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10 Attorneys for the Arizona State Board of Pharmacy

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

12 In the Matter of

Board Case No. 12-0008-PHR

13 **HOLIDAY RX, INC.,**

Complaint No. 2976

14 Holder of Pharmacy Permit No. Y005095  
15 In the State of Arizona.

**CONSENT AGREEMENT**

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17 In the interest of a prompt and judicious settlement of this case, consistent with the  
18 public interest, statutory requirements and the responsibilities of the Arizona State Board  
19 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Holiday RX, holder of Pharmacy  
20 Permit Number Y005095 in the State of Arizona ("Respondent"), and the Board enter into  
21 the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent  
22 Agreement") as a final disposition of this matter.  
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1           8.     Respondent acknowledges and agrees that, upon signing this Consent  
2 Agreement and returning this document to the Board's Executive Director, it may not  
3 revoke its acceptance of the Consent Agreement or make any modifications to the  
4 document regardless of whether the Consent Agreement has been signed by the Executive  
5 Director. Any modification to this original document is ineffective and void unless  
6 mutually agreed by the parties in writing.

7           9.     This Consent Agreement is subject to the approval of the Board and is  
8 effective only when accepted by the Board and signed by the Board's Executive Director.  
9 In the event that the Board does not approve this Consent Agreement, it is withdrawn and  
10 shall be of no evidentiary value and shall not be relied upon nor introduced in any action  
11 by any party, except that the parties agree that should the Board reject this Consent  
12 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the  
13 Board was prejudiced by its review and discussion of this document or any records  
14 relating thereto.

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

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

22          12.    Respondent understands that any violation of this Consent Agreement  
23 constitutes unethical conduct and may result in disciplinary action. A.R.S. §§ 32-  
24 1901.01(A) and A.R.S. § 32-1927.02(A).

25          13.    Respondent agrees that the Board will adopt the following Findings of Fact,  
26 Conclusions of Law and Order.

**FINDINGS OF FACT**

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2           1.     The Board is the duly constituted authority for licensing and regulating the  
3 practice of pharmacy in the State of Arizona.

4           2.     Respondent is the holder of Pharmacy Permit Number Y005095 allowing it  
5 to operate a pharmacy in Arizona.

6           3.     On or about June 16, 2011, at approximately 1:30 p.m., Board compliance  
7 officers visited the Respondent pharmacy. The Respondent pharmacy was closed, but the  
8 compliance officers observed that drugs were visible on the shelf through the main entry  
9 door.

10          4.     A Board compliance officer visited the Respondent pharmacy on June 17,  
11 2011, at 3:26 p.m. The Respondent pharmacy was closed.

12          5.     On June 17, 2011, a Board compliance officer spoke with the pharmacist-in-  
13 charge, Harvey Morton. Mr. Morton informed the Board compliance officer that the  
14 Respondent pharmacy was not currently in operation. According to information received  
15 by the Board compliance officers on June 16 and 17, 2011, the Respondent pharmacy had  
16 not been in full-time operation for at least a month due to Mr. Morton's serious illness.

17          6.     Harvey Morton, Respondent's pharmacist-in-charge effective May 4, 2011,  
18 resigned due to illness as pharmacist-in-charge on June 17, 2011.

19          7.     Holiday Rx tried, beginning in June of 2011, to hire a replacement for Mr.  
20 Morton. Holiday Rx finally found a pharmacist, Sidney Levin, in late September 2011  
21 and Mr. Levin notified the Board that he would be the pharmacist-in-charge at Holiday Rx  
22 effective October 1, 2011.

23          8.     The Board believed that Respondent was discontinuing or abandoning  
24 operation without following proper procedure, and took administrative action against  
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1 Respondent. Respondent did not, however, receive notice of this action until after the  
2 Board had issued an Order revoking Respondent's pharmacy permit.

3 9. Respondent filed a timely motion for rehearing explaining, among other  
4 things, that it did not learn of the Board's Order until after it was issued and that, although  
5 it had difficulty finding a pharmacist and its leased space had been damaged, it did wish to  
6 continue operation.

7 10. This Consent Agreement supersedes and resolves the Board's Order of  
8 October 5, 2011.

### 9 CONCLUSIONS OF LAW

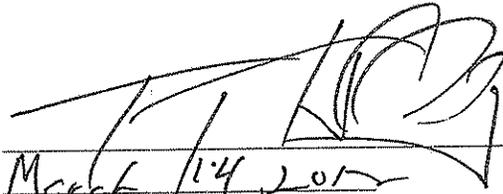
10 1. The Board possesses jurisdiction over the subject matter and over  
11 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

12 2. The Board may discipline permit holder if the Board determines that the  
13 permittee or the permittee's employee has engaged in unethical conduct. A.R.S. § 32-  
14 1927.02(A)(1).

15 3. The conduct and circumstances described above in the factual allegations 3  
16 through 7 constitute unethical conduct pursuant to A.R.S. § 32-1901.01(A)(6) (Violating a  
17 federal or state law or administrative rule relating to marijuana, prescription-only drugs,  
18 narcotics, dangerous drugs, controlled substances or precursor chemicals).

19 4. The conduct and circumstances described above in factual allegation 6  
20 violated A.A.C. R4-23-610(A) (Every pharmacy shall have a pharmacist designated as the  
21 "pharmacist-in-charge").  
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ACCEPTED AND AGREED BY RESPONDENT

 Dated: \_\_\_\_\_  
March 14, 2012  
CEO, on behalf of Holiday RX

Subscribed and sworn to before me in the County of \_\_\_\_\_,  
State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, on behalf of Holiday RX.

See CA Jurat Attachment  
Benjamin Herrera, Notary Public  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: Oct. 24, 2014



1 ORDER

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

4 1. Permit No. Y005095, which was issued to Holiday RX, Inc. to operate a  
5 Pharmacy in the State of Arizona, is hereby placed on PROBATION for a  
6 period of one (1) year. During the term of PROBATION, Respondent shall  
7 complete the following terms and conditions:

8 a. On or before April 1, 2012, Respondent shall enter into a  
9 contract with Affiliated Monitors or a like organization  
10 approved by the Board or Board staff (the "Monitor") for the  
11 development and implementation of a Compliance Program  
12 and Monitoring Program as further described in this Consent  
13 Agreement. Respondent shall cooperate fully in all its  
contracts with the Monitor, comply with any and all requests  
for records and documents, and make all requested  
information available to the Monitor. Failure to do so will be  
considered a violation of the Consent Agreement.

14 b. Within thirty (30) days from execution of this Consent  
15 Agreement, Respondent shall establish and implement a  
16 Compliance Program and shall submit the Compliance  
17 Program to the Monitor and to the Board or Board staff for  
approval. The Compliance Program review will include at  
least the following the following:

18 (i) A requirement that Respondent undertake any and all  
19 steps necessary to remain fit to hold a permit under the  
requirements of the Board;

20 (ii) A requirement that Respondent adopt, implement, and  
21 meet appropriate accuracy standards emphasizing  
supply of drugs and chemicals requirements in A.A.C.  
R4-23-611 (B);

22 (iii) A requirement that Respondent establish an internal  
23 quality control system;

24 (iv) A requirement that Respondent establish security  
25 standards emphasizing requirements in A.A.C. R4-23-  
609 (F) & (G);

26 (v) A requirement that Respondent comply with all state  
and federal laws related to the practice of pharmacy;

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- (vi) A requirement that Respondent adhere to all good standards of practice in hiring and training of staff;
- (vii) A requirement that Respondent train all staff in the obligations of the internal quality control system.

Respondent's failure to comply with its Compliance Program will be considered as noncompliance with the Consent Agreement.

2. Respondent understands and agrees that the Monitor will conduct unscheduled monthly inspections of the facility during the probation (the "Monitoring Program").

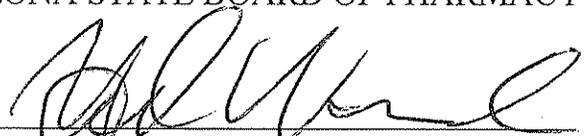
- (i) The dates of such inspections will be decided by the Monitor and Board staff. The inspections will be conducted by a monitoring team designed by the Monitor, which will include appropriate, experienced licensed professionals and investigators. The Monitor shall provide comprehensive written reports of its inspections to the Board on the 15th day of July, October, January and April throughout the probationary period.
- (ii) The monitoring will include oversight of the implementation and adherence to the Compliance Program described above, as well as monitoring of the Respondent to ensure that he is acting within the limitations, restrictions, obligations, and conditions set forth in the Consent Agreement.
- (iii) The Monitor's activities will include but not be limited to interviews with staff and third parties, as necessary, to ensure that any agreement or obligation of the Board is being followed.
- (iv) The Monitor will provide the Board and Respondent with originals of all reports of the results of inspections and monitoring reviews.
- (v) Respondent agrees to cooperate with the Monitor so that the Monitor can complete all obligations of this Consent Agreement.

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- 3. Respondent understands and agrees that it is responsible for all costs associated with the Consent Agreement and its contract with the Monitor and the services the Monitor is required to provide under the terms of this Consent Agreement including the cost of the inspections and written reports to the Board.
- 4. Respondent is responsible to provide to the Board of the copy of the contract it enters with the Monitor. Respondent must contact the Monitor within five (5) business days of the effective date of this Consent Agreement and express its intent to engage in said contract. Respondent is thereafter responsible to provide a copy of said contract to the Board within ten (10) business days of the effective date of the contract.

DATED this 21 day of MARCH 2012.

(Seal)

ARIZONA STATE BOARD OF PHARMACY  
By:   
HAL WAND, R.Ph.  
Executive Director

1 ORIGINAL OF THE FOREGOING FILED  
this 21 day of March 2012 with:

2  
3 Arizona State Board of Pharmacy  
1616 W. Adams St.  
4 Phoenix, Arizona 85007

5 COPY OF THE FOREGOING MAILED  
6 BY CERTIFIED MAIL  
this 21 day of March, 2012 to:

7 Holiday RX, Inc.  
8 303 Baseline Road #103  
Phoenix, Arizona 85042  
9 Respondent

10 COPY OF THE FOREGOING MAILED  
11 this 21 day of March, 2012 to:

12 Anne W. Bishop  
Snell and Wilmer, L.L.P.  
13 One Arizona Center  
400 E. Van Buren St.  
14 Phoenix, AZ 85004-2202

15 Montgomery Lee  
Assistant Attorney General  
16 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
17 Attorney for the State of Arizona

18  
19 By: PL

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