

1 2004-09-H

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

3 In the Matter of:

4 ALAN L. CLENDENIN  
5 Holder of License No. 8255 )  
6 For the Practice of Pharmacy )  
7 In the State of Arizona, )  
Respondent )

Case Number 2004-09-PHR

**CONSENT AGREEMENT AND ORDER  
FOR REVOCATION**

8 TO: ALAN L. CLENDENIN  
9 4148 W. Maryland  
Phoenix, AZ 85019

10 **RECITALS**

11 In the interest of a prompt and judicious settlement of this case, consistent with the public  
12 interest, statutory requirements and responsibilities of the Arizona State Board of Pharmacy  
13 (“Board”), and under A.R.S. § 32-1928, *et seq.* and 41-1092(F)(5), ALAN CLENDENIN, holder of  
14 license number 8255 to practice pharmacy in the State of Arizona (“Respondent”), and the Board  
15 enter into the following Recitals, Finding of Fact, Conclusions of Law and Order (“Consent  
16 Agreement”) as the final disposition of this matter.

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

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

1 irrevocable.

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

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

11 5. Respondent understands that this Consent Agreement deals with Board Investigation  
12 Case No. 2004-09 involving allegations of unprofessional conduct against Respondent. The  
13 investigation into these allegations against Respondent shall be concluded upon the Board's adoption  
14 of this Consent Agreement.

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

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

26 8. Respondent understands that the foregoing Consent Agreement shall not become

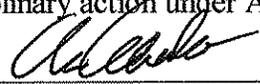
1 effective unless and until adopted by the Board and signed by its Executive Director.

2 9. Respondent understands and agrees that if the Board does not adopt this Consent  
3 Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement  
4 constitutes bias, prejudice, prejudgment or other similar defenses.

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

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

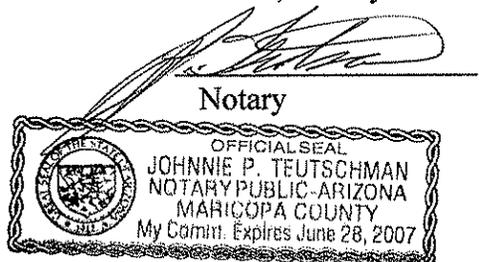
12 DATED: 4/12/04

  
ALAN CLENDENIN

13 Reviewed and Approved as to form:

Subscribed and sworn to before me this 12<sup>th</sup> day of  
April 2004. In the State of Arizona, County of  
Maricopa.

14 By: \_\_\_\_\_  
15 (*Insert Name of Attorney, if any*), Esq.  
16 Attorney for Respondent



18 **FINDINGS OF FACT**

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

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

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

26 14. Respondent is the holder of License No. 8255 for the practice of pharmacy in the State

1 of Arizona.

2 15. On April 17, 1987, Respondent's license to practice pharmacy was suspended until  
3 March 31, 1989. (See Exhibit A - Copy of Board Order 86-8-H )

4 16. On June 26, 1991, Respondent signed a Pharmacists Assisting Pharmacists of Arizona  
5 ("PAPA") contract that required him to attend six (6) Alcoholics Anonymous meetings, attend weekly  
6 peer group counseling, complete the Tarros outpatient program, and submit twenty-four (24) urine  
7 screens, per year.

8 17. On January 7, 1993, Respondent was called for a random urine screen and tested  
9 positive for methamphetamine and amphetamine in violation of the PAPA contract.

10 18. On February 2, 1993, Respondent signed his second PAPA contract that required him  
11 to attend four (4) peer group meetings per month, attend three (3) Alcoholics Anonymous or  
12 Narcotics Anonymous meetings per week, and submit twenty-four (24) random urine screens per year.

13 19. On July 6, 1995, Respondent made a request to the Board that his license to practice  
14 pharmacy be reinstated. The Board reinstated Respondent's license to practice, but with the condition  
15 that he continue to attend four (4) peer group sessions per month, attend three (3) self-help sessions  
16 per week, and submit forty-eight (48) random urine screens per year. (See Exhibit B - Copy of  
17 Board Order Number 95-15-H)

18 20. On April 8, 1997, Respondent was called for a random urine screen and tested positive  
19 for a cocaine metabolite in violation of the PAPA contract and Board Order No. 95-15-H. The  
20 positive result was confirmed by a Medical Review Officer.

21 21. In May 1997, Respondent voluntarily surrendered his pharmacist license, number 8255,  
22 to the PAPA staff.

23 22. On July 11, 1997, Respondent signed his third PAPA contract that required him to  
24 attend four (4) self-help meetings per week, attend weekly peer group counseling sessions, and submit  
25 forty-eight (48) urine screens per year.

26 23. On August 2, 2002, Respondent was called for a random urine screen and tested

1 positive for methamphetamine in violation of the PAPA contract. The positive result was confirmed  
2 by a Medical Review Officer.

3 24. On August 12, 2002, Respondent was admitted as an inpatient to Valley Hope  
4 Treatment Center.

5 25. On August 14, 2002, Respondent's PAPA contract was terminated because he  
6 admitted himself to Valley Hope Treatment Center.

7 26. On September 10, 2002, Respondent signed his fourth PAPA contract that required  
8 him to attend weekly peer group counseling sessions, attend three (3) self-help meetings per week, and  
9 submit twenty-four (24) random urine screens per year.

10 27. On June 19, 2003, Respondent signed Consent Agreement Number 03-004-PHR which  
11 suspended his pharmacist license until October 28, 2003. **(See Exhibit C - Copy of Consent**  
12 **Agreement & Stipulated Order No. 03-004-PHR)**

13 28. On November 5, 2003, Respondent appeared before the Board and requested that his  
14 pharmacist license number 8255 be reinstated. The Board reinstated the license, but placed it on  
15 **PROBATION** for a five year period and required continued compliance with his September 10, 2002  
16 PAPA contract.

17 29. On March 23, 2004, Dr. Wendy Orm of Phoenix Baptist Hospital called Cheryl Frush,  
18 the Board's Deputy Director, to report that Respondent admitted to inhaling approximately ten (10)  
19 bottles of nitrous oxide daily. Nitrous Oxide is a mind altering substance and is used to initiate a  
20 "high" or feeling of euphoria. Respondent informed Dr. Orm that he purchased the nitrous oxide at  
21 paraphernalia stores.

22 30. On April 2, 2004, Respondent admitted to PAPA staff that he had been inhaling nitrous  
23 oxide, which is a violation of his PAPA contract and Consent Agreement & Board Order No. 03-004-  
24 PHR. Respondent is also in violation of the PAPA contract because he has not submitted peer group  
25 meeting sheets since November 2003, and he has failed to pay his outstanding PAPA balance of  
26 \$2,070.00.

1 31. The parties waive all further findings of fact.

2 CONCLUSIONS OF LAW

3 32. Under A.R.S. § 32-1901, *et. seq.*, the Board is the duly constituted authority for the  
4 regulation and control of the practice of pharmacy in the State of Arizona.

5 33. The conduct and circumstances described above regarding Respondent constitutes  
6 unprofessional conduct under A.R.S. § 32-1927(A)(17) to wit:

7 The license of any pharmacist, pharmacy intern or graduate intern may  
8 be revoked or suspended or a pharmacist or intern may be placed on  
9 probation by the board if:

10 (17) The licensee violated a formal order, terms of  
11 probation, a consent agreement or a stipulation issued  
12 or entered into by the board or its executive director  
13 pursuant to this chapter.

11 ORDER

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

14 **IT IS HEREBY ORDERED** that:

15 34. License No. 8255, which was issued to Respondent for the practice of pharmacy in the  
16 State of Arizona, shall be deemed **REVOKED** upon adoption of this Consent Agreement by the  
17 Board.

18 **DATED AND EFFECTIVE** this 12<sup>th</sup> day of May, 2004.

19 **ARIZONA STATE BOARD OF PHARMACY**

20  
21 **SEAL**

22 By



23 **Hal Wand, Executive Director**  
24 **Arizona State Board of Pharmacy**

25  
26 . . .