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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 **GERWYN MAKAI**
12 Holder of License No. S016844
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 09-0044-PHR
**AMENDED CONSENT AGREEMENT
AND ORDER FOR PROBATION**

14 **RECITALS**

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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”) under A.R.S. § 32-1901, *et. seq.*, Gerwyn Makai (“Respondent”),
19 holder of Pharmacist License Number S016844 in the State of Arizona, and the Board
20 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
21 (“Consent Agreement”) as a final disposition of this matter.
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23 1. Respondent has read and understands this Amended Consent Agreement
24 and has had the opportunity to discuss this Amended Consent Agreement with an
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1 attorney, or has waived the opportunity to discuss this Amended Consent Agreement with
2 an attorney.

3 2. Respondent understands that he had a right to a public administrative
4 hearing concerning the above-captioned matter prior to entering the original Consent
5 Agreement with the Board, at which hearing he could have presented evidence and cross
6 examined witnesses. By entering into this Amended Consent Agreement, Respondent
7 knowingly and voluntarily relinquishes all rights he had to such an administrative
8 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
9 any other administrative and/or judicial action, concerning the matters set forth herein.
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11 3. Respondent affirmatively agrees that this Amended Consent Agreement
12 shall be irrevocable.
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14 4. Respondent understands that this Amended Consent Agreement or any part
15 of the agreement may be considered in any future disciplinary action by the Board against
16 him.
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18 5. Respondent understands this Amended Consent Agreement deals with
19 Board Complaint No. 3637 involving allegations of unprofessional conduct against
20 Respondent. The investigation into these allegations against Respondent shall be
21 concluded upon the Board's adoption of this Amended Consent Agreement.
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23 6. Respondent understands that this Amended Consent Agreement does not
24 constitute a dismissal or resolution of any other matters currently pending before the
25 Board, if any, and does not constitute any waiver, express or implied, of the Board's
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1 statutory authority or jurisdiction regarding any other pending or future investigation,
2 action or proceeding.

3 7. Respondent also understands that acceptance of this Amended Consent
4 Agreement does not preclude any other agency, subdivision, or officer of this State from
5 instituting any other civil or criminal proceedings with respect to the conduct that is the
6 subject of this Amended Consent Agreement.

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

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

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

23 11. Respondent understands and agrees that if the Board does not adopt this
24 Amended Consent Agreement, he will not assert as a defense that the Board's
25 consideration of this Amended Consent Agreement constitutes bias, prejudice,
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1 prejudgment or other similar defenses and that the original Consent Agreement accepted
2 by the Board shall remain in full force and effect.

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

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

12 ACCEPTED AND AGREED BY RESPONDENT

13 
14 Gerwyn Makai Dated: 18 DEC 2012

15 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
16 this 18th day of December, 2012, by Gerwyn Makai.



17 KATHLEEN A. WOOLSEY
18 Notary Public - Arizona
Maricopa County
Expires 03/14/2015

17 
NOTARY PUBLIC

18 My Commission expires: 3/14/2015

20 FINDINGS OF FACT

- 21 1. The Board is the duly constituted authority for licensing and regulating the
22 practice of pharmacy in the State of Arizona.
23 2. Respondent is the holder of license number S016844 to practice as a
24 pharmacist in the State of Arizona.
25 3. On December 6, 2008, Respondent ingested methamphetamine.
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1 a copy of this Amended Consent Agreement within ten (10) days of entering into
2 an employment relationship with Respondent.

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

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

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

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

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

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19 5. Respondent shall furnish the Board with a list of all jurisdictions in which
20 he maintains or has maintained licensure in the profession of pharmacy along with the
21 registration numbers of said licenses.

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

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1 COPY OF THE FOREGOING MAILED
this 31 day of December, 2012, to:

2 Justin D. Holm
3 Holm, Wright, Hyde and Hays, PLC
10429 South 51st Street, Suite 285
4 Phoenix, Arizona 85044
Attorneys for Respondent
5

6 Montgomery Lee
Assistant Attorney General
7 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
8 Attorney for the Board

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