



1 THOMAS C. HORNE
Attorney General
2 (Firm State Bar No. 14000)

3 MONTGOMERY LEE
Assistant Attorney General
4 State Bar No. 005658
1275 W. Washington, CIV/LES
5 Phoenix, Arizona 85007-2997
Tel: (602) 542-7980
6 Fax: (602) 364-3202

7 Attorneys for the Arizona State Board of Pharmacy

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

9
10 In the Matter of
11 **SUNWEST PHARMACY,**
12 Holder of Permit No. 5263
As a Pharmacy
13 In the State of Arizona

Board Case No. 12-0015-PHR
**CONSENT AGREEMENT
FOR CIVIL PENALTY AND
PROBATION**

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15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Sunwest Pharmacy
18 ("Respondent"), holder of Pharmacy Permit Number 5263 in the State of Arizona, and
19 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
20 Order ("Consent Agreement") as a final disposition of this matter.

21 **RECITALS**

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 it has a right to a public administrative hearing
2 concerning this matter at which hearing it could present evidence and cross examine
3 witnesses. By entering into this Consent Agreement, Respondent knowingly and
4 voluntarily relinquishes all right to such an administrative hearing, as well as rights of
5 rehearing, review, reconsideration, appeal, judicial review or any other administrative
6 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 it.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3956 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, it may not
25 revoke its 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. This Consent Agreement is subject to the approval of the Board and is
5 effective only when accepted by the Board and signed by the Executive Director. In the
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by
8 any party, except that the parties agree that should the Board reject this Consent
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the
10 Board was prejudiced by its review and discussion of this document or any records
11 relating thereto.

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

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

19 12. Respondent understands that any violation of this Consent Agreement
20 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
21 1901.01(A) (19) and A.R.S. § -1927(A)(1).

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

24 ...

25 ...

26 ...

1 ACCEPTED AND AGREED BY RESPONDENT

2 Yuri Eidelman
3 Yuri Eidelman

Dated: 10/24/11

4 Subscribed and sworn to before me in the County of MARICOPA, State of ARIZONA,
5 this 24 day of October, 2011, by Yuri Eidelman

Patrick Stromboni



6 NOTARY PUBLIC

7 My Commission expires: July 3, 2013

8 FINDINGS OF FACT

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

12 2. Respondent is the holder of permit No. 5263 to operate as a pharmacy in
13 the State of Arizona.

14 3. During all relevant times to these findings, Respondent operated as
15 Sunwest Pharmacy in Phoenix, Arizona.

16 4. During a routine inspection on April 12, 2011 Compliance Officer Sandra
17 Sutcliffe noted that there were several medications offered for sale over the counter at
18 Sunwest Pharmacy which had labels printed primarily in Russian. A number of these
19 products were prescription medications and others were prescription products not
20 marketed in the United States.

21 5. Respondent operated Sunwest Pharmacy from February 18, 2011 through
22 April 12, 2011 and offered for sale or sold the prescription medications and prescription
23 products described in paragraph 4 above.
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1 CONCLUSIONS OF LAW

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

4 2. The Board may discipline a permittee who has engaged in unprofessional
5 conduct. A.R.S. § 32-1927.02 (A)(1).

6 3. The conduct and circumstances described above constitutes unprofessional
7 conduct pursuant to A.R.S. § 32-1901.01 (A) (5) (Violating any federal or state law or
8 administrative rule relating to the manufacture, sale or distribution of drugs, devices,
9 poisons, hazard substances, or precursor chemicals).

10 4. The conduct and circumstances described above constitutes unprofessional
11 conduct pursuant to A.R.S. § 32-1901.01(B) (2) (Violating any federal or state law, rule
12 or regulation relating to the manufacture or distribution of drugs and devices or the
13 practice of pharmacy).

14 5. The conduct described above violated Arizona Administrative Code R4-23-
15 404(E) (prescription-only drugs or devices may be dispensed only after receipt of a valid
16 prescription order from a licensed medical practitioner and dispensed prescription-only
17 drugs or devices are properly prepared, packaged, and labeled according to Arizona
18 pharmacy laws).

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20 ORDER

21 Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY
22 ORDERED THAT Respondent shall:

23 1. Pay a civil penalty of \$10,000.00 within **180 days** of the effective date of
24 this Order; and

1 2. Respondent's Pharmacy Permit No. 5263 is immediately placed on
2 **PROBATION** for one (1) year. Respondent's probation is subject to the following
3 conditions:

4 A. No sooner than one (1) year from the beginning of Respondent's
5 probationary period, Respondent shall request in writing that the Board terminate its
6 probation. Respondent's request for termination will be considered at a regularly
7 scheduled Board meeting. Respondent is required to send a duly authorized
8 representative to appear at that Board meeting. Respondent's probationary period will
9 continue until Respondent's request for termination is received and the Board terminates
10 the probation.

11 B During the probationary period Board Compliance Officers shall conduct
12 two (2) inspections of the Pharmacy for compliance with Arizona Pharmacy Laws and
13 Rules pursuant to A.R.S. § 32-1939 (A).

14 C. Respondent shall pay all costs associated with complying with this Consent
15 Agreement.

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

21 DATED this 17th day of November, 2011.

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24 (Seal)

ARIZONA STATE BOARD OF PHARMACY

25 By: 
26 HAL WAND, R.Ph.
Executive Director

