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BEFORE THE ARIZONA STATE BOARD OF PHARMACY

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10 In the Matter of

11 **THOMAS CASTANEDA**

Board Case No. 08-0049-PHR

12 Holder of License No. S006020
For the Practice of Pharmacy
13 In the State of Arizona

**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

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RECITALS

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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") under A.R.S. § 32-1901, *et. seq.*, Thomas Castaneda ("Respondent"), holder of Pharmacist License Number S006020 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.

1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he 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 him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3533 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. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, he may not
25 revoke his acceptance of the Consent Agreement or make any modifications to the
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1 document regardless of whether the Consent Agreement has been signed by the
2 Executive Director. Any modification to this original document is ineffective and void
3 unless mutually agreed by the parties in writing.

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

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

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

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

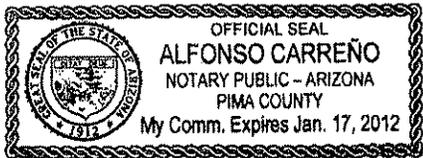
16 13. Respondent understands that any violation of this Consent Agreement
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
18 1901.01(B)(20), -1927(A)(1).

19 ACCEPTED AND AGREED BY RESPONDENT

20 *Thomas Castaneda*
21 Thomas Castaneda

Dated: 6-13-08

22 Subscribed and sworn to before me in the County of Pima, State of Arizona,
23 this 13 day of June, 2008, by Thomas Castaneda.



24 *Alfonso Carreño*
25 NOTARY PUBLIC

26 My Commission expires: Jan 17 2012

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FINDINGS OF FACT

- 1. The Board is the duly constituted authority for licensing and regulating the practice of pharmacy in the State of Arizona.
- 2. Respondent is the holder of license number S006020 to practice as a pharmacist in the State of Arizona.
- 3. During all times relevant to these Findings, Respondent worked as a pharmacist at Fry’s Pharmacy #17 in Tucson Arizona, Arizona (the “Pharmacy”).
- 4. In March 2008, the Board received information from the Pharmacy that Respondent had diverted promethazine with codeine syrup for his own personal use. Respondent has admitted to use of promethazine with codeine syrup.
- 5. Promethazine with codeine syrup is a Schedule V controlled substance. A.R.S. § 36-2516(1)(a).
- 6. On April 4, 2008, Respondent signed an agreement with Pharmacists Assisting Pharmacists of Arizona (“PAPA”).

CONCLUSIONS OF LAW

- 1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq.*
- 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist who has engaged in unprofessional conduct.
- 3. Respondent’s practice and conduct, as described in the Findings of Fact, constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (“Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy.”).
- 4. Respondent’s practice and conduct, as described in the Findings of Fact, constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) (“Knowingly

1 dispensing a drug without a valid prescription order as required pursuant to section 32-
2 1968, subsection A.”).

3 5. Respondent’s conduct as described in the Findings of Fact constitutes a
4 violation of A.R.S. § 32-1968(A) (“A prescription-only drug shall be dispensed only
5 under one of the following conditions: (1) By a medical practitioner in conformance with
6 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical
7 practitioner’s manual signature; (3) On an electronically transmitted prescription order
8 containing the prescribing medical practitioner’s electronic or digital signature that is
9 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription
10 order generated from electronic media containing the prescribing medical practitioner’s
11 electronic or manual signature. A prescription order that contains only an electronic
12 signature must be applied to paper that uses security features that will ensure the
13 prescription order is not subject to any form of copying or alteration; (5) On an oral
14 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By
15 refilling any written, electronically transmitted or oral prescription order if a refill is
16 authorized by the prescriber either in the original prescription order, by an electronically
17 transmitted refill order that is documented promptly and filed by the pharmacist or by an
18 oral refill order that is documented promptly and filed by the pharmacist.”)

19 6. The conduct and circumstances described in the Findings of Fact constitute
20 a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful
21 authority, the person knowingly controls another person’s property with the intent to
22 deprive that other person of such property). Theft is a crime of moral turpitude. *State v.*
23 *Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978)
24 (shoplifting involves moral turpitude and bears a close relationship to the common law
25 crime of larceny).

1 placed on **SUSPENSION** for a period of not less than two (2) months but not more than
2 eight (8) months. The period of suspension shall be determined by the Board after
3 reviewing (a) information from PAPA regarding Respondent's compliance with the terms
4 of the PAPA program/contract; (b) a progress report from Respondent's PAPA counselor,
5 which may be submitted in writing to the Board; and (c) any input from Respondent.
6 Thereafter, Respondent's license shall be placed on **PROBATION** for a period of at least
7 four (4) years, but not more than four and one-half (4.5) years from the final date of
8 suspension. Respondent's disciplinary period under the suspension and probation shall
9 not exceed five (5) years, unless Respondent affirmatively fails to petition the Board to
10 terminate the probation in accordance with paragraph 10 below.

11 The **SUSPENSION** and **PROBATION** are subject to the following conditions:

12 1. Respondent shall return his pharmacist license to the Board for the
13 period of suspension.

14 2. Respondent contacted PAPA on March 18, 2008 and signed a PAPA
15 contract on April 4, 2008. Failure to abide by the PAPA contract's terms is a
16 violation of this Order.

17 3. Respondent shall pay all necessary fees and complete all Continuing
18 Education requirements throughout the term of his probation to maintain
19 Pharmacist License No. S006020.

20 4. Respondent shall furnish all pharmacy employers with a copy of this
21 Board Order throughout the term of his probation.

22 5. Respondent shall not serve as a preceptor pharmacist or pharmacist
23 in charge throughout the term of his probation.

24 6. Respondent shall advise the Board immediately of any change in
25 pharmacy employment status throughout the term of his probation.
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7. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or has maintained licensure in the profession of pharmacy along with the registration numbers of said licenses.

8. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

9. If Respondent violates this order in any way or fails to fulfill the requirements of this order, the Board, after giving the respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against the Respondent's license. The issue at such a hearing will be limited solely to whether this order has been violated.

10. Respondent shall appear before the Board at a regularly scheduled Board meeting five years after the effective date of this Order to request that the probation imposed by this order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

DATED this 9th day of JULY, 2008.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

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

1 ORIGINAL OF THE FOREGOING FILED
this 10 day of July, 2008, with:

2 Arizona State Board of Pharmacy
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
BY FIRST-CLASS and CERTIFIED MAIL
6 this 10 day of July, 2008, to:

7 Thomas Castaneda
6135 E. House Rock Ln.
8 Tucson, Arizona 85706

9 EXECUTED COPY OF THE FOREGOING MAILED
this 10 day of July, 2008, to:

10 Elizabeth A. Campbell
Assistant Attorney General
11 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007



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