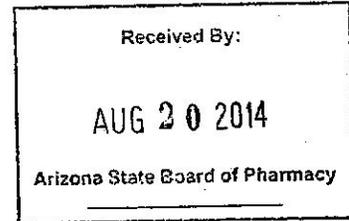


1 THOMAS C. HORNE
Attorney General
2 (Firm State Bar No. 14000)

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

10
11 In the Matter of

12 **Kelly Downing,**

13 Holder of License No. T007378
As a Pharmacy Technician
14 In the State of Arizona

Board Case No. 14-0013-PHR

**CONSENT AGREEMENT
FOR PROBATION**

15
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.*, Kelly Downing ("Respondent"),
19 holder of Pharmacy Technician License Number T007378 in the State of Arizona, and
20 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
21 Order ("Consent Agreement") as a final disposition of this matter.

22 **RECITALS**

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

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 number 4265 involving allegations of unprofessional conduct against
13 Respondent. The investigation into these allegations against Respondent shall be
14 concluded upon the 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(C) (16), -1927.01(A) (1).

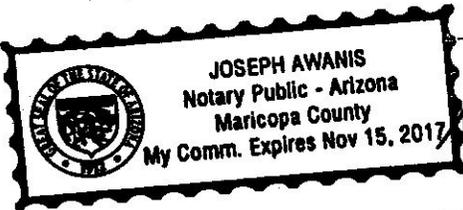
22 13. Respondent agrees that the Board will adopt the following Findings of Fact,
23 Conclusions of Law and Order.
24
25
26

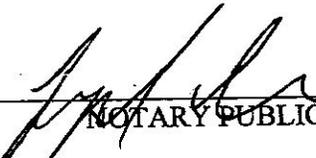
1 ACCEPTED AND AGREED BY RESPONDENT

2
3 
4 Kelly Downing

Dated: 08/20/2014

5 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
6 this 20th day of Aug, 2014, by Kelly Downing.



7 
8 NOTARY PUBLIC
9 My Commission expires: 11-15-2017

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 2. Respondent is the holder of license number T007378 to practice as a
14 pharmacy technician in the State of Arizona.

15 3. During all relevant times to these findings, Respondent worked as a
16 pharmacy technician at Mayo Clinic (the "Pharmacy") located at 5777 E. Mayo Blvd.,
17 Phoenix, Arizona.

18 4. On or about September 20, 2013 Respondent diverted a 6 cc syringe
19 containing 6 ml of midozalam without a prescription order and injected the drug into
20 himself later that evening. Respondent resigned from his position as a pharmacy
21 technician at the Pharmacy effective October 3, 2013 for failing to comply with
22 Pharmacy policies.
23
24
25
26

1 to personally appear at that Board meeting. Respondent's probationary
2 period will continue until Respondent's request for termination is received
3 and the Board terminated the probation.

4 2. Respondent shall pay all costs associated with complying with this Consent
5 Agreement.

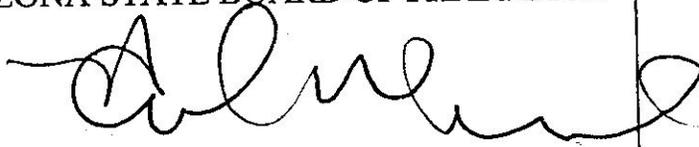
6 3. Respondent shall furnish all pharmacy employers with a copy of this
7 Consent Agreement. Respondent shall ensure that all pharmacy employers submit to the
8 Board a written acknowledgement that they have received a copy of this Consent
9 Agreement within ten (10) days of entering into an employment relationship with
10 Respondent.

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

16 DATED this 29th day of August, 2014.

17
18 ARIZONA STATE BOARD OF PHARMACY

19 (Seal)

20
21 By: 

HAL WAND, R.Ph.
Executive Director

22
23
24 ORIGINAL OF THE FOREGOING FILED
25 this 20 day of August 2014, with:

26 Arizona State Board of Pharmacy

1 1616 W. Adams Street
Phoenix, Arizona 85007
2 COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
3 this 28 day of August, 2014, to:

4 Kelly Downing
4101 W. Union Hills, #2125
5 Glendale, Arizona 85308
Respondent

6
7 COPY OF THE FOREGOING MAILED
this 28 day of August 2014, to:

8 Montgomery Lee
Assistant Attorney General
9 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
10 Attorney for the Board

11 
12 _____
Doc # 3871103

13
14
15
16
17
18
19
20
21
22
23
24
25
26