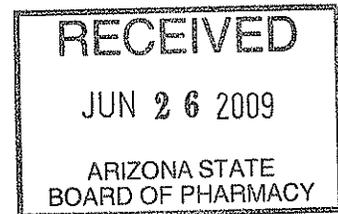


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Attorneys for the Arizona State Board of Pharmacy

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of	
JAMES MILOSHOFF,	Board Case No. 09-0037-PHR
Holder of License No. S016725 For the Practice of Pharmacy In the State of Arizona	CONSENT AGREEMENT AND ORDER FOR SUSPENSION AND PROBATION

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") under A.R.S. § 32-1901, *et. seq.*, James Miloshoff ("Respondent"), holder of Pharmacist License Number S016725 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 he has a right to a public administrative hearing concerning the above-captioned matter, at which hearing he could present evidence and cross examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all right 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 understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against him.

5. Respondent understands this Consent Agreement deals with Board Complaint No. 3628 involving allegations of unprofessional conduct against Respondent. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

7. Respondent also understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision, or officer of this

State from instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

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

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

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

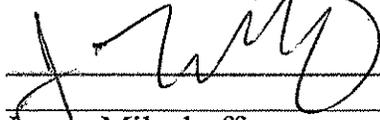
11. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

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

13. Respondent understands that any violation of this Consent

Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-1901.01(B)(20), -1927(A)(1).

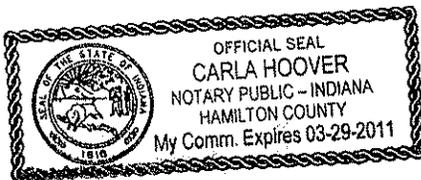
ACCEPTED AND AGREED BY RESPONDENT



James Miloshoff

D a t e d :

Subscribed and sworn to before me in the County of HAMILTON, State of INDIANA, this 23 day of June, 2009, by James Miloshoff.





NOTARY PUBLIC

My Commission expires: 3-29-11

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 S016725 to practice as a pharmacist in the State of Arizona.
3. During all times relevant to these Findings, Respondent worked as a pharmacist at Walgreens Pharmacy #1272 in Phoenix, Arizona (the "Pharmacy").
4. In December 2008, Respondent signed a written statement admitting that he stole food, drink, and non-food items from the Pharmacy. In addition, Respondent admitted in the written statement that he stole 2 oz. of Tussionex (cough syrup with hydrocodone) from the Pharmacy and dispensed unauthorized refills for controlled substances to himself.
5. A Board investigator found that Respondent had falsified numerous prescriptions and their refills for himself at the Pharmacy, including

prescriptions and refills for carisoprodol 350, zolpidem 10 mg, alprazolam 2 mg, hydrocodone/APAP 10/325. Respondent also falsified a prescription for Cymbalta® (duloxetine) 60 mg.

6. A Board controlled substance audit documented shortages of the following at the Pharmacy: 4 tablets of Vicodin ES, 323 tablets of hydrocodone/APAP 5/500, 731 tablets of hydrocodone/APAP 7.5/500, 50 tablets of Soma 250, 276 tablets of carisoprodol 350, 133 cc of Tussionex, 74 tablets of alprazolam 2 mg, and 48 tablets of hydrocodone/APAP 10/325. The audit did not disclose who was responsible for the shortages.

7. Cymbalta® is a prescription-only medication.

8. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-2514(A)(5)(d).

9. Cough syrup with hydrocodone is a Schedule III controlled substance. A.R.S. § 36-2514(A)(5)(d).

10. Carisoprodol is a Schedule IV controlled substance. A.R.S. § 36-2515(A)(5)(a).

11. Zolpidem is a Schedule IV controlled substance. A.R.S. § 36-2515(A)(2)(xx).

12. Alprazolam is a Schedule IV controlled substance. A.R.S. § 36-2515(A)(2)(a).

CONCLUSIONS OF LAW

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

Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a

pharmacist who has engaged in unprofessional conduct.

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).

The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(8) (Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission).

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

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

7. Respondent's conduct as described in the Findings of Fact constitutes a violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the following conditions: (1) By a medical

practitioner in conformance with A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical practitioner's manual signature; (3) On an electronically transmitted prescription order containing the prescribing medical practitioner's electronic or digital signature that is reduced promptly to writing and filed by the pharmacist; (4) On a written prescription order generated from electronic media containing the prescribing medical practitioner's electronic or manual signature. A prescription order that contains only an electronic signature must be applied to paper that uses security features that will ensure the prescription order is not subject to any form of copying or alteration; (5) On an oral prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By refilling any written, electronically transmitted or oral prescription order if a refill is authorized by the prescriber either in the original prescription order, by an electronically transmitted refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is documented promptly and filed by the pharmacist.”)

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

9. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or

use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a licensed prescriber). Furthermore, a person may not knowingly obtain or procure the administration of a prescription-only drug by fraud, deceit, misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-3406(B)(1).

10. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 36-2531(E) (A person shall not provide a false prescription for a controlled substance or knowingly or intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception or subterfuge, including the forgery or falsification of a prescription). A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-2531(E).

11. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 36-2525(H) (Except when dispensed directly by a medical practitioner to an ultimate user, a controlled substance included in schedule III or IV that requires a prescription order as determined under state or federal laws shall not be dispensed without a written or oral prescription order of a medical practitioner).

12. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in violation of section 36-2525). A person who violates

A.R.S. § 36-2531(A)(1) is guilty of a class 4 felony. A.R.S. § 36-2531(B).

13. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 32-1965(8) (It is unlawful for any person to make or offer to make a forged, counterfeit, altered or photocopied prescription or drug order for controlled substance drugs).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. Respondent's Pharmacist License No. S016725, which was issued to Respondent for the practice of pharmacy in the State of Arizona, is hereby **SUSPENDED**, subject to the following terms and conditions:

A. Respondent's license is suspended for at least six (6) months. Respondent is currently residing in Indiana. Respondent may not request that the suspension be terminated unless and until he returns full time to Arizona. Upon his return to Arizona and no sooner than six (6) months from the effective date of this Consent Agreement, Respondent may request in writing that the Board terminate the suspension.

B. Respondent's request to terminate suspension will be considered at the Board's next regularly scheduled Board meeting. Respondent is required to personally appear at that Board meeting. The Board shall determine whether to terminate the suspension after reviewing (i) information from Pharmacists Assisting Pharmacists of Arizona ("PAPA") regarding Respondent's compliance with the terms of the PAPA program/contract; (ii) a progress report/recommendation from Respondent's PAPA

counselor, which may be submitted in writing to the Board; and (iii) any input from Respondent.

C. Respondent shall advise the Board in writing within ten (10) days of his full-time return to Arizona.

D. Respondent shall, within ten (10) days of his full-time return to Arizona, contact the Administrative Coordinator of PAPA. Based solely upon the Administrative Coordinator's determination, Respondent may be required to immediately (within 10 days) (1) enter and successfully complete an in-patient treatment program approved by PAPA; or (2) submit to further evaluation by a PAPA-approved evaluator. If referred for further evaluation, Respondent shall promptly comply with all treatment recommendations made by the evaluator.

E. When directed by the PAPA Administrative Coordinator, Respondent shall sign a five (5) year contract with PAPA and abide by each and every requirement of the PAPA contract. Failure to sign the PAPA contract when directed by the PAPA Administrative Coordinator, failure to complete the five-year PAPA program, or failure to abide by the PAPA contract's terms is a violation of this Order.

F. Respondent shall, within ten (10) days of the effective date of this Order, return his Arizona pharmacist license to the Board office for the period of suspension.

2. Upon termination of the period of suspension by the Board, Respondent's reinstated license shall immediately be placed on **PROBATION**. Respondent's probation is subject to the following conditions:

A. No sooner than five (5) years from the beginning of Respondent's probationary period, Respondent shall request in writing that the Board terminate his probation. Respondent's request for termination will be considered at the Board's next regularly scheduled Board meeting. Respondent is required to personally appear at that Board meeting. Respondent's probationary period will continue until Respondent's request for termination is received and the Board terminates the probation.

B. Respondent shall continue to participate in the PAPA program and to comply with the terms of his PAPA contract.

C. Respondent shall furnish all pharmacy employers with a copy of this Consent Agreement. Respondent shall ensure that all pharmacy employers submit to the Board a written acknowledgement that they have received a copy of this Consent Agreement within ten (10) days of entering into an employment relationship with Respondent.

D. Respondent shall not serve as a preceptor pharmacist or pharmacist in charge.

E. Respondent shall advise the Board within ten (10) days of any change in pharmacy employment status.

F. Within five (5) years from the beginning of Respondent's probationary period, Respondent shall complete 400 hours of community service approved by Board staff. Respondent shall ensure that all entities to which he provides community service verify in writing to the Board the number of hours completed within 30 days of

completing the community service.

3. Respondent shall pay all necessary fees and complete all continuing education requirements throughout the term of his suspension and probation.

4. Throughout the term of Respondent's suspension and probation, Respondent shall personally appear before the Board when requested to do so by the Board or Board staff.

5. 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.

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

7. 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 Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated.

DATED this 14th day of July, 2009.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By:



HAL WAND, R.Ph.
Executive Director

1 ORIGINAL OF THE FORGOING FILED
this 14 day of July, 2009, with:

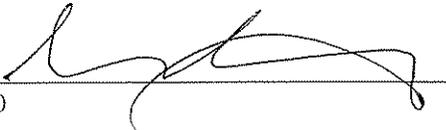
2 Arizona State Board of Pharmacy
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
BY FIRST-CLASS and CERTIFIED MAIL
this 14 day of July, 2009, to:

6 James Miloshoff
7 Address of Record
8 Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED
this 14 day of July, 2009, to:

10 Elizabeth A. Campbell
11 Assistant Attorney General
12 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
13 Attorney for the Board

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