

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

2 In the Matter of:

Investigation Case Number 03-0019-PHR

3 DOUGLAS K. McDOWELL, RPh. )  
4 Holder of License No. 6268 )  
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) , DOUGLAS K. McDOWELL  
11 ("Respondent"), holder of pharmacist license number 6268 to practice pharmacy in the State of Arizona,  
12 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
13 ("Consent Agreement") as a final disposition of this matter.

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

17 2. Respondent understands that he has a right to a public administrative hearing concerning  
18 the above-captioned matter, at which hearing he could present evidence and cross-examine witnesses.  
19 By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right to such  
20 an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review  
21 or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent  
22 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 Case No.  
26 03-0019-PHR involving allegations of unprofessional conduct against Respondent. The investigation into

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

3 5. Respondent understands that this Consent Agreement does not constitute a dismissal or  
4 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 Consent  
7 Agreement does not preclude any other agency, subdivision, or officer of this State from instituting other  
8 civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

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

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

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

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

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

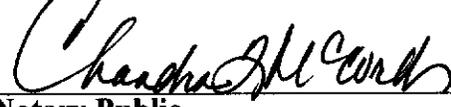
24 11. Respondent understands that any violation of this Consent Agreement constitutes  
25 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of  
26 probation, a consent agreement or a stipulation issued or entered into by the board or its Executive

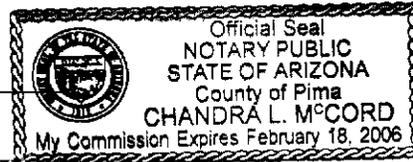
1 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

2 **REVIEWED AND ACCEPTED BY:**

3   
4 DOUGLAS K. McDOWELL

12-30-03  
DATE

5   
6 Notary Public



7 **FINDINGS OF FACT**

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

- 10 1. The Board is the duly constituted authority for the regulation and control of the practice  
11 of pharmacy in the State of Arizona.
- 12 2. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee  
13 of the Board under A.R.S. § 32-1901, et seq.
- 14 3. Respondent is the holder of a license 6268 which permits him to engage in the practice of  
15 pharmacy in the State of Arizona.
- 16 4. Respondent was employed as a pharmacist from June 9, 2003 to November 4, 2003 at  
17 Walgreens Drug #3007, 9470 E. Golf Links Road, Tucson, Arizona and also at Walgreens Drug #1899  
18 at 9495 E. Speedway Blvd., Tucson, Arizona.
- 19 5. On November 4, 2003, Respondent appeared he was having a stroke and was transported  
20 by ambulance from Walgreens Drug #1899 to El Dorado Hospital.
- 21 6. Medical personnel at El Dorado Hospital determined that Respondent was suffering from  
22 a drug overdose, which caused Respondent to act as though he was having a stroke.
- 23 7. Respondent's drug overdose was caused by taking lorazepam tablets.
- 24 8. Respondent did not have a valid prescription to take lorazepam, which is a violation of  
25 A.R.S. § 36-2525(D) and 21 C.F.R. § 1306.21.
- 26 9. At El Dorado Hospital, Respondent admitted to medical personnel that he had stolen

1 lorazepam tablets, a Class IV Controlled Substance as defined in A.R.S. § 36-2515 and 21 C.F.R.  
2 §1308.14, from Walgreens Drug.

3 10. From November 19, 2003 to December 2, 2003, a Board Compliance Officer conducted  
4 Controlled Substance audits at both pharmacies and determined that Walgreens Drug #3007 was unable  
5 to account for approximately 144 tablets of 0.5mg. lorazepam tablets.

### 6 CONCLUSIONS OF LAW

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

9 12. The conduct and circumstances described in paragraphs 16 and 19 above constitute a  
10 violation of A.R.S. § 32-1927 (A) (4) and (A) (5) to wit:

11 The licensee reports for duty under the influence of alcohol or other drugs.

12 The licensee is addicted to the use of alcohol or other drugs to such a degree as to render the  
13 licensee unfit in the opinion of the board to practice the profession of pharmacy.

14 13. The conduct and circumstances described in paragraph 20 above constitutes a violation(s)  
15 of A.R.S. § 32-1927 (A)(10) and (B)(2).

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

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

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

22 **A.R.S. § 32-1927 (B)(2):** The license of any pharmacist or pharmacy intern may be revoked  
23 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:

24 The licensee is found by the board, or is convicted in a federal or state court, of having  
25 violated federal or state laws or administrative rules pertaining to marijuana, prescription-  
only drugs, narcotics, dangerous drugs or controlled substances.

26

1 **ORDER**

2 Based upon the above Findings of Fact and Conclusions of Law and under the authority granted  
3 to the Board under A.R.S. § 32-1927, 41-1092.07 (F)(5), and A.A.C. R4-23-104(G).

4 **IT IS HEREBY ORDERED** that:

5 15. License No. 6268, which was issued to Respondent for the practice of pharmacy in the  
6 State of Arizona, is hereby placed on **SUSPENSION**, effective on November 4, 2003, the date of  
7 voluntary surrender of said license to the Board, for a period of time to be determined by the steering  
8 committee of the Pharmacists Assisting Pharmacists in Arizona, no less than six (6) months, and thereafter  
9 **PROBATION** for a period of five (5) years upon adoption of this Consent Agreement by the Board.

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

11 16. Respondent shall initiate a five (5) year contract with the Pharmacists Assisting Pharmacists  
12 and shall abide by every requirement of that contract.

13 17. Respondent shall pay all fees and complete all Continuing Education requirements  
14 throughout the term of his probation to maintain Pharmacist License Number 6268.

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

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

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

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

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

25 23. Respondent shall perform four hundred (400) hours of community service approved by the  
26 Board before the term of probation is completed.

1 Board before the term of probation is completed.

2 24. Respondent shall submit to a minimum of two (2) monthly random biological fluid  
3 screenings for the presence of drugs or alcohol in his body as determined by PAPA during the Probation.  
4 Nevertheless, upon Respondent's acceptance of employment as a pharmacist, he shall submit to a  
5 minimum of four (4) monthly random biological fluid screenings for the presence of drugs or alcohol in  
6 his body for the remainder of the Probation.

7 25. If Respondent violates this Order in any way or fails to fulfill the requirements of this  
8 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke,  
9 suspend or take other disciplinary actions against the Respondent. The issue of such hearing will be  
10 limited solely to whether this Order has been violated.

11 26. Respondent shall appear before the Board at a regularly scheduled Board meeting on or  
12 after January 14, 2009 to request that the probation imposed by this Order be terminated.

13 DATED and EFFECTIVE this 20<sup>th</sup> day of January, 2004

14 **ARIZONA STATE BOARD OF PHARMACY**

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17 Hal Wand, RPh  
18 Executive Director  
19 Arizona State Board of Pharmacy  
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23  
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1 ORIGINAL of the foregoing, fully executed,  
2 filed this 20<sup>th</sup> 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 20<sup>th</sup> day of  
8 January, 2004 to:

9 DOUGLAS K. McDOWELL  
10 9750 E. May Drive.  
11 Tucson, AZ 85730

12 Copy or the foregoing mailed  
13 this 21<sup>st</sup> day of Janaury, 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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