlled Substance as defined in A.R.S. § 36-2513 and
16 21 C.F.R. § 1308.12, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

17 29. From May 1, 2003 to May 1, 2004, Respondent failed to account for 60 dosage units
18 of Oxycontin 10 mg. tablets, a Class II Controlled Substance as defined in A.R.S. § 36-2513 and 21
19 C.F.R. § 1308.12, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

20 30. From May 1, 2003 to May 1, 2004, Respondent failed to account for 24 dosage units
21 of methadone 10 mg. tablets, a Class II Controlled Substance as defined in A.R.S. § 36-2513 and 21
22 C.F.R. § 1308.12, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

23 31. From May 1, 2003 to May 1, 2004, failed to account for 25 dosage units of
24 clonazepam 7.5 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and 21
25 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

26 32. From May 1, 2003 to May 1, 2004, Respondent, failed to account for 118 dosage

1 units of clonazepam 1 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515
2 and 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

3 33. From May 1, 2003 to May 1, 2004, Respondent failed to account for 9,482 dosage
4 units of clonazepam 2 mg. tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515
5 and 21 C.F.R. § 1308.14, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

6 34. From May 1, 2003 to May 1, 2004, Respondent, failed to account for 72 dosage units
7 of Vicoprofen 7.5 mg. tablets, a Class III Controlled Substance as defined in A.R.S. § 36-2514 and 21
8 C.F.R. § 1308.13, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

9 35. From May 1, 2003 to May 1, 2004, Respondent failed to account for 436 dosage
10 units of MS Contin 30 mg. tablets, a Class II Controlled Substance as defined in A.R.S. § 36-2513
11 and 21 C.F.R. § 1308.12, in violation of A.R.S. § 36-2523 and 21 C.F.R. § 1304.04.

12 **CONCLUSIONS OF LAW**

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

15 37. The conduct and circumstances described in paragraphs seventeen (17) through thirty-five
16 (35) constitute violations of A.R.S. §§ 32-1932(A)(1) to wit:

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

20 38. Under A.R.S. § 1932(A)(1), the Board is allowed to impose a civil penalty of not more
21 than one thousand dollars (\$1,000.00) for each offense and deny, suspend or revoke any permit issued
22 under this chapter or place a permittee on probation if at any time any of the following occurs:

23 On examination or inspection it is found that the place is not being conducted according
24 to the federal act and this chapter relating to the manufacturing, sale and distribution of
25 drugs, devices, poisons or hazardous substances.
26

04 OCT 21 PM 1:32
ARIZONA BOARD OF PHARMACY
PHARMACY DIVISION

ORDER

Based upon the above Findings of Fact and Conclusions of Law and under the authority granted to the Board by A.R.S. § 32-1932, 41-1092.07(F)(5), and A.A.C. R4-23-122(C),

IT IS HEREBY ORDERED that:

39. Respondent will voluntarily surrender, within ten (10) days of the effective date of this Consent Agreement, Permit No. 125, which was issued to Respondent to operate a pharmacy in the State of Arizona.

40. Respondent shall pay a civil penalty of fifty cents (\$0.50) for each of the 223, 604 controlled substance dosage units that Respondent failed to account for as required for a total of one hundred eleven thousand, eight hundred and two dollars (\$111,802) to the Board within ninety (90) days of the effective date of this Consent Agreement by certified check or cashier's check.

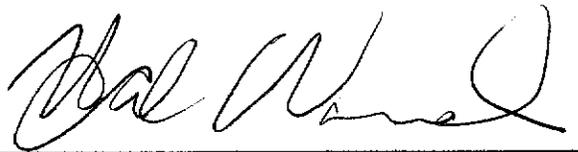
41. Upon the Respondent's application for a pharmacy permit at any time after the effective date of this Consent Agreement, the board may issue the permit subject to such conditions as the Board deems appropriate regarding the security of controlled substances.

42. Case No. 2004-23-PHR, and any other allegations or matters relating to the activities of Respondent in its operation of Kino Hospital Pharmacy under Permit No. 125, are hereby dismissed and resolved.

DATED AND EFFECTIVE this 18th day of November, 2004.

ARIZONA STATE BOARD OF PHARMACY

SEAL

By 
Hal Wand, Executive Director
Arizona State Board of Pharmacy

1 ORIGINAL of the foregoing
2 filed this 18th day of November,
3 2004, with:

4 Arizona State Board of Pharmacy
5 4425 W. Olive Avenue, Suite 140
6 Glendale, Arizona 85302

7 COPY of the foregoing mailed by
8 US Certified Mail this 19th day of November, 2004, to:

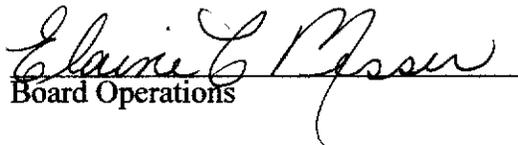
9 Enrique Serna
10 130 W. Congress, 10th Floor
11 Tucson, Arizona 85701

12 and

13 Roger N. Morris, RPh, Esq.
14 for Kino Hospital Pharmacy
15 C/O Quarles & Brady, Streich Lang
16 One Renaissance Square
17 Two North Central Avenue
18 Phoenix, Arizona 85004-2391

19 and

20 Roberto Pulver
21 Assistant Attorney General
22 1275 W. Washington, CIV/LES
23 Phoenix, Arizona 85007
24 Attorney for the State

25 
26 Board Operations

Quarles & Brady
Streich Lang LLP

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ARIZONA STATE BOARD
OF PHARMACY
JAN 27 2005

One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in
Phoenix and Tucson, Arizona
Naples and Boca Raton, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

Writer's Direct Dial: 602.229.5269
E-Mail: rmorris@quarles.com

January 27, 2005

Hai Wand, Jr., RPh.
Executive Director
Arizona State Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

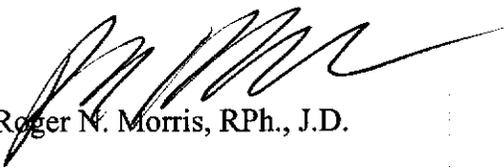
Re: Kino Hospital - Case No. 2004-23-PHR

Dear Hal:

Enclosed is a warrant in the amount of \$111,802.00 in payment of the fine regarding the investigation of Kino Hospital. I appreciate your cooperation in this matter.

If you have any questions, please contact me.

Very truly yours,


Roger N. Morris, RPh., J.D.

RNM:krb
Enclosure

Cc: Paula Ferrara
QBPHX\112936.00002\1879891.1

RECEIPT INFORMATION (BY:

PAID BY: CASH CHECK # 8014 1-24-05
AMOUNT: \$ 111,802.00
FOR: Civil Penalties
Receipt date: 1-28-05
Receipt No: 1850



RECEIPT FOR PHARMACY FEES

HOSPITAL

EFFECTIVE
10/2/1953

PERMIT NO.
125

EXPIRES
10/31/2005

Receipt date: 1/28/2005
Receipt No. 1850
Receipt Amount: \$111,802.00

OWNER & MAILING ADDRESS:

Pima County
2800 E Ajo Way
Tucson, AZ 85713

LOCATION NAME & ADDRESS:

Kino Community Hospital Pharmacy
2800 E Ajo Way
Tucson, AZ 85713

CIVIL PENALTY - 2004-23-PHR

Arizona State Board of Pharmacy
4425 W. Olive Ave. Suite #140
Glendale, AZ 85203
PHONE: (623) 463-2727 FAX: (623) 934-0853