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7 Attorneys for the Arizona State Board of Pharmacy

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

9
10 In the Matter of

11 **ERIC MCCARTHY, PHARMD,**

Board Case No. 17-0016-PHR

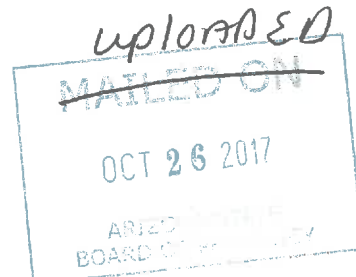
12 Holder of License No. S018296
As a Pharmacist
13 In the State of Arizona.

**CONSENT AGREEMENT
AND ORDER FOR 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.*, Eric McCarthy,
18 ("Respondent"), holder of Pharmacy License No. S018296 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.



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. 17-0016 involving allegations of unprofessional conduct against
13 Respondent.

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

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

22 8. Respondent acknowledges and agrees that, upon signing this Consent
23 Agreement and returning this document to the Board's Executive Director, he may not
24 revoke his acceptance of the Consent Agreement or make any modifications to the
25
26

1 document. Any modification to this original document is ineffective and void unless
2 mutually agreed by the parties in writing.

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5 not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value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

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

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

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

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

22 ACCEPTED AND AGREED BY RESPONDENT

23 
24 _____

Dated: 10-23-17

25 Eric McCarthy, PharmD
26 Pharmacist

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2 **FINDINGS OF FACT**

3 1. The Board is the duly constituted authority for regulating the practice of
4 pharmacy in the State of Arizona.

5 2. Respondent is the holder of license number S018296 which allows him to
6 practice as a Pharmacist in the State of Arizona.

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

9 4. At all relevant times, Respondent was employed by Fry's Food & Drug
10 located at 435 S. Ellsworth, Mesa, AZ 85208.

11 5. On or about February of 2016, Ms. Stephanie Spark, Pharm.D., Pharmacy
12 Coordinator for District 3, notified the Board staff of inventory discrepancies at Fry's
13 #115. According to Ms. Spark, Respondent admitting to taking Vyvanse 60mg#150;
14 Vyvanse 70mg #60, Alprazolam 2mg #60, Diazepam 10mg #50, Amphetamine Salts
15 20mg #100 and Amphetamine Salts 30mg #100.

16 6. It was reported that security footage from inside of the pharmacy show
17 Respondent pouring pills from a CII bottle believed to be Vyvanse into hand and then
18 pocketing the pills.

19 7. The Maricopa County Sheriff's Department arrested Respondent at the
20 store on February 16, 2016, and his employment was then terminated.

21 8. On February 18, 2106, Respondent signed a Notice of Separation with
22 Fry's noting the reason for termination as "Dishonesty (confessed or proven)." In the
23 comments section it was noted that "Associate confessed/proved to have taken controlled
24 substances from the pharmacy in the amount of \$2,800 without paying. This is
25 dishonesty, a violation of our good conduct guidelines and a violation of our core values."
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2 **CONCLUSIONS OF LAW**

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

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

7 3. The conduct and circumstances described above constitutes unprofessional
8 conduct pursuant to A.R.S. § 32-1901.01 (B) (1), (10) and (19).

9 **ORDER**

10 Based upon the above Findings of Fact and Conclusions of Law,

11 IT IS HEREBY ORDERED THAT Pharmacy License No. S018296, which was
12 issued to Respondent for the practice of Pharmacy in the State of Arizona, is hereby
13 placed on **PROBATION** for a minimum period of four (4) year and three (3) months
14 beginning the effective date of this Consent Agreement. The effective date of the Consent
15 Agreement and Order is the date it is signed by the Board's Executive Director.

16 The PROBATION is subject to the following conditions:

17 1. Within fourteen (14) days of the effective date of this Consent Agreement
18 and Order, Respondent shall enter into a contract with Pharmacists Assisting Pharmacists
19 of Arizona ("PAPA"). Respondent's PAPA contract shall extend for the entire term of
20 his probation under this Consent Agreement. Respondent shall abide by each and every
21 requirement of the PAPA contract. Failure to participate in the PAPA program, complete
22 the PAPA program or to abide by the PAPA contract's terms is a violation of this Order.

23 2. Within four (4) years and three (3) months from the execution date of this
24 Consent Agreement, Respondent shall complete 400 hours of community service
25 approved by Board staff. Respondent shall ensure that all entities to which he provides
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1 community service verify in writing to the Board the number of hours completed within
2 30 days of Respondent completing the community service.

3 3. Respondent shall pay all necessary fees relating to this probation.

4 4. Respondent shall furnish all pharmacy employers/preceptors with a copy of
5 this Board Order throughout the term of his probation. Respondent shall ensure that all
6 pharmacy employers submit to the Board a written acknowledgement that they have
7 received a copy of this Consent Agreement within ten (10) days of entering into an
8 employment relationship with Respondent.

9 5. Respondent shall advise the Board immediately of any change in pharmacy
10 employment status throughout the term of his probation.

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

14 7. Respondent shall obey all federal and state laws and rules governing the
15 practice of pharmacy.

16 8. Throughout the term of Respondent's probation, Respondent shall
17 personally appear before the Board when requested to do so by the Board or Board staff.

18 9. Respondent shall execute all appropriate release of information forms to
19 permit the Respondent's treatment professionals and PAPA to communicate with the
20 Board regarding Respondent's treatment.

21 10. Respondent shall pay all costs associated with complying with this Consent
22 Agreement, including all expenses associated with PAPA.

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

3 12. Prior to the probation being lifted, Respondent must request in writing to
4 the Board that the probation be terminated. Also, Respondent shall appear before the
5 Board at a regularly scheduled Board meeting approximately four (4) years and three (3)
6 months after the effective date of this Order to request that the probation imposed by this
7 Order be terminated. Respondent's failure to petition the Board to terminate the
8 probation shall extend the probation period.

9 DATED this 26 day of October, 2017.

10
11 ARIZONA STATE BOARD OF PHARMACY

12 (Seal)

13 By: 
14 KAMLESH GANDHI, PHARM.D.
15 Executive Director

16 ORIGINAL OF THE FORGOING FILED
17 this _____ day of _____, 2017, with:

18 Arizona State Board of Pharmacy
19 1616 W. Adams Street
20 Phoenix, Arizona 85007

21 EXECUTED COPY OF THE FOREGOING MAILED
22 BY CERTIFIED MAIL
23 this _____ day of _____, 2017, to:

24 Eric McCarthy
25 7255 E. Tasman St
26 Mesa, AZ 85207

EXECUTED COPY OF THE FOREGOING MAILED
this _____ day of _____, 2017, to:

Jeanne M. Galvin
Assistant Attorney General
1275 W. Washington Street, SGD/LES

1 Phoenix, Arizona 85007
2 Attorney for the Board

3 _____
4 Doc # 6295263

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PAPA ADDENDUM TO CONTRACT


PAPA Participant: Eric McCarthy

New PAPA Contract end date: August 18, 2021

Addendum to Contract:

1. Extend my PAPA contract completion date as to end on the same date as my Arizona State Board of Pharmacy consent order that eliminated the license suspension returning my license to normal status, or whichever comes first.

All other requirements of the contract will remain the same and in effect.


PAPA Participant's Signature

10-23-17
Date


PAPA Administrative Manager or Program Director

10/23/17
Date