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Attorneys for the Arizona State Board of Pharmacy

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

9 In the Matter of

10 **BRETT ROBERSON,**

11 Holder of License No. 12887
12 For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 07-0009-PHR

**CONSENT AGREEMENT
FOR SUSPENSION AND
PROBATION**

14 **RECITALS**

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") and under A.R.S. §§ 32 1901, *et. seq.* and 41 1092.07(F)(5), Brett
18 Roberson, ("Respondent"), holder of Pharmacist License Number 12887 to practice
19 pharmacy in the State of Arizona, and the Board enter into the following Recitals,
20 Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final
21 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. 3185 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. All admissions made by the Respondent in this Consent Agreement are
24 made solely for the final disposition of this matter, and any related administrative
25 proceedings or civil litigation involving the Board and Respondent. Therefore, any
26

1 admissions made by Respondent in this Consent Agreement are not intended for any
2 other use, such as in the context of another regulatory agency's proceedings, or civil or
3 criminal proceedings, whether in the State of Arizona or in any other state or federal
4 court.

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

11 10. Respondent understands that the Consent Agreement shall not become
12 effective unless and until adopted by the Board and signed by its Executive Director.

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

16 12. Respondent understands and agrees that if the Board does not adopt this
17 Consent Agreement, he will not assert as a defense that the Board's consideration of this
18 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

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

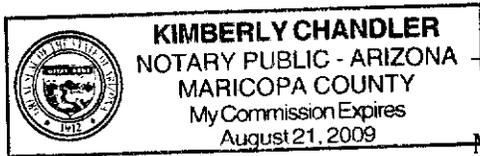
23 14. Respondent understands that any violation of this Consent Agreement
24 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
25 1901.01(B)(20), -1927(A)(1).

1 ACCEPTED AND AGREED BY RESPONDENT

2 
3 _____
4 Brett Roberson

Dated: 09-06-06

4 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
5 this 06 day of September, 2006, by Brett Roberson.



7 Kimberly Chandler
8 _____
9 NOTARY PUBLIC

My Commission expires: 08-21-2009

10 **FINDINGS OF FACT**

- 11 1. The Arizona State Board of Pharmacy ("Board") is the duly constituted
12 authority for licensing and regulating the practice of pharmacy in the State of Arizona.
- 13 2. Brett Roberson ("Respondent") is the holder of license number 12887 for
14 the practice of pharmacy in the State of Arizona.
- 15 3. At all times relevant to this action, Respondent was employed as a
16 Pharmacist for Fry's Pharmacy #43 ("Pharmacy") in Tempe, Arizona .
- 17 4. On or about May 13, 2006, a Pharmacy customer submitted a complaint
18 that Respondent was acting erratic and may be taking medications causing him to appear
19 "stoned."
- 20 5. An audit was conducted from April 30, 2006 through June 15, 2006 and the
21 following shortages were found:
- 22 A. Oxycodone/APAP 5/325 (-14)
 - 23 B. Carisoprodol 350 mg (-81)
 - 24 C. Ambien 10mg (-82)
 - 25 D. Hydrocodone/APAP 10/325mg (-120)
- 26

1 E. Hydrocodone/APAP 10/500 (-66)

2 F. Hydrocodone/APAP (-259)

3 G. Hydrocodone/APAP 5/500 (-755)

4 6. On or about June 16, 2006, Respondent was questioned by the Pharmacy
5 District Supervisor. Respondent admitted to the theft of the Hydrocodone products and
6 Ambien in a written statement.

7 **CONCLUSIONS OF LAW**

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

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

12 3. The conduct and circumstances described above constitutes unprofessional
13 conduct pursuant to A.R.S. § 32-1901.01(B)(1) ("Addiction to the use of alcohol or other
14 drugs to such a degree as to render the licensee unfit to practice the profession of
15 pharmacy.").

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

20 5. The conduct and circumstances described above constitutes unprofessional
21 conduct pursuant to A.R.S. § 32-1901.01(B)(8) ("Committing a felony, whether or not
22 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
23 related offense. In either case, conviction by a court of competent jurisdiction or a plea
24 of no contest is conclusive evidence of the commission.").

25

26

1 IT IS HEREBY ORDERED THAT Pharmacist License No. 12887, which was
2 issued to Brett Roberson for the practice of Pharmacy in the State of Arizona, is hereby
3 placed on suspension for a period of not less than six (6) months but not more than one
4 (1) year effective June 17, 2006. The period of suspension shall be determined by the
5 Board after receiving a recommendation from the PAPA Steering Committee.
6 Thereafter, Respondent's license shall be placed on probation for a period of at least four
7 (4) years, but not more than four and one-half (4.5) years from the final date of
8 suspension. Respondent's disciplinary period under the suspension and probation shall
9 not exceed five (5) years, unless Respondent affirmatively fails to petition the Board to
10 terminate the probation in accordance with paragraph 10 below.

11 The suspension and probation are subject to the following conditions:

- 12 1. Respondent shall immediately return his pharmacist license to the
13 Board for the period of suspension.
- 14 2. Respondent shall, within ten days of the effective date of this order,
15 sign a five (5) year contract with PAPA and abide by each and every requirement
16 of the PAPA contract. Failure to sign a PAPA contract or abide by the PAPA
17 contract's terms is a violation of this Order.
- 18 3. Respondent shall furnish all pharmacy employers with a copy of this
19 Board Order throughout the term of his probation.
- 20 4. Respondent shall not serve as a preceptor pharmacist or pharmacist
21 in charge throughout the term of his probation.
- 22 5. Respondent shall advise the Board immediately of any change in
23 pharmacy employment status throughout the term of his probation.

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6. Respondent shall furnish the Board with a list of all jurisdictions in which he maintains or has maintained licensure in the profession of pharmacy along with the registration numbers of said licenses.

7. Respondent shall complete four hundred (400) hours of community service approved by the Board staff before the termination of the probation period.

8. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

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

10. Respondent shall appear before the Board at a regularly scheduled Board meeting five years after the effective date of this Order to request that the probation imposed by this order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

DATED this 26th day of September, 2006.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By: 
HAL WAND, R.Ph.
Executive Director

ORIGINAL OF THE FORGOING FILED
this 26 day of September, 2006, with:

Arizona State Board of Pharmacy
4425 W. Olive Avenue, Suite 140
Glendale, Arizona 85302

RECEIVED

SEP 11 2006

ARIZONA STATE
BOARD OF PHARMACY

1 EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL

2 this 26th day of September 2006, to:

3 Brett Roberson
4 805 N. 4th Ave. #508
Phoenix, Arizona 85003

5 EXECUTED COPY OF THE FOREGOING MAILED

6 this 26th day of September, 2006, to:

7 Dawn Walton Lee
8 Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007

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PS Form 3800, June 2002 See Reverse for Instructions

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 City, State, ZIP+4

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired, so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

2. Article Number (Transfer from service label)
 7005 1820 0000 7585 8459

PS Form 3811, February 2004 Domestic Return Receipt

Brett Robinson
 805 W. 4th Ave
 #508
 Phoenix AZ 85003

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) Addressee

C. Date of Delivery No

D. Is delivery address different from the address below? No

ARIZONA STATE BOARD OF PHARMACY
 AUG 23 2006
 DOWNTOWN

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:
 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

2. Article Number (Transfer from service label)
 7005 1820 0000 7585 8503

PS Form 3811, February 2004 Domestic Return Receipt

Brett Robinson
 805 W. 4th Ave
 #508
 Phoenix AZ 85003

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) Addressee

C. Date of Delivery No

D. Is delivery address different from the address below? No

ARIZONA STATE BOARD OF PHARMACY
 OCT 5 2006
 DOWNTOWN

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes