

2 BEFORE THE ARIZONA STATE BOARD OF PHARMACY

3 In the Matter of:

4 James R. Bataoel)
5 Holder of License No. 12255)
6 For the Practice of Pharmacy)
7 In the State of Arizona,)
Respondent)

Case Number 2003-18-PHR

CONSENT AGREEMENT AND ORDER
FOR PROBATION

8 TO: James R. Bataoel
9 21803 N. 40th Place
Phoenix, Arizona 85050

10 RECITALS

11
12 In the interest of a prompt and judicious settlement of this case, consistent with the public interest,
13 statutory requirements and responsibilities of the Arizona State Board of Pharmacy ("Board"), and under
14 A.R.S. § 32-1928, *et seq.* and 41-1092(F)(5), James R. Bataoel, holder of license number 12255 to
15 practice pharmacy in the State of Arizona ("Respondent"), and the Board enter into the following Recitals,
16 Finding of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this
17 matter.

18 1. Respondent has read and understands this Consent Agreement as set forth herein, and has
19 had the opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters
20 into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative
21 hearing.

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

1 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

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

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

10 5. Respondent understands that this Consent Agreement deals with Board Investigation Case
11 No. 2003-18-H involving allegations of unprofessional conduct against Respondent. The investigation
12 into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent
13 Agreement.

14 6. All admissions made by Respondent in this Consent Agreement are made solely for the final
15 disposition of this matter, and any related administrative proceedings or civil litigation involving the Board
16 and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are not
17 intended for any other use, such as in the context of another regulatory agency proceedings, or civil or
18 criminal proceedings, whether in the State of Arizona or in any other state or federal court.

19 7. Respondent acknowledges and agrees that, upon signing this Consent Agreement and
20 returning this document to the Board's Executive Director, Respondent may not revoke his acceptance
21 of the Consent Agreement or make any modifications to the document, regardless of whether the Consent
22 Agreement has been issued by the Board's Executive Director. Any modification to this original
23 document is ineffective and void unless mutually approved by the parties in writing.

24 8. Respondent understands that the foregoing Consent Agreement shall not become effective
25 unless and until adopted by the Board and signed by its Executive Director.

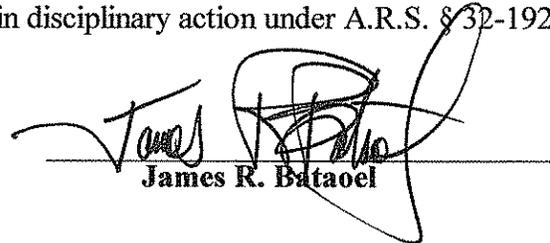
26 9. Respondent understands and agrees that if the Board does not adopt this Consent

1 Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement
2 constitutes bias, prejudice, prejudgment or other similar defense.

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

6 11. Respondent understands that any violation of this Consent Agreement constitutes
7 unprofessional conduct under A.R.S. §32-1927(A)(17)([t]he licensee violated a formal order, terms of
8 probation, a consent agreement or a stipulation issued or entered into by the board or its executive
9 director pursuant to this chapter) and may result in disciplinary action under A.R.S. §32-1927.

10
11 DATED: 12/20/03


James R. Bataoel

12 Reviewed and Approved as to form:

13
14
15 By: _____, Esq.
16 *(Insert Name of Attorney, if any)*
17 Attorney for Respondent

18 **FINDINGS OF FACT**

19 By stipulation of the parties, this Consent Agreement is entered into for final disposition of the
20 matters described therein. Respondent admits to the following Finding of Fact:

21 12. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee
22 of the Board, under A.R.S. § 32-1901, *et seq.*

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

25 14. Respondent is the holder of License No. 12255 for the practice of pharmacy in the State
26 of Arizona. Respondent was engaged in the practice of pharmacy and was the only pharmacist on duty
at Apothecary Shop of Phoenix, located at 1300 N. 12th Street, Suite 555, Phoenix, Arizona on March

1 4, 2003.

2 15. On or about March 4, 2003, Respondent admits that he incorrectly compounded and/or
3 assumed responsibility for compounding and dispensed alprostadil 1000 mcg/ml injection pursuant to
4 prescription number 176235 that was written for PGE 1, 20 mcg/ml injection, to patient M.G.

5 16. On or about March 4, 2003, Respondent dispensed alprostadil 1000 mcg/ml injection that
6 had expired on January 31, 2003.

7 17. The parties waive all further findings of fact.

8
9 **CONCLUSIONS OF LAW**

10 18. The Board is the duly constituted authority for the regulation and control of the practice
11 of pharmacy in the State of Arizona, under A.R.S. § 32-1901, *et seq.*

12 19. The conduct and circumstances described above regarding Respondent constitute
13 violations of A.A.C. R4-23-402(A)(6)(8)&(11) to wit:

14 A.A.C. R4-23-402(A)(6)(8)&(11) A pharmacist or a graduate intern or pharmacy intern under the
15 supervision of a pharmacist shall perform the following professional practices in dispensing a
prescription medication from a prescription order:

16 (6). Verify that a dosage is within proper limits;

17 (8). Compound, mix, combine, or otherwise prepare and package prescription medication
18 needed to dispense individual prescription orders.

19 (11). Make a final accuracy check on the completed prescription medication and manually
initial the finished label;

20 20. The conduct and circumstances described above regarding Respondent constitute
21 unprofessional conduct under A.R.S. § 32-1927(A)(10) and A.R.S. § 32-1927(B)(1)(2):

22 **A.R.S. §32-1927(A)(10)** The license of any pharmacist, pharmacy intern, or graduate intern may
23 be revoked or suspended or a pharmacist or intern may be placed on probation by the board if:

24 10. The licensee is found by the board to be guilty of violating any Arizona or federal law, rule
25 or regulation relating to the manufacture and distribution of drugs, devices or the practice
of pharmacy.

26 **A.R.S. §32-1927(B)(1)&(2)** The license of any pharmacist or intern may be revoked or suspended
or the pharmacist, pharmacy intern, or graduate intern may be placed on probation or censured
and a civil penalty of not more than one thousand dollars for each offense may be imposed by the

1 board if the licensee:

- 2 1. Is found by the Board to be guilty of dispensing a different drug or brand of drug in place
3 of the drug or brand of drug ordered or prescribed without the express permission in each
4 case of the orderer, or in the case of a prescription order, the medical practitioner. The
5 conduct prohibited by this paragraph does not apply to substitutions authorized pursuant
6 to section 32-1963.01.
- 7 2. Is found by the board, or is convicted in a federal or state court, of having violated federal
8 or state laws or administrative rules pertaining to marijuana, prescription-only drugs,
9 narcotics, dangerous drugs or controlled substances.

7 **ORDER**

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

10 **IT IS HEREBY ORDERED** that:

11 21. License No. 12255, which was issued to Respondent for the practice of pharmacy in the
12 State of Arizona, is hereby placed on **PROBATION** for a period of six (6) months upon adoption of this
13 Consent Agreement by the Board. The **PROBATION** is subject to the following conditions:

14 22. Respondent shall attend and complete a Continuing Education class on prescription
15 compounding.

16 23. Respondent shall pay all fees and complete all Continuing Education requirements to
17 maintain Pharmacist License number 12255 throughout the term of **PROBATION**.

18 24. Respondent shall not serve as a preceptor pharmacist nor as a pharmacist in charge
19 throughout the term of **PROBATION**.

20 25. Respondent shall obey all federal and state laws and rules governing the practice of
21 pharmacy.

22 26. Respondent shall pay a civil penalty of two hundred and fifty dollars (\$250.00) to the
23 Board within sixty 60 days of the date of this Order. Payment shall be by a certified check or a cashier's
24 check.

25 27. If Respondent violates this Order in any way or fails to fulfill the requirements of this
26 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke,

1 suspend or take other disciplinary action against the Respondent. The issue at such hearing will be limited
2 solely to whether this Board Order has been violated.

3 28. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
4 after July 14, 2004 to request that the probation imposed by this order be terminated.

5 DATED AND EFFECTIVE this 20th day of January, 2003.

7 ARIZONA STATE BOARD OF PHARMACY

8 SEAL

9 By 
10 Hal Wand, Executive Director
Arizona State Board of Pharmacy

11 ORIGINAL of the foregoing
12 filed this 20th day of January
2003, with:

13 Arizona State Board of Pharmacy
14 4425 W. Olive Avenue, Suite 140
Glendale, Arizona 85302

15 COPY of the foregoing mailed by
16 US Certified Mail #
this 21st day of January, 2003, to:

17 James R. Bataoel
18 21803 N. 40th Place
Phoenix, Arizona 85050

19 Copy of the foregoing mailed
20 this 21st day of January, 2003, to:

21 **[Name of Attorney Respondent]**
XXXXXXXXXXXXX
XXXXXXXXXXXXX

22 Roberto Pulver
23 Assistant Attorney General
24 1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
25 Attorney for the State

26 
Board Operations