

NOV 08 2011

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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 **DONALD STEVEN MERKEL**

12 Holder of License No. S009366  
For the Practice of Pharmacy  
13 In the State of Arizona

Board Case No. 12-0010-PHR

**CONSENT AGREEMENT  
AND ORDER FOR SURRENDER**

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") under A.R.S. § 32-1901, *et. seq.*, Donald Steven Merkel  
19 ("Respondent"), holder of Pharmacist License Number S009366 in the State of Arizona,  
20 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law  
21 and Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had  
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
24 opportunity to discuss this Consent Agreement with an attorney.  
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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. 4008 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  
26

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, she will not assert as a defense that the Board's consideration of this  
11 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

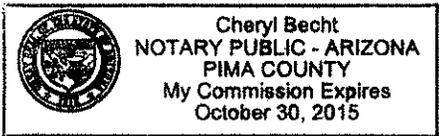
12 12. Respondent understands that this Consent Agreement is a public record that  
13 may be publicly disseminated as a formal action of the Board and may be reported as  
14 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
15 Protection Data Bank.

16  
17 ACCEPTED AND AGREED BY RESPONDENT

18   
19 Donald Steven Merkel

Dated: 11 / 5 / 11

20 Subscribed and sworn to before me in the County of Pima, State of ARIZONA,  
21 this 7 day of November, 2011, by Donald Steven Merkel.

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NOTARY PUBLIC

My Commission expires: OCT 30, 2015

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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 S009366 to practice as a pharmacist in the State of Arizona.

3. On August 20, 2010 Respondent surrendered his California pharmacist license No. RPH 43281 pursuant to a Stipulated Surrender of License and Order in California Pharmacy Board Case Nos. 3306 and 3682.

4. The Stipulated Surrender of License and Order entered by the California Pharmacy Board was the final disposition of allegations that Respondent was charged with and convicted of the criminal offense of driving under the influence of controlled substances and violation of laws regarding the possession and consumption of controlled substances.

5. Respondent did not report being charged with or being convicted of driving under the influence of controlled substances until July 2011.

**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) (5) ("Denial or discipline of a licensee's license to practice pharmacy in another jurisdiction and the license was not reinstated.").



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ORIGINAL OF THE FORGOING FILED  
this 17 day of NOV., 2011, with:

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

EXECUTED COPY OF THE FOREGOING MAILED  
BY FIRST-CLASS and CERTIFIED MAIL  
this 17 day of NOV., 2011, to:

Donald Steven Merkel  
6526 E. Fordham Dr.  
Tucson, Arizona 85710

EXECUTED COPY OF THE FOREGOING MAILED  
this 17 day of NOV., 2011, to:

Montgomery Lee  
Assistant Attorney General  
1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007

TMLP

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