

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

2 In the Matter of:

Investigation Case Number 04-0020-PHR

3 KANU PATEL)
4 Holder of Pharmacist License)
5 Number 11173)
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), KANU PATEL, RPh ("Respondent"),
11 holder of pharmacist license number 11173 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 Agreement")
13 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 an
20 administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
21 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 0020-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. 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 force and effect.

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

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

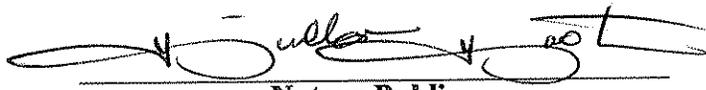
25 11. Respondent understands that any violation of this Consent Agreement constitutes
26 unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of

1 probation, a consent agreement or a stipulation issued or entered into by the board or its Executive
2 Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

3 **REVIEWED AND ACCEPTED BY:**

4 
5 _____
6 **KANU PATEL, RPh**

7 7-9-4
8 **DATE**

9 
10 _____
11 **Notary Public**



12 **FINDINGS OF FACT**

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

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

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

19 14. Respondent is the holder of pharmacist license 11173 which permits Respondent to practice
20 pharmacy in the State of Arizona.

21 15. On February 13, 2004, Respondent was employed as a staff pharmacist at OSCO Pharmacy
22 #9258, 802 E. Union Hills, Phoenix, Arizona.

23 16. On February 13, 2004, Respondent was on duty as the pharmacist-in-charge at OSCO
24 Pharmacy #9258, when he dispensed prescription number 424589 to patient P.S. for a different drug than
25 that ordered by the prescriber and the label also bore the incorrect dispensing directions for use by the
26 patient. The prescription was written for gentamicin, an **ophthalmic ointment**, for use in the right eye but
gentamicin, a **topical cream**, was dispensed with the following directions: "Apply small amount to wright
left three times a day for five days" instead of "apply small amount to right eye three times a day for five
days". (see appendix "A" for copy of written prescription)

17. Under A.A.C. R4-23-402(A) (10 & (11), Respondent was required to check a prescription

1 label to ensure that it communicates the prescriber's directions precisely; and to make a final accuracy
2 check on the completed prescription medication and manually initial the finished label.

3 18. On May 14, 2004, Respondent admitted to a Board Compliance Officer that he entered, filled,
4 verified and labeled the prescription by himself. Respondent states that the patient's mother refused patient
5 counseling about the new prescription, but the alleged refusal of counseling was not documented in the
6 pharmacy records as required by A.A.C. R4-23-402 (E)(2) . (see exhibit B, Compliance Officer's
7 summary of Pharmacist's Statement)

8 CONCLUSIONS OF LAW

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

11 20. The conduct and circumstances in paragraphs 15 through 18 above constitutes a violation (s)
12 of A.A.C. R4-23-402 (A)(10), (11), R4-23-402 (B)(1-5); and (E)(1), (2) to wit:

13 (A) A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist
14 shall perform the following professional practices in dispensing a prescription medication from a
prescription order:

15 (10). Check a prescription label to ensure that it communicates the prescriber's directions precisely;
16 (11). Make a final accuracy check on the completed prescription medication and manually initial
the finished label.

17 B. Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a
18 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:

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

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

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

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

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

7 **A.R.S. § 32-1927 (B)(2)** The license of any pharmacist or pharmacy intern may be revoked
8 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
9 be imposed by the board when:

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

12 **ORDER**

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

15 **IT IS HEREBY ORDERED** that:

16 22. License No. 11173, which was issued to Respondent for the practice of pharmacy in the State
17 of Arizona, is hereby placed on **PROBATION** for six (6) months.

18 23. Respondent shall pay all fees and complete all Continuing Education requirements throughout
19 the term of his probation to maintain Pharmacist License Number 11173.

20 24. Respondent shall successfully complete eight (8) contact hours, (0.8 C.E.U.) of American
21 Council on Pharmaceutical Education (ACPE) courses approved by the Board staff before the termination
22 of the PROBATION. The courses shall be limited to topics of the patient counseling by pharmacists or
23 error prevention. The Continuing Education Courses are in addition to the normal 30 contact hours
24 (3.0 C.E.U.) ACPE Continuing Education requirements for renewal of pharmacist licensure.

25 25. Respondent shall not serve as a preceptor pharmacist throughout the term of his probation.

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

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

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

5 29. Respondent is required to furnish all pharmacy employers with a copy of this Board Order
6 throughout the term of his probation.

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

11 31. Respondent shall appear before the Board at a regularly scheduled Board meeting on or
12 after March 11, 2005 to request that the probation imposed by this Order be terminated. Respondent's
13 failure to petition the Board to terminate the probation shall extend the probation period.

14
15 DATED and EFFECTIVE this 11th day of August, 2004

16 ARIZONA STATE BOARD OF PHARMACY

17 

18 _____
19 Hal Wand, RPh
20 Executive Director
21 Arizona State Board of Pharmacy
22
23
24
25
26

1 ORIGINAL of the foregoing, fully executed,
2 filed this 13th day of August, 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 13th day of
8 August, 2004 to:

9 KANU PATEL RPh
10 17691 N. 54th Avenue
11 Glendale, AZ 85308

12 Copy or the foregoing mailed
13 this 13th day of August, 2004 to:

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

19 By: Elaine E Messer

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	A. Received by (Please Print Clearly)	B. Date of Delivery
1. Article Addressed to:	C. Signature <u>X Jayo. K. Patel</u>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
Mr. Kanu Patel 17691 N 54 th Avenue Glendale AZ 85308	D. Is delivery address different from item 1? If YES, enter delivery address below	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Article Number (Copy from service label) <u>7000 1670 0006 4393 4624</u>	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail	<input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee)	<input type="checkbox"/> Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

AGENDA ITEM 6- Special Requests

 #1 **Kanu Patel**

Kanu Patel appeared on his own behalf to request that the probation imposed by his Consent Order be terminated.

President McCoy opened the discussion by asking Mr. Patel about the nature of his request. Mr. Patel stated that he had made an error when he filled a prescription and had signed a Consent Order with the Board. Mr. Patel stated that he had completed the requirements of the Consent Order and is requesting that his probation be terminated.

Ms. McCoy noted that Mr. Patel had completed several CE programs about error prevention. Ms. McCoy asked Mr. Patel if he had changed his practice as a result of completing these CE programs. Mr. Patel replied that he has changed the way he practices. Mr. Patel stated that he double-checks every prescription that he fills. Mr. Patel stated that if the prescription is illegible he calls the doctor for clarification.

On motion by Dr. Tippett and Mr. Dutcher, the Board unanimously agreed to terminate the probation of Mr. Patel's license subject to the terms of Board Order Number 04-0020- PHR.

#2 **James Liberatore**

James Liberatore appeared on his own behalf to request that the probation imposed by his Consent order be terminated.

President McCoy opened the discussion by asking Mr. Liberatore about the nature of his request. Mr. Liberatore stated that he has met the requirements of his Consent Order and is requesting that his probation be terminated.

Ms. McCoy asked Mr. Liberatore what he has learned from this experience. Mr. Liberatore stated that he would not make the same mistake again.

Mr. McAllister asked the staff if all requirements of the Order have been met. Mr. Wand stated all requirements had been met.

On motion by Mr. Van Hassel and Dr. Tippett, the Board unanimously agreed to terminate the probation of Mr. Liberatore's license subject to the terms of Board Order Number 03-0017-PHR.

#3 **Eloisa Martinez**

Eloisa Martinez appeared on her own behalf to request permission to proceed with technician licensure.

President McCoy opened the discussion by asking Ms. Martinez to describe her request. Ms. Martinez stated that she had appeared at the November 2004 meeting requesting to proceed with technician licensure. Ms. Martinez stated at that time she had pending legal issues. The Board advised Ms. Martinez to resolve her issues with the court and provide the paperwork to the Board. Ms. Martinez stated that she has resolved her court issues and is requesting to proceed with technician licensure.

Mr. Pulver asked Ms. Martinez if her fine has been paid to the Court. Ms. Martinez replied the fine has been paid.