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**BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

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In the Matter of:	)	
	)	Investigation Case Number 05-0007-PHR
excelleRx, Inc.	)	
Holder of Permit No. 3674	)	<b>CONSENT AGREEMENT AND ORDER</b>
to Operate a Pharmacy	)	<b>FOR STAYED PROBATION</b>
In the State of Arizona,	)	
	)	
Respondent	)	

**CONSENT AGREEMENT**

**RECITALS**

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5), Robert Keiser, representing excelleRx, Inc., ("Respondent"), holder of pharmacy permit number 3674 to operate a pharmacy in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that it has a right to a public administrative hearing concerning the above-captioned matter, at which hearing it could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all rights to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, 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. Respondent understand that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against it.

1           5.       Respondent understands this Consent Agreement deals with Board Investigation Case  
2 No. 05-0007-PHR involving allegations that it failed to comply with prescription record-keeping  
3 requirements. The investigation into these allegations against Respondent shall be concluded upon  
4 the Board's adoption of this Consent Agreement.

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

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

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

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

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

1 and effect.

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

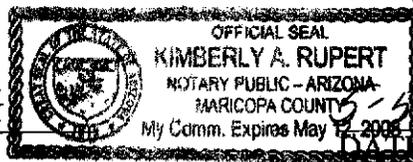
5 12. Respondent understands that this Consent Agreement is a public record that may be  
6 publicly disseminated as a formal action of the Board and may be reported as required by law to  
7 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

8 REVIEWED AND ACCEPTED BY:

9 Robert Keiser, R.Ph.  
10 Robert Keiser, R. Ph.  
11 ExcelleRx, Inc.

May 5, 2005  
DATE

12 Kimberly A. Rupert  
13 Notary Public



14 **FINDINGS OF FACT**

15 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the  
16 matters described herein. Respondent admits to the following Findings of Fact:

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

19 14. The Board possesses jurisdiction over this matter and over Respondent as a  
20 permittee of the Board.

21 15. Respondent is the holder of Pharmacy Permit No. 3674 which permits it to operate  
22 a pharmacy in the State of Arizona.

23 16. On January 4, 2005, a Board Compliance Officer determined during a compliance  
24 inspection that Respondent failed to have its pharmacy personnel renew its pharmacy permit as  
25 required by A.R.S. § 32-1931(A). (See Exhibit A - January 4, 2005 Inspection Report )

26 17. On January 4, 2005, a Board Compliance Officer determined during a compliance

1 inspection that Respondent failed to have its pharmacy personnel record all the required information  
2 on the annual controlled substance inventory as required by A.A.C. R4-23-1003(A)(1).  
3 ( see Exhibit A - January 4, 2005 Inspection Report )

4 **CONCLUSIONS OF LAW**

5 18. The Board is the duly constituted authority for the regulation and control of the practice  
6 of pharmacy in the State of Arizona, under A.R.S. § 32-1901, *et seq.*

7 19. The Board possesses jurisdiction over the subject matter and Respondent as a  
8 permittee of the Board, under A.R.S. § 32-1932.

9 20. The conduct and circumstances described in paragraphs 15 through 17 above constitute  
10 violations of A.A.C. R4-23-608 (B) (1) to wit:

11 B. Responsibility of ownership and management. The owner and  
12 management of a pharmacy shall:

13 1. Ensure that pharmacists, interns, and other pharmacy employees comply with state  
14 and federal laws and administrative rules;

15 21. The conduct and circumstances described in paragraphs 15 through 17 above  
16 constitutes grounds for disciplinary action under A.R.S. § 32-1932 (A) (1) to wit :

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

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

22 **ORDER**

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

25 **IT IS HEREBY ORDERED that :**

26 22. Pharmacy permit No. 3674, which was issued to Respondent and allows it

1 to operate a pharmacy in the State of Arizona, is hereby issued **PROBATION**, which is **STAYED**,  
 2 for one year from the effective date of this Order, and Respondent shall be required to submit to two  
 3 additional pharmacy inspections within that year and shall pay the costs of these inspections.  
 4 Respondent shall pay the Board its inspection costs within 30 days from the date the Board presents  
 5 Respondent with an inspection invoice(s).

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

8 DATED and EFFECTIVE this 16<sup>th</sup> day of June, 2005

ARIZONA STATE BOARD OF PHARMACY

*[Signature]*

Hal Wand, R.Ph.  
 Executive Director  
 State Board of Pharmacy

**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:

Robert Keiser  
 C/O excelleRx, Inc.  
 51 W 3<sup>rd</sup> Street  
 Tempe AZ 85281

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

C. Signature

*[Signature]*

B. Date of Delivery

7/27/06

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

JUN 27 8:30 AM '06  
 ARIZONA STATE BOARD OF PHARMACY

4. Restricted Delivery? (Extra Fee)
- Insured Mail
  - Registered
  - Certified Mail
  - Service Type
  - Return Receipt for Merchandise
  - Express Mail
  - C.O.D.
  - Yes

2. Article Number (Copy from service label)  
 7000 1670 0006 4393 3627  
 PS Form 3811, July 1999 Domestic Return Receipt

1 ORIGINAL of the foregoing, fully executed,  
2 filed this 27<sup>th</sup> day of June, 2005, with:

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

6 Copy of the foregoing sent  
7 via Certified US mail this 27<sup>th</sup> day of  
8 June, 2005 to:

9 Robert Keiser  
10 C/O excelleRx, Inc.  
11 51 W. 3<sup>rd</sup> Street, Suite 501  
12 Tempe, AZ 85281

13 and

14 Copy or the foregoing mailed  
15 this 27<sup>th</sup> day of June, 2005 to:

16 Roberto Pulver  
17 Assistant Attorney General  
18 1275 W. Washington, CIV/LES  
19 Phoenix, Arizona 85007  
20 Attorney for the State

21 By: \_\_\_\_\_

22 #444774 LES#05-0432

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**EXHIBIT "A"**

ExcellRx  
 511 W 3rd  
 Tempe, AZ 85281  
 Y03674 exp 10-31-04 \*  
 DEA BE8625747 exp 8-31-06

excellerx Inc. BE8625747  
 51 W. Third St. Suite 501, Tempe, AZ 85281 877-882-7820  
 Rx [redacted] Ref# PA2716763 Dr. [redacted]  
 9045 West Athens Str. Sun City, AZ 85382  
 Wrt: 12/30/2004 Disp: 1/4/2005 Pharmacist: ARC  
 apply 1ml to inner wrist or other hairless area  
 every 4-6 hours as needed for nausea &  
 vomiting (do not refill e-box med)  
**2 ABHR 1/25/1/10 GEL**  
 Sub for: Not Available Compound NDC 7777911111  
 Refills: 0.3 Discard After: 4/4/2005

PIC: Robert Keiser LICENSE #: 14273

(Attach list of Personnel) EXP DATE: 10-05 LIMITED SERVICE \_\_\_\_\_

PREVIOUS INSPECTION COMMENTS: \_\_\_\_\_

1. Licenses / Permits	5. Rx Survey / Transfers	9. C. S. Inventory / Audit / DEA 41
2. Pharmacy Area Security	6. Generic Substitution	10. CPHT's / Technician Manual
3. Sanitation/Outdates/Equipment	7. LTCF / Assisted Living	11. Prescription Labeling / Packaging
4. Counseling / Confidentiality	8. Computer Requirements	12. Schedule V Register

# Rx's/Week 210 RPh Hours/Week 24 Rx's/Hour 8.75  
 Sterile Products N/A CS Inventory 43004 Compounding ✓

Posted pharmacy permit expired <sup>ARS 32-1929</sup>  
 Cannot compound commercially <sup>32-1930</sup>  
 available products <sup>32-1933</sup>  
 No CII hardcopies onsite for <sup>ARS 32-1961(A)</sup>  
 dispensed CII's - kept in PA - must <sup>ARS 32-1964(A)</sup>  
 be kept onsite in AZ.  
 Prescriptions must be filed in <sup>ARS 32-1964(A)</sup>  
 numerical order.  
 Must keep daily RPh log or daily <sup>ARS 23-402(B)</sup>  
 printout with complete information  
 Annual inventory must indicate <sup>ARS 23-402(A)(1)</sup>  
 date taken, whether open or close,  
 signature of respons. ble pharmacist.

Cannot accept repackaged tablet <sup>ARS 32-1967</sup>  
 items from Memphis unless they  
 fully comply with FDA labeling  
 requirements / licensure.  
 CII's cannot partial fill from  
 same prescription from 2  
 different pharmacy locations  
 ZZZ's mostly complete <sup>CFR 1304.13</sup> in order  
 Only AZ licensed pharmacists  
 can do prescription verification  
 for meds dispensed from AZ  
 location. <sup>ARS 23-402(A)(5)</sup>  
 CS Audit Satisfactory

Narda Antoloff  
 Compliance Officer

Robert Keiser, RPh  
 Pharmacist