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**BEFORE THE ARIZONA STATE BOARD
OF PHARMACY**

In the Matter of:

**Michael Ira Smith, Pharmacist
Holder of License No. S013524
As a Pharmacist
In the State of Arizona,

Respondent**

Board Case No. 17-0020

**INTERIM CONSENT AGREEMENT
FOR VOLUNTARY SUSPENSION OF
LICENSE**

By mutual agreement and understanding, between the Arizona State Board of Pharmacy ("Board") and Michael Ira Smith ("Respondent"), holder of Pharmacist License No. S013524, the parties enter into this Interim Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Interim Consent Agreement") as an interim disposition of this matter.

RECITALS

Respondent understands and agrees that:

1. The Board may adopt this Interim Consent Agreement, or any part thereof, pursuant to A.R.S. § 32-1901 *et seq.* and A.R.S. § 41-1092.07(F)(5).
2. Respondent has read and understands this Interim Consent Agreement as set forth herein, and has had the opportunity to discuss this Interim Consent Agreement with an attorney or has waived the opportunity to discuss this Interim Consent Agreement with an attorney. Respondent voluntarily enters into this Interim Consent Agreement and by doing so agrees to abide by all of its terms and conditions.

1 3. By entering into this Interim Consent Agreement, Respondent freely and
2 voluntarily relinquishes all rights to an administrative hearing on the matters set forth
3 herein, as well as all rights of rehearing, review, reconsideration, appeal, judicial review
4 or any other administrative and/or judicial action, concerning the matters related to the
5 Interim Consent Agreement.
6

7 4. Respondent understands that this Interim Consent Agreement does not
8 constitute a dismissal or resolution of this matter or any matters that may be currently
9 pending before the Board and does not constitute any waiver, express or implied, of the
10 Board's statutory authority or jurisdiction regarding any other pending or future
11 investigations, actions, or proceedings. Respondent also understands that acceptance of
12 this Interim Consent Agreement does not preclude any other agency, subdivision, or
13 officer of this State from instituting civil or criminal proceedings with respect to the
14 conduct that is the subject of this Interim Consent Agreement. Respondent does not
15 intend his acceptance of this Interim Consent Agreement to constitute an admission of
16 any fact or facts and he enters into this agreement as an interim compromise of a
17 pending matter. Respondent further does not relinquish his rights to an administrative
18 hearing, rehearing, review, reconsideration, judicial review or any other administrative
19 and/or judicial action, concerning the matters related to a final disposition of this matter,
20 unless she affirmatively does so as part of the final resolution of this matter.
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23 5. Respondent acknowledges and agrees that upon signing this Interim
24 Consent Agreement and returning it to the Board's Executive Director, Respondent may
25 not revoke his acceptance of this Interim Consent Agreement or make any modifications

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

3 6. Respondent understands that this Interim Consent Agreement shall not
4 become effective unless and until it is adopted by the Board and signed by its Executive
5 Director.
6

7 7. Respondent understands and agrees that if the Board does not adopt this
8 Interim Consent Agreement, he will not assert in any future proceedings that the Board's
9 consideration of this Interim Consent Agreement constitutes bias, prejudice,
10 prejudice, or other similar defense.
11

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

16 9. Respondent understands that this Interim Consent Agreement does not
17 alleviate his responsibility to comply with the applicable license-renewal statutes and
18 rules. If this Interim Consent Agreement is in effect at the time Respondent's **pharmacy**
19 **license** comes for renewal, he must renew the license if Respondent wishes to retain it.
20 If Respondent elects not to renew his license as prescribed by statute and rule,
21 Respondent's license will not expire but rather, by operation of law (A.R.S. § 32-3202),
22 will become suspended until the Board takes final action in this matter.
23

24 10. Respondent understands that any violation of this Interim Consent
25 Agreement constitutes unprofessional conduct under A.R.S. § 32-1901.01(B)(20),

1 violating a formal order, terms of probation, a consent agreement or a stipulation issued
2 or entered by the board or its executive director pursuant to Chapter 18.

3 11. Respondent neither admits nor denies the following Findings of Fact but does
4 acknowledge that if this matter proceeds to a formal administrative hearing, the Board
5 could offer evidence and testimony in support of the Findings of Fact and as such, a trier
6 of fact could determine the findings of fact sustain the conclusions of law.
7

8 INTERIM FINDINGS OF FACT

9 1. The Board is the duly constituted authority for licensing and regulating the
10 practice of pharmacy in the State of Arizona.

11 2. Respondent is the holder of License No. S013524 to practice as a
12 pharmacist in the State of Arizona.

13 3. During all relevant times to these interim findings, Respondent was
14 employed as a pharmacist by Walmart in Maricopa County, AZ and various other
15 locations as a covering pharmacist.
16

17 4. On July 27, 2017, Mr. Smith was arrested and on August 7, 2017, he was
18 indicted on ten (10) felony counts of Sexual Exploitation of a Minor, all class 2 felonies
19 and all Dangerous Crimes Against Children. All of the charges involve the knowing
20 distribution, transportation, exhibition, receipt, sale, purchase, electronic transmission,
21 possession or exchange of a visual depiction in which a minor under fifteen years of age
22 is engaged in exploitive exhibition or other sexual conduct in violation of A.R.S. §§13-
23 3821, 13-3551, 13-3553, 13-705, 13-702 and 13-801.
24
25

1 5. Specifically, in 2015, a Special Agent (SA) from Homeland Security
2 Investigations (HIS) Phoenix, AZ Office began an investigation into “Application A”, a
3 video conferencing application that is used internationally by individuals to stream
4 and/or view child abuse images/videos with other users of the application. Many users
5 also utilize their webcam to stream live videos of themselves masturbating to other users
6 in the same video-conferencing room.
7

8 6. On more than ten (10) occasions from October 20, 2015 to July 24, 2017,
9 an undercover SHI SA logged on to “Application A” and viewed a user with the
10 screenname “Pervbator”, in video-conference rooms masturbating in full view of his
11 webcam while child abuse images or videos were being shown to the room by other
12 users.
13

14 7. After effectuating service on “Application A” and Internet Service Provider
15 (ISP) Cox Communications, the individual using the screen name “Pervbator” was
16 identified as Michael I. Smith, Respondent.
17

18 8. Cox Communications confirmed that Respondent was assigned the relevant
19 Internet Protocol (IP) address from July 14, 2015 until April 1, 2016.

20 9. The IP address assigned to Respondent was captured on numerous
21 occasions by “Application A” at times Mr. Smith aka “Pervbator” was present in rooms
22 where child abuse material was being shown.

23 10. The undercover agent utilized software to record what was visible in the
24 video-conferencing rooms while he was acting in the undercover role. The following are
25

1 examples of instances of child abuse that were broadcast to video-conferencing rooms
2 while Respondent was present in these rooms.

3 a. On December 9, 2015, January 7, 2015, and April 6, 2017,
4 Respondent was naked and masturbating in full view (including his face) of his webcam
5 while child abuse material was being shown in the "Application A" room.
6

7 b. On April 6, 2017, Respondent engaged in conversation with the
8 undercover agent admitting he (Respondent) enjoys watching pornography that involves
9 underage boys.

10 e. On July 27, 2107 HSI Special Agents executed a search warrant at
11 Respondent's where agents found pornographic photographs taken in that same home of
12 a young boy.
13

14 INTERIM CONCLUSIONS OF LAW

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

17 2. The Board is authorized to enter into an Interim Consent Agreement with a
18 licensee to restrict the professional's practice to protect the public and ensure that the
19 professional is able to safely engage in the practice of pharmacy in Arizona. A.R.S. §
20 32-1927.
21

22 INTERIM ORDER

23 Based on the Interim Findings of Fact and Interim Conclusions of Law, and
24 pursuant to the authority granted to the Board under A.R.S. § 32-1927:
25

1 1. **IT IS HEREBY ORDERED** that upon the effective date of this Consent
2 Agreement and Order, Respondent's license as a pharmacist is **SUSPENDED**. The
3 effective date of this Consent Agreement and Order is the date that it is signed by the
4 Board's Executive Director.

5
6 2. During the period of suspension, Respondent shall not practice pharmacy
7 as defined in A.R.S. §32-1901(69) or hold himself out as a practicing pharmacist or in
8 any way convey to the public that he holds an active license to practice pharmacy.

9 3. The suspension of Respondent's license shall continue until such time the
10 Board enters a final order with respect to this matter after a formal hearing or
11 acceptance of a Consent Agreement as a final resolution of the matter.

12
13 4. Respondent's license to practice pharmacy shall not be fully restored
14 unless and until the Board determines in its sole discretion that Respondent may safely
15 engage in the practice of pharmacy. Respondent understands that should the Board lift
16 the suspension of his license, the Board may order that he return to practice on a limited
17 basis and/or under certain terms and conditions.

18
19 5. Respondent has read and understands this Interim Consent Agreement and
20 Order for Voluntary Suspension as set forth herein, and has had the opportunity to
21 discuss this Interim Consent Agreement and Order for Voluntary Suspension with an
22 attorney or has waived the opportunity to do so.

23 6. Respondent understands that this Interim Consent Agreement and Order
24 for Voluntary Suspension, or any part thereof, may be considered in any future
25 disciplinary action against him.

1 7. Time is of the essence with regard to this agreement.

2 8. If Respondent fails to comply with the terms of this Interim Consent
3 Agreement and Order for Voluntary Suspension, the Board shall properly institute
4 proceedings for noncompliance with this Consent Agreement and Order for Voluntary
5 Suspension, which may result in suspension, revocation, or other disciplinary and/or
6 remedial actions. Respondent agrees that any violation of this Interim Consent
7 Agreement and Order for Voluntary Suspension is a violation of A.R.S. § 32-
8 1901.01(B)(20), which is violating a formal board order or consent agreement.

9
10 9. Respondent understands that this Interim Consent Agreement and Order
11 for Voluntary Suspension does not constitute a final resolution of this or other matters
12 currently pending before the Board, if any, and does not constitute any waiver, express
13 or implied, of the Board's statutory authority or jurisdiction regarding any other
14 pending or future investigation, action or proceeding. Respondent also understands that
15 acceptance of this Interim Consent Agreement and Order for Voluntary Suspension
16 does not preclude any other agency, subdivision or officer of this state from instituting
17 other civil or criminal proceedings with respect to the conduct that is the subject of this
18 Interim Consent Agreement and Order for Voluntary Suspension.
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20
21 10. Respondent understands that the foregoing Interim Consent Agreement
22 and Order for Voluntary Suspension shall not become effective unless and until adopted
23 by the Board and executed on behalf of the Board. Any modification to this original
24 document is ineffective and void unless mutually approved by the parties in writing.
25

1 11. Respondent understands that this Interim Consent Agreement and Order
2 for Voluntary Suspension is a public record that may be publicly disseminated as a
3 formal action of the Board.
4

5 **RESPONDENT ACCEPTS, SIGNS AND DATES THIS INTERIM CONSENT**
6 **AGREEMENT**


7 
8 _____

8 Michael Ira Smith

Dated: 10/10/2017

9
10 **BOARD ACCEPTS, SIGNS AND DATES THIS INTERIM CONSENT**
11 **AGREEMENT**

12
13 Dated this 19 day of October, 2017.

14
15 By: 
16 _____
17 KAMLESH GANDHI, PharmD
18 Executive Director
19 Arizona State Board of Pharmacy

20
21 **ORIGINAL** of the foregoing filed
22 This _____ day of _____, 2017, with:

23 Arizona State Board of Pharmacy
24 1616 West Adams Street
25 Phoenix, Arizona 85007

COPY of the foregoing mailed via
Certified mail no.

This _____ day of _____, 2017, to:

Michael Ira Smith
6242 East Hearn Road
Scottsdale, AZ 85254

1 DOC#6132628

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