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7 Attorneys for the Arizona State Board of Pharmacy

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

9  
10 In the Matter of

11 **DENISE GARCIA,**  
12 Holder of License No. 247  
As a Pharmacy Technician  
13 In the State of Arizona

Board Case No. 07-0054-PHR

**CONSENT AGREEMENT  
FOR PROBATION**

14  
15 **RECITALS**

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") and under A.R.S. §§ 32-1901, *et. seq.* and 41-1092.07(F)(5),  
19 Denise Garcia ("Respondent"), holder of Pharmacy Technician License Number 247 in  
20 the State of Arizona, and the Board enter into the following Recitals, Findings of Fact,  
21 Conclusions of Law and Order ("Consent Agreement") as a final disposition of this  
22 matter.

23 1. Respondent has read and understands this Consent Agreement and has had  
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
25 opportunity to discuss this Consent Agreement with an attorney.  
26

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

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

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

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3268 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

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

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

23          8.     All admissions made by the Respondent in this Consent Agreement are  
24 made solely for the final disposition of this matter, and any related administrative  
25 proceedings or civil litigation involving the Board and Respondent. Therefore, any  
26

1 admissions made by Respondent in this Consent Agreement are not intended for any  
2 other use, such as in the context of another regulatory agency's proceedings, or civil or  
3 criminal proceedings, whether in the State of Arizona or in any other state or federal  
4 court.

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

11 10. Respondent understands that the Consent Agreement shall not become  
12 effective unless and until adopted by the Board and signed by its Executive Director.

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

16 12. Respondent understands and agrees that if the Board does not adopt this  
17 Consent Agreement, she will not assert as a defense that the Board's consideration of this  
18 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

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

23 14. Respondent understands that any violation of this Consent Agreement  
24 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
25 1901.01(C)(16), -1927.01(A)(1).

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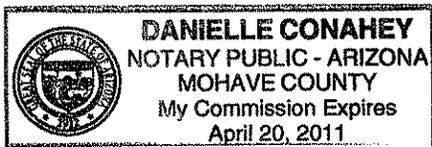
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ACCEPTED AND AGREED BY RESPONDENT

Denise Garcia  
Denise Garcia

Dated: July 20, 2007

Subscribed and sworn to before me in the County of Mohave, State of Arizona, this 20 day of July, 2007, by Denise Garcia.



Danielle Conahey  
NOTARY PUBLIC

My Commission expires: April 20, 2011

**FINDINGS OF FACT**

1. The Arizona State Board of Pharmacy ("Board") is the duly constituted authority for licensing and regulating the practice of pharmacy in the State of Arizona.

2. Denise Garcia ("Respondent") holds Arizona Pharmacy Technician License Number 247.

3. During all times relevant to this Complaint, Respondent was employed as a Pharmacy Technician at K-Mart Pharmacy #3375 ("Pharmacy") in Bullhead City, Arizona.

4. On or about November 17, 2006, the Board was notified that Respondent failed a random drug screen and tested positive for benzodiazepines and oxazepam.

5. According to Respondent, she had taken the medication from her husband who had a prescription.

**CONCLUSIONS OF LAW**

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq.*

1           2.     The Board may discipline a Pharmacy Technician who has engaged in  
2 unprofessional conduct. A.R.S. § 32-1927.01(A)(1).

3           3.     The conduct and circumstances described above constitutes unprofessional  
4 conduct pursuant to A.R.S. § 32-1901.01(C)(6) (“Committing a felony, whether or not  
5 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-  
6 related offense.”).

7           4.     The conduct and circumstances described above constitutes unprofessional  
8 conduct pursuant to A.R.S. § 32-1901.01(C)(8) (“Violating a federal or state law or  
9 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous  
10 drugs, controlled substances or precursor chemicals when determined by the board or by  
11 conviction in a federal or state court.”).

12          5.     The conduct and circumstances described above constitutes unprofessional  
13 conduct pursuant to A.R.S. § 32-1901.01(C)(15) (“Violating or attempting to violate,  
14 directly or indirectly, or assisting in or abetting in the violation of, or conspiring to  
15 violate, this chapter.”)

16          6.     A person may not knowingly acquire or possess a prescription-only drug  
17 unless the person obtains the prescription-only drug pursuant to a valid prescription of a  
18 licensed prescriber. A.R.S. § 13-3406(A)(1). Such illegal acquisition, possession or  
19 procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-  
20 3406(B)(1). “The sale or dispensing or prescribing of narcotic drugs, except for  
21 medicinal use and under strict surveillance, [involves] moral turpitude.” *Du Vall*, 49  
22 Ariz. at 337, 66 P.2d at 1030.

23     / / / /  
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1           6.     Respondent shall advise the Board immediately of any change in  
2 employment status throughout the term of her probation.

3           7.     Within ten days of the effective date of this order, Respondent shall furnish  
4 the Board with a list of all jurisdictions in which she maintains or has maintained  
5 licensure as a pharmacy technician with the registration numbers of said licenses.

6           8.     Respondent shall obey all federal and state laws, including all statutes and  
7 rules governing the practice as a pharmacy technician.

8           9.     When requested by the Board, Respondent shall appear in person before the  
9 board to respond to questions or concerns regarding her compliance with this Order.

10          10.    If Respondent violates this Order in any way or fails to fulfill or timely  
11 complete any of the requirements of this Order, the Board, after giving the Respondent  
12 notice and the opportunity to be heard, shall revoke Respondent's license. The issue at  
13 such a hearing will be limited solely to whether this Order has been violated.

14          11.    Respondent shall appear before the Board at a regularly scheduled Board  
15 meeting one year after the effective date of this Order to request that the probation  
16 imposed by this order be terminated. Respondent's failure to petition the Board to  
17 terminate the probation shall extend the probation period.

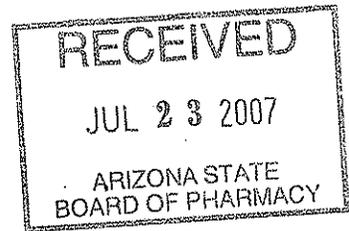
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DATED this 17 day of Sept., 2007.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By: Hal Wand  
HAL WAND, R.Ph.  
Executive Director



1 ORIGINAL OF THE FORGOING FILED  
2 this 17 day of Sept., 2007, with:

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

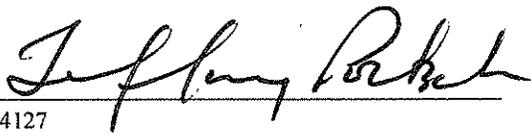
6 EXECUTED COPY OF THE FOREGOING MAILED  
7 BY CERTIFIED MAIL

8 this 17 day of Sept, 2007, to:

9 Denise Garcia  
10 3468 Tres Alamos Dr.  
11 Bullhead City, AZ 85442  
12 Respondent

13 EXECUTED COPY OF THE FOREGOING MAILED  
14 this 17 day of Sept., 2007, to:

15 Elizabeth A. Campbell  
16 Assistant Attorney General  
17 1275 W. Washington Street, CIV/LES  
18 Phoenix, Arizona 85007  
19 Attorneys for the State of Arizona

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