

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

2 In the Matter of:

Investigation Case Number 04-0014-PHR

3 BEREKET GEBRE-EGZIABHER)
4 Holder of Pharmacist License)
5 Number 13972)
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) , BEREKET GEBRE-EGZIABHER
11 (“Respondent”), holder of pharmacist license number 13972 to practice pharmacy in the State of
12 Arizona, 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
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 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. 04-
26 0014-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
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. All admissions made by Respondent in this Consent Agreement are made solely for the final
11 disposition of this matter, and any related administrative proceedings or civil litigation involving
12 the Board and Respondent. There fore, any admissions made by Respondent in this Consent Agreement
13 are not intended for any other use, such as in the context of another regulatory agency's proceedings, or
14 civil or criminal proceedings, whether in the state of Arizona or in any other state or federal court.
15 returning this document to the Board's Executive Director, Respondent may not revoke his acceptance
16 of the Consent Agreement or make any modifications to the document regardless of whether the
17 Consent Agreement has been signed by the Executive Director. Any modification to this original
18 document is ineffective and void unless mutually agreed by the parties in writing.

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
22 Consent Agreement has been signed by the Executive Director. Any modification to this original
23 document is ineffective and void unless mutually agreed by the parties in writing.

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

26 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is void

1 or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

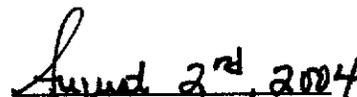
2 10. Respondent understands and agrees that if the Board does not adopt this Consent Agreement,
3 he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias,
4 prejudice, prejudgement or other similar defenses.

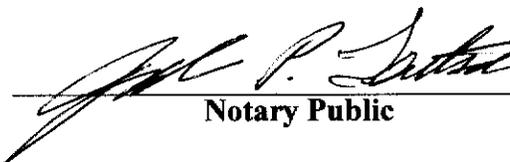
5 11. Respondent understands that this Consent Agreement is a public record that may be
6 publicly disseminated as a formal action of the Board and may be reported as required by law to
7 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

8 12. Respondent understands that any violation of this Consent Agreement constitutes
9 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the 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 **REVIEWED AND ACCEPTED BY:**

13 
14 **BEREKET GEBRE-EGZIABHER**


15 **DATE**

16 
17 **Notary Public**



18 **FINDINGS OF FACT**

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

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

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

25 15. Respondent is the holder of pharmacist license 13972 which permits Respondent to practice
26 pharmacy in the State of Arizona.

16. Respondent was employed as a staff pharmacist on February 5, 2004 at Walgreens Pharmacy

1 #5893, 705 E. McDowell Road, Phoenix, Arizona.

2 17. On February 5, 2004, the pharmacist-in-charge, at Walgreens Pharmacy #5893, incorrectly
3 filled a new prescription, number 0197105-05893, for Lamisil 200 mg. tablets with Lamictal 200mg..
4 Respondent was on duty when the incorrect prescription was dispensed to the patient by a non-pharmacist
5 employee of Walgreens Pharmacy #5893. Under A.A.C. R4-23-402 (B), Respondent was required to
6 provide an oral consultation about this new prescription, but no consultation was provided. The patient
7 denies refusing an oral consultation and the alleged refusal was not documented by Respondent as
8 required by A.A.C. R4-23-402 (E).

9 **CONCLUSIONS OF LAW**

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

12 19. The conduct and circumstances in paragraphs 15 and 16 constitutes a violation (s) of A.A.C.
13 R4-23-402 (B) and (E) to wit:

14 B. Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about
15 a prescription medication to a patient or patient's agent in an outpatient setting, including a patient
discharged from a hospital. The oral consultation is required whenever the following occurs:

- 16 1. The prescription medication has not been previously dispensed to the patient;
17 2. A new prescription number is assigned to a previously dispensed prescription
18 medication;
19 3. The prescription medication has not been previously dispensed to the patient in the
20 same strength or dosage form or with the same directions;
21 4. The pharmacist, through the exercise of professional judgment, determines that oral
22 consultation is warranted; or
23 5. The patient or patient's agent requests oral consultation

21 E. Nothing in subsection (B) shall be construed as requiring a pharmacist, graduate intern, or
22 pharmacy intern to provide oral consultation if a patient or patient's agent refuses the consultation.

- 22 1. Only a pharmacist, graduate intern, or pharmacy intern shall accept a refusal for
23 consultation.
24 2. A pharmacist, graduate intern, or pharmacy intern shall document, or assume
25 responsibility to document, a refusal for consultation on the original prescription order or
26 document by alternative methods approved by the Board or its designee.

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

1 wit:

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

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

8 **A.R.S. § 32-1927 (B)(2)** The license of any pharmacist or pharmacy intern may be revoked
9 or suspended or the pharmacist or pharmacy intern may be placed on probation or censured
10 and a civil penalty of not more than one thousand dollars (\$1000.00) for each offense may
11 be imposed by the board when:

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

15 ORDER

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

18 **IT IS HEREBY ORDERED** that:

19 21. License No. 13972, which was issued to Respondent for the practice of pharmacy in the State
20 of Arizona, is hereby CENSURED and a civil penalty of one thousand dollars (\$1,000.00) is imposed,
21 payable by certified check or cashier's check within sixty (60) days of the date of this Order. .

22 22. Respondent shall successfully complete eight (8) contact hours, (0.8 C.E.U.) of American
23 Council on Pharmaceutical Education (ACPE) courses approved by the Board staff within sixty (60) days
24 of the date of this Order. The courses shall be limited to the topics of patient counseling by pharmacists
25 or medication error prevention.

26 23. Respondent shall obey all federal and state laws and rules governing the practice of pharmacy.

27 24. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order,
28 the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or
29 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
3 DATED and EFFECTIVE this 11th day of August, 2004

4
5 **ARIZONA STATE BOARD OF PHARMACY**

6 

7
8 Hal Wand, RPh
9 Executive Director
10 Arizona State Board of Pharmacy

11 ORIGINAL of the foregoing, fully executed,
12 filed this 13th day of August, 2004, with:

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

16 Fully Executed Copy of the foregoing sent
17 via Certified US mail this 13th day of
18 August, 2004 to:

19 BEREKET GEBRE-EGZIABHER
20 1100 E. Osborn Road #358
21 Phoenix, AZ 85014

22 Copy of the foregoing mailed
23 this 13th day of August, 2004 to:

24 Roberto Pulver
25 Assistant Attorney General
26 1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

By: 