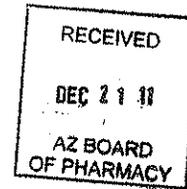


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7 Attorneys for the Arizona State Board of Pharmacy

8

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

10 In the Matter of

Board Case No. 12-0019-PHR

11 **JOHN NICOLAIS,**

**CONSENT AGREEMENT
FOR CIVIL PENALTY AND
CONTINUING EDUCATION**

12 Holder of License No. S008066
As a Pharmacist
13 In the State of Arizona

14

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., John Nicolais ("Respondent"),
18 holder of Pharmacist License Number S008066 in the State of Arizona, and the Board
19 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
20 ("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.

25 2. Respondent understands that he has a right to a public administrative
26 hearing concerning this matter at which hearing he could present evidence and cross

1 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
2 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
3 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
4 and/or judicial action, concerning the matters set forth herein.

5 3. Respondent affirmatively agrees that this Consent Agreement shall be
6 irrevocable.

7 4. Respondent understands that this Consent Agreement or any part of the
8 agreement may be considered in any future disciplinary action by the Board against him.

9 5. Respondent understands this Consent Agreement deals with Board
10 Complaint No. 4006 involving allegations of unprofessional conduct against Respondent.
11 The investigation into these allegations against Respondent shall be concluded upon the
12 Board's adoption of this Consent Agreement.

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

17 7. Respondent also understands that acceptance of this Consent Agreement
18 does not preclude any other agency, subdivision, or officer of this State from instituting
19 any other civil or criminal proceedings with respect to the conduct that is the subject of
20 this Consent Agreement.

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

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

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

12 11. 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 12. Respondent understands that any violation of this Consent Agreement
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
18 1901.01(B) (20) and A.R.S. § -1927(A) (1).

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

21 **ACCEPTED AND AGREED BY RESPONDENT**

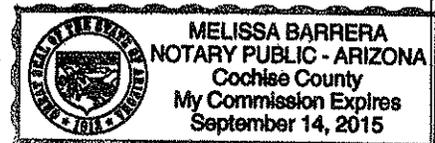
22 *John Nicolais*
23 John Nicolais

Dated: 12-16-2011

24 Subscribed and sworn to before me in the County of Cochise, State of
Arizona, this 16th day of December, 2011, by John Nicolais.

25 *Melissa Barrera*
26 NOTARY PUBLIC

My Commission expires: September 14, 2015



1 FINDINGS OF FACT

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 license number S008066 to practice as a
5 pharmacist in the State of Arizona.

6 3. During all relevant times to these findings, Respondent worked as the
7 pharmacist in charge at Sierra Health Mart Pharmacy (the "Pharmacy") in Sierra Vista,
8 Arizona.

9 4. In August 2011, a patient had a prescription for roxanol 20 mg/ml
10 (morphine sulfate 20 mg/ml) oral solution incorrectly filled as oxycodone 20 mg/ml by
11 Respondent at the Pharmacy. The patient did not take any of the medication.
12

13 5. Respondent was the pharmacist on duty at the Pharmacy on the day the
14 prescription was incorrectly filled. Respondent counseled the patient's wife who
15 questioned the name of the drug and asked why she was getting oxycodone liquid.
16 Respondent stated that he believed that oxycodone solution was the generic equivalent of
17 the roxanol solution. Oxycodone solution is not the generic equivalent of roxanol
18 solution.
19
20

21 CONCLUSIONS OF LAW

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

24 2. The Board may discipline a pharmacist who has engaged in unprofessional
25 conduct. A.R.S. § 32-1927(A) (1).
26

1 opportunity to be heard, may revoke, suspend or take other disciplinary actions against
2 Respondent's license. The issue at such a hearing will be limited solely to whether this
3 Order has been violated.

4 DATED this 26 day of JAN., 2012

5 ARIZONA STATE BOARD OF PHARMACY

6 (Seal)

7 

8 By: _____
9 HAL WAND, R.Ph.
Executive Director

10 ORIGINAL OF THE FOREGOING FILED
11 this 26 day of JAN., 2012 with:

12 Arizona State Board of Pharmacy
13 1700 West Washington, Suite 250
14 Phoenix, Arizona 85007

15 EXECUTED COPY OF THE FOREGOING MAILED
16 BY CERTIFIED MAIL
17 this 26 day of JAN., 2012 to:

18 John Nicolais
19 3381 Wild Rabbit Road
20 Hereford, Arizona 85615
21 Respondent

22 EXECUTED COPY OF THE FOREGOING MAILED
23 this 26 day of JAN., 2012 to:

24 Montgomery Lee
25 Assistant Attorney General
26 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorney for the Board

27 TP 1-26-12
28 ML: yfl - #2421081