

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

2 In the Matter of:

Investigation Case Number 03-0017-PHR

3 JAMES LIBERATORE, RPh.)
4 Holder of License No. 11134)
5 For the Practice of Pharmacy)
6 In the State of Arizona,)
Respondent)

**CONSENT AGREEMENT AND ORDER
FOR SUSPENSION AND PROBATION**

7 **RECITALS**

8 In the interest of a prompt and judicious settlement of this case, consistent with the public
9 interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board")
10 and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5) , James Liberatore ("Respondent"),
11 holder of pharmacist license number 11134 to practice pharmacy in the State of Arizona, and the Board
12 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent
13 Agreement") as a final disposition of this matter.

14 1. Respondent has read and understands this Consent Agreement and has had the
15 opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity
16 to discuss this Consent Agreement with an attorney.

17 2. Respondent understands that he has a right to a public administrative hearing concerning the
18 above-captioned matter, at which hearing he could present evidence and cross-examine witnesses. By
19 entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right
20 to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial
21 review or any other administrative and/or judicial action, concerning the matters set forth herein.
22 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

23 3. Respondent understands that this Consent Agreement or any part of the agreement may
24 be considered in any future disciplinary action against him.

25 4. Respondent understands this Consent Agreement deals with Board Investigation
26 Case No. 03-0017-PHR involving allegations of unprofessional conduct against Respondent. The

1 investigation into these allegations against Respondent shall be concluded upon the Board's
2 adoption of this Consent Agreement.

3 5. Respondent understands that this Consent Agreement does not constitute a dismissal
4 or resolution of any other matters currently pending before the Board, if any, and does not constitute any
5 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending
6 or future investigation, action or proceeding. Respondent also understands that acceptance of this
7 Consent Agreement does not preclude any other agency, subdivision, or officer of this State from
8 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this
9 Consent Agreement.

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

15 7. Respondent understands that the Consent Agreement shall not become effective unless
16 and until adopted by the Board and signed by its Executive Director.

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

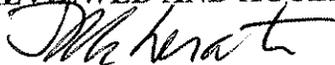
20 9. Respondent understands and agrees that if the Board does not adopt this Consent
21 Agreement, he will not assert as a defense that the Board's consideration of this Consent
22 Agreement constitutes bias, prejudice, prejudgement or other similar defense.

23 10. Respondent understands that this Consent Agreement is a public record that may be
24 publicly disseminated as a formal action of the Board and may be reported as required by law to
25 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

26 11. Respondent understands that any violation of this Consent Agreement constitutes

1 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of
2 probation, a consent agreement or a stipulation issued or entered into by the board or its Executive
3 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

4 **REVIEWED AND ACCEPTED BY:**

5 

6 **JAMES LIBERATORE**

7 12-29-03

8 **DATE**



10 **FINDINGS OF FACT**

11 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
12 matters described herein. Respondent admits to the following Findings of Fact:

13 12. The Board is the duly constituted authority for the regulation and control of the practice of
14 pharmacy in the State of Arizona.

15 13. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee
16 of the Board under A.R.S. § 32-1901, et seq.

17 14. Respondent is the holder of a license 11134 which permits him to engage in the practice of
18 pharmacy in the State of Arizona.

19 15. Respondent was employed as a pharmacist between the dates of February 1, 2002 and
20 February 5, 2003 at Fry's Food and Drug Pharmacy #54, 4832 E. Bell Rd., Phoenix, Arizona. Respondent
21 admitted to removing prescription files from the pharmacy in violation of A.A.C. § R4-23-407 (A)(2). (See
22 **Exhibit A** -Statement from Respondent's supervisor, Terry Daane and **Exhibit B** - Respondent's Signed
Admission).

23 16. A Board Compliance Officer met with Terry Daane (Pharmacy Supervisor) and Kendra Doyel
24 (Pharmacy Manager at Store #54) on May 1, 2003. During Fry's investigation, it was disclosed that the
25 Respondent had merged his prescription profile and the profiles of his family members to a dummy profile
26 and the hard-copy prescriptions were removed from the pharmacy. (See **Exhibit C**). The Pharmacy

1 Supervisor had the profiles recreated and doubted the legitimacy of the prescriptions. All prescriptions
2 were dispensed by James Liberatore during his midnight shift. The Pharmacy Supervisor did not pursue
3 the issue since James Liberatore had been terminated.

4 17. Between the dates of May 1, 2003 and June 17, 2003, a Board Compliance Officer met with
5 the medical practitioners identified by the Fry's investigation. The results of the investigation are disclosed
6 in **Exhibits D through H**, which are attached to this Consent Agreement.

7 18. Between the dates of January 1, 2002 and December 31, 2002, Respondent dispensed
8 prescriptions to himself as listed in **Exhibit D** from Fry's Pharmacy #54. Four (4) original prescriptions
9 and sixteen (16) refills were dispensed without valid prescription orders from a medical practitioner.
10 Included in **Exhibit D** is the signed statement from the physician attesting that Respondent was not his
11 patient nor had he prescribed any medications to Respondent. Respondent dispensed approximately 300
12 dosage units of Atenolol 50mg, 300 dosage unites of Lipitor 40mg, 12 dosage units of Viagra 25mg, and
13 800 dosage units of Butalbital/APAP/Caffeine 50/325/40, without a valid prescription order as required
14 under A.R.S. § 32-1901 (73).

15 19. Between the dates of January 1, 2002 and December 31, 2002, Respondent dispensed
16 prescriptions to patient T.L. as listed in **Exhibit E** from Fry's Pharmacy #54. Six (6) original prescriptions
17 and nine (9) refills were dispensed without valid prescription orders from a medical practitioner. Included
18 in **Exhibit E** is the signed statement from the physician attesting that T.L. was not his patient nor had he
19 prescribed any medications to this patient. Respondent dispensed to patient T.L. approximately 360
20 dosage units of Butalbital/APAP/Caffeine 50/325/40, 120 dosage units of Clindamycin Solution 1%, 120
21 dosage units of Clindamycin Pledgets, 180 dosage units of Effexor XR 150 mg, 360 dosage units of
22 Effexor XR 75 mg, and 230 units of Ibuprofen 600 mg, without a valid prescription as required under
23 A.R.S. § 32-1901 (73).

24 20. Between the dates of January 1, 2002 and December 31, 2002, Respondent dispensed
25 prescriptions to patient N.L. as listed in **Exhibit F** from Fry's Pharmacy #54. Eight (8) original
26 prescriptions and seven (7) refills were dispensed without valid prescription orders from a medical

1 practitioner. Included in **Exhibit F** is the signed statement from the physician attesting that N.L. was not
2 his patient nor had he prescribed medications to this patient. Respondent dispensed to N.L. approximately
3 120 dosage units of Minocycline 100mg, 960 dosage units of Benzoyl Peroxide Wash 5%, 240 dosage
4 units of Clindamycin Pledgets, 56 dosage units of Cephalexin 500mg, 120 dosage units of Fluocinonide
5 Solution 0.05%, 120 dosage units of Effexor XR 150mg , 270 dosage units of Effexor XR 75mg, and 120
6 dosage units of Clindamycin 1% solution, without a valid prescription order as required under
7 A.R.S. § 32-1901 (73).

8 21. Between the dates of January 1, 2002 and December 31, 2002, Respondent dispensed
9 prescriptions to M.L. as listed in **Exhibit G** from Fry's Pharmacy #54. One (1) original prescription and
10 one (1) refill were dispensed without valid prescriptions from a medical practitioner. Included in **Exhibit**
11 **G** is the signed statement from the physician attesting that M.L. was not his patient nor had he prescribed
12 any medications to this patient. Respondent dispensed to patient M.L. approximately 4 metered dose
13 inhalers of Albuterol, without a valid prescription order as required under A.R.S. § 32-1901 (73).

14 22. Between the dates of January 1, 2002 and December 31, 2002, Respondent dispensed
15 prescriptions to patient S.P.L. as listed in **Exhibit H** from Fry's Pharmacy #54. Five (5) original
16 prescriptions were dispensed without valid prescription orders from a medical practitioner. Included in
17 **Exhibit H** is the signed statement from the veterinarian attesting that patient S.P.L. was last seen at her
18 office in September of 1999 and she has not prescribed any medications for the patient since that time.
19 Respondent dispensed approximately 750 dosage units of Phenobarbital 64.8 mg, 60 dosage units of
20 diazepam 10mg, and 100 dosage units of Cephalexin 500mg without a valid prescription order as required
21 under A.R.S. § 32-1901 (73), in violation of A.R.S. § 36-2525 (D) and 21 C.F.R. § 1306.21.
22 Phenobarbital and diazepam are Class IV Controlled Substances as defined in A.R.S. § 36-2515 (A)(2)
23 and 21 C.F.R. § 103.14.

24 CONCLUSIONS OF LAW

25 23. The Board is the duly constituted authority for the regulation and control of the practice of
26 pharmacy in the state of Arizona, under A.R.S. § 32-1901, et seq.

1 24. The conduct and circumstances described in paragraph 16 constitutes a violation of
2 A.A.C. R4-23-407 (A)(2) to wit:

3 **A.A.C. R4-23-407 (A)(2) :** A prescription order is kept by the pharmacist or pharmacy
4 permittee as a record of the dispensing of a drug or device for three years from the date the drug
5 or device is dispensed, except for a drug or device personally administered by a medical practitioner
6 to the medical practitioner's patient.

7 25. The conduct and circumstances described in paragraphs 18 through 22 constitute a
8 violation (s) of A.R.S. § 32-1968 (A) to wit:

9 **A.R.S. § 32-1968 (A):** A prescription-only drug shall be dispensed only under one of the
10 following conditions:

- 11 1. By a medical practitioner in conformance with section 32-1921.
- 12 2. On a written prescription order
- 13 3. On an oral prescription order that is reduced promptly to writing and filed by the
14 pharmacist.
- 15 4. By renewing any written or oral prescription order if a renewal is authorized by the
16 prescriber either in the original prescription order or by an oral order that is reduced
17 promptly to writing and filed by the pharmacist

18 26. The conduct and circumstances described in the Findings of Fact above constitute
19 grounds for disciplinary action under A.R.S. § 32-1927 (A)(10) and A.R.S. § 32-1927 (B)(2) to
20 wit:

21 **A.R.S. § 32-1927 (A)(10)** The license of any pharmacist or pharmacy intern may be revoked
22 or suspended or a pharmacist or pharmacy intern may be placed on probation by the board
23 when :
24 The licensee is found by the board to be guilty of violating any Arizona or federal
25 law, rule, or regulation relating to the manufacture and distribution of drugs, devices, or the
26 practice of pharmacy.

A.R.S. § 32-1927 (B)(2) The license of any pharmacist or pharmacy intern may be revoked
 or suspended or the pharmacist or pharmacy intern may be placed on probation or censured
 and a civil penalty of not more than one thousand dollars (\$1000.00) for each offense may
 be imposed by the board when:
 The licensee is found by the board, or is convicted in a federal or state court, of having
 violated federal or state laws or administrative rules pertaining to marijuana, prescription-
 only drugs, narcotics, dangerous drugs or controlled substances.

ORDER

 Based upon the above Findings of Fact and Conclusions of Law and under the authority granted
to the Board under A.R.S. § 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-104(G).

1 **IT IS HEREBY ORDERED** that:

2 27. License No. 11134, which was issued to Respondent for the practice of pharmacy in the State
3 of Arizona, is hereby placed on **SUSPENSION** for a period of ten (10) days, and thereafter
4 **PROBATION** for a period of one (1) year upon adoption of this Consent Agreement by the Board and
5 Respondent shall immediately return License No. 11134 to the Board.

6 The **SUSPENSION** and **PROBATION** are subject to the following conditions:

7 28. Respondent shall pay a civil penalty of one thousand dollars (\$1,000.00) to the Board for each
8 of the five (5) patients that he dispensed prescription-only drugs or Controlled Substances to as listed in
9 the Findings of Fact above for a total of five thousand dollars (\$5,000.00) within three hundred and sixty
10 five days sixty (365) days of the date of this Order. Payment of the civil penalty must be paid by Cashier's
11 Check or Certified Check to the Board.

12 29. Respondent shall pay all fees and complete all Continuing Education requirements throughout
13 the term of his probation to maintain Pharmacist License Number 11134.

14 30. Respondent shall not serve as a preceptor pharmacist or pharmacist-in-charge throughout
15 the term of his suspension and probation.

16 31. Respondent shall obey all federal and state laws and rules governing the practice
17 of pharmacy.

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

20 33. Respondent is required to advise the Board immediately of any change in pharmacy
21 employment status throughout the term of his probation.

22 34. Respondent is required to furnish all pharmacy employers with a copy of this Board Order
23 throughout the term of his probation.

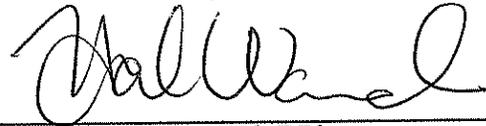
24 35. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order,
25 the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or
26 take other disciplinary actions against the Respondent. The issue of such hearing will be limited solely

1 to whether this Order has been violated.

2 36. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
3 after January 14, 2005 to request that the probation imposed by this Order be terminated.

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5 DATED and EFFECTIVE this 20th day of January, 2004

6 ARIZONA STATE BOARD OF PHARMACY

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9 Hal Wand, RPh
10 Executive Director
11 Arizona State Board of Pharmacy
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1 ORIGINAL of the foregoing, fully executed,
2 filed this 20th day of January 2004, with:

3 Arizona State Board of Pharmacy
4 4425 W. Olive Avenue, #140
5 Glendale, Arizona 85302

6 Fully Executed Copy of the foregoing sent
7 via Certified US mail this 21st day of
8 January, 2004 to:

9 James Liberatore
10 10434 N. 43rd St.
11 Phoenix, AZ 85028

12 Copy or the foregoing mailed
13 this 21st day of January, 2004 to:

14 Roberto Pulver
15 Assistant Attorney General
16 1275 W. Washington, CIV/LES
17 Phoenix, Arizona 85007
18 Attorney for the State
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