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

10 In the Matter of

11 **Douglas Massey,**

12 Holder of License No. 016067
As a Pharmacist
13 In the State of Arizona

Board Case No. 13-0013-PHR

**CONSENT AGREEMENT
FOR CIVIL PENALTY**

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.*, Douglas Massey
18 (“Respondent”), holder of Pharmacist License No. 016067 in the State of Arizona and the
19 Board 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.
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1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning this matter at which hearing he could present evidence and cross
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
5 of 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 him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 4179 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. 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(B) (20) 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

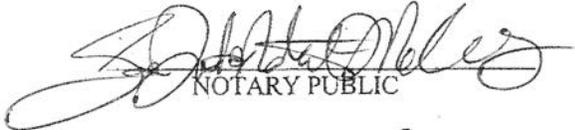
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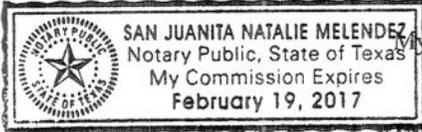
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3 _____

Dated: 4/24/13

4 Douglas Massey

5 Subscribed and sworn to before me in the County of Travis, State of Texas
6 this 24 day of April, 2013, by Douglas Massey.

7 
8 NOTARY PUBLIC



9 Commission expires: February 19, 2017

10 **FINDINGS OF FACT**

- 11 1. The Board is the duly constituted authority for licensing and regulating the
- 12 practice of pharmacy in the State of Arizona.
- 13
- 14 2. Respondent is the holder of license number 016067 to practice as a
- 15 pharmacist in the State of Arizona.
- 16
- 17 3. During all relevant times to these findings, Respondent worked as the
- 18 pharmacist-in-charge at Avella of Scottsdale (the "Pharmacy") located at 9777N. 91st St.
- 19 # C-102, Scottsdale, Arizona.
- 20
- 21 4. On or about June 16, 2011, a patient had a refill prescription for
- 22 Levothyroxine 125mcg SR incorrectly filled with Liothyronine 125 mcg SR at the
- 23 Pharmacy.
- 24
- 25 5. On June 22, 2011 the patient's wife returned to the Pharmacy concerned
- 26 that her husband had been admitted to a hospital for symptoms which might be related to

1 the medication he received from the Pharmacy on June 16, 2011. The patient's wife
2 presented a capsule of the medication dispensed and asked that it be tested for accuracy.
3 Respondent complied and on June 28, 2011 reported to the patient that the medication
4 was correct not realizing that he had requested testing to verify that the capsule was
5 Liothyronine 125 mcg SR as dispensed rather than testing to verify that the capsule was
6 Levothyroxine 125 SR as prescribed. Approximately two days later the patient asked for
7 the lab test results and at this time Respondent discovered the error in filling the
8 prescription.
9

10
11 6. Respondent was on duty and the pharmacist-in-charge at the Pharmacy
12 when the incorrect medication was dispensed but the verification log was not properly
13 maintained to determine whether Respondent or another staff pharmacist on duty on June
14 16, 2011 had actually filled the prescription.

15 CONCLUSIONS OF LAW

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

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

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

24 4. The conduct described above violated Arizona Administrative Code R4-23-
25 402(A) (11) (A pharmacist shall make a final accuracy check on the completed
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1 prescription medication and manually initial the finished label. Manual initialing of a
2 finished label is not required if the pharmacy's computer system complies with the
3 computer documentation requirements of R4-23-408 (B) (4)).

4 5. The conduct described above violated Arizona Administrative Code R4-23-
5 610 (A) (2) (a) (The pharmacist-in-charge shall ensure that all pharmacy policies and
6 procedures required under 4 A.A.C. 23 are prepared, implemented and complied with).

7 **ORDER**

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

10 1. Pay a civil penalty of \$250.00 within **90 days** of the effective date of this
11 Order; and

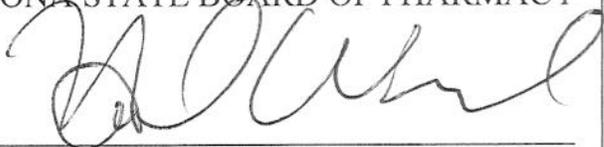
12 2. Respondent shall pay all costs associated with complying with this Consent
13 Agreement.

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

19 DATED this 9th day of MAY, 2013.

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23 (Seal)

ARIZONA STATE BOARD OF PHARMACY

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

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ORIGINAL OF THE FORGOING FILED
this 10 day of May, 2013, with:

Arizona State Board of Pharmacy
1616 W. Adams Street
Phoenix, Arizona 85007

COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL

this 10 day of May, 2013, to:

Douglas Massey
9494 E. Redfield Rd., Apt. 1022
Scottsdale, Arizona 85260
Respondent

COPY OF THE FOREGOING MAILED
this 10 day of May, 2013, to:

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

Doc # 3195873