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ARIZONA STATE BOARD OF PHARMACY

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

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In the Matter of:)
)
Consuelo L. Pitpitan)
Holder of License No. 818)
for Pharmacy Technician)
In the State of Arizona,)
)
Respondent)
_____)

Investigation Case Number 05-0013-PHR

CONSENT AGREEMENT AND ORDER FOR PROBATION

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901, *et. seq.* and 41-1092.07(F)(5), CONSUELO L. PITPITAN ("Respondent"), holder of Pharmacy Technician License Number 818 to work as a pharmacy technician in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

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

2. Respondent understands that she has a right to a public administrative hearing concerning the above-captioned matter, at which hearing she could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly and voluntarily relinquishes all rights to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or

1 judicial action, concerning the matters set forth herein.

2 3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

3 4. Respondent understands that this Consent Agreement or any part of the agreement
4 may be considered in any future disciplinary action *by the Board* against her.

5 5. Respondent understands that this Consent Agreement deals with Board Investigation
6 Case No. 05-0013-PHR involving allegations of unprofessional conduct against Respondent.
7 The investigation into these allegations against Respondent shall be concluded upon the Board's
8 adoption of this Consent Agreement.
9

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

17 7. All admissions made by Respondent in this Consent Agreement are made solely for the
18 final disposition of this matter, and any related administrative proceedings or civil litigation
19 involving the Board and Respondent. Therefore, any admissions made by Respondent in this
20 Consent Agreement are not intended for any other use, such as in the context of another
21 regulatory agency's proceedings, or civil or criminal proceedings, whether in the State of
22 Arizona or in any other state or federal court.
23

24 8. Respondent acknowledges and agrees that, upon signing this Consent Agreement
25 and returning this document to the Board's Executive Director, she may not revoke her
26

1 acceptance of the Consent Agreement or make any modifications to the document regardless of
2 whether the Consent Agreement has been signed by the Executive Director. Any modification to
3 this original document is ineffective and void unless mutually agreed by the parties in writing.

4 9. Respondent neither admits nor denies the allegations contained in the Findings of Fact
5 herein. Respondents admits, however, that if this matter were to proceed to formal hearing
6 before the Board, the State may be able to prove by a preponderance of the evidence, the
7 violations as alleged herein.
8

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

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

14 12. Respondent understands and agrees that if the Board does not adopt this Consent
15 Agreement, she will not assert as a defense that the Board's consideration of this Consent
16 Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

17 13. Respondent understands that this Consent Agreement is a public record that may
18 be publicly disseminated as a formal action of the Board and may be reported as required by law
19 to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.
20

21 14. Respondent understands that any violation of this Consent Agreement constitutes
22 a violation of A.R.S. § 32-1901, *et seq.*

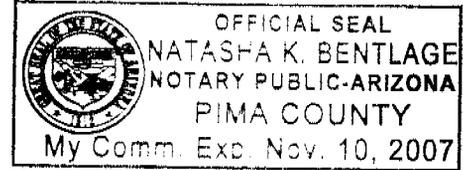
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1 **REVIEWED AND ACCEPTED BY:**

2 *Consuelo L. Pipitan*
3 **Consuelo L. Pipitan**

4 12-15-06
5 **DATE**

6 *Natasha K. Bentlage*
7 **Notary Public**



8 **FINDINGS OF FACT**

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

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

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

15 17. Respondent is the holder of license 818, which permits her to work as a pharmacy
16 technician in the State of Arizona.

17 18. From March 29, 2004 to January 28, 2005, Respondent worked as a pharmacy technician
18 at University Physicians Healthcare Out-Patient Pharmacy at Kino Campus (UPHKP), located at
19 2800 E. Ajo Way, Tucson, Arizona.

20 19. On November 22, 2004, Veronica Pimienta, M.D., may have denied a refill request for
21 UPHKP prescription number 1402182, instructing the UPHKP staff that a patient appointment
22 was required before any additional refills would be authorized.

23 20. On April 19, 2005, the Board's Executive Director received a letter from Kevin
24 Christiansen, UPHKP's administrator, which summarized an investigation conducted by hospital
25 staff in the matter of prescriptions for patient H.C.S.. The letter alleged that Respondent's
26 employment was terminated after Respondent admitted and the investigation affirmed that
Respondent had created and filled two unauthorized refills, UPHKP prescription number 141100
on November 23, 2004 and on January 21, 2005.

1 21. Metformin 500 mg. is a prescription-only drug as defined in A.R.S. § 32-1901 (72) to
2 wit:

3 "Prescription-only drug" does not include a controlled substance but does include:

4
5 (a) Any drug that because of its toxicity or other potentiality for harmful
6 effect, the method of its use, or the collateral measures necessary to its use
7 is not generally recognized among experts, qualified by scientific training and
8 experience to evaluate its safety and efficacy, as safe for use except by or under
9 the supervision of a medical practitioner.

10 (b) Any drug that is limited by an approved new drug application under the federal
11 act or section 32-1962 to use under the supervision of a medical practitioner.

12 (c) Every potentially harmful drug, the labeling of which does not bear or contain
13 full and adequate directions for use by the consumer.

14 (d) Any drug, other than a controlled substance, required by the federal act to bear
15 on its label the legend "Rx only".

16 22. On April 27, 2005, the Board opened an investigation concerning Respondent's alleged
17 misconduct of creating and refilling medications for patient H.C.S. without proper authorization
18 from a healthcare prescriber.

19 23. The Board's investigation disclosed the following: On November 22, 2004 patient
20 H.C.S. requested a refill, but the request was denied. The following day, Respondent allegedly
21 created prescription number 1411000 for patient H.C.S. without proper authorization, which the
22 prescription stated on its face "no refills."

23 24. On November 23, 2004, Terri Birkholz, R.Ph., was given prescription number 1411000
24 by Respondent. Ms. Birkholz believed that the prescription to be filled was generated by
25 UPHKC for patient H.C.S. and she filled the prescription. Ms. Birkholz failed to review the
26 entire prescription to determine whether a healthcare prescriber had authorized the prescription.

27 25. On January 21, 2005 patient H.C.S. presented herself at UPHKC and was attended to
28 by Respondent. Trudy Yace, certified pharmacy technician alleged that she witnessed
29 Respondent refill prescription number 1411000 for H.C.S.

1 26. Ms. Yace informed Ms. Erlinda Cano, R.Ph., about Respondent's conversation with
2 H.C.S. and Respondent's alleged refilling of H.C.S.'s medication. A review of H.C.S.'s
3 computer profile at UPHKC may have disclosed that "no refills" were allowed for prescription
4 number 1411000, and that Respondent may have altered the patient's profile to allow two refills,
5 even though there may not have been documentation from a healthcare prescriber authorizing the
6 prescription or refills.

7
8 27. On or about February 7, 2005, UPHKC terminated Respondent's employment with the
9 hospital.

10 28. Respondent has been working as a pharmacy technician on a part-time, on call basis
11 with Mariposa Clinic in Nogales since July 26, 2006.

12 **CONCLUSIONS OF LAW**

13 29. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to
14 A.R.S. § 32-1901 *et seq.*

15 30. The Board may discipline a pharmacy technician who has engaged in
16 unprofessional conduct. A.R.S. §32-1927(A)(1).¹

17 31. The conduct and circumstances described in the paragraphs 6 - 14 constitute
18 grounds for disciplinary action under A.R.S. § 32-1927.01(A)(9) ("The board may revoke
19 or suspend the license of a pharmacy technician or pharmacy technician trainee or place
20 the licensee on probation if the board determines that the licensee is found to be guilty of
21 violating any state or federal law relating to the manufacture and distribution of
22 prescription-only drugs, controlled substance drugs or medical devices.").

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¹ Cites to new statute that took effect after August 11, 2005.
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1 32. The conduct and circumstances described in paragraphs 6 - 14 constitute grounds
2 for disciplinary action under A.R.S. § 32-1927.01(B)(1) (“The board may revoke or
3 suspend the license of a pharmacy technician or a pharmacy technician trainee, place the
4 licensee on probation, censure the licensee or impose a civil penalty of not more than two
5 hundred fifty dollars for each offense if the board determines that the licensee violated
6 federal or state law relating to marijuana, prescription-only drugs, narcotics, dangerous
7 drugs or controlled substances.”).

8 33. The conduct and circumstances described in paragraphs 6 - 14 constitute grounds
9 for disciplinary action under A.R.S. § 32-1968(A):

10 A.R.S. § 32-1968(A): A prescription-only drug shall be dispensed only under one of the
11 following conditions:

- 12 1. By a medical practitioner in conformance with §32-1921.
- 13 2. On a written prescription order.
- 14 3. On an oral prescription order that is reduced promptly to writing and filed by
15 the pharmacist.
- 16 4. By renewing any written or oral prescription order if a renewal is authorized
17 by the prescriber either in the original prescription order or by an oral order
18 that is reduced promptly to writing and filed by the pharmacist.

19
20 34. A.R.S. §32-1968(B): A prescription order shall not be renewed if it is either:

- 21 1. Ordered by the prescriber not to be renewed.

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1 Respondent's failure to petition the Board to terminate the probation shall extend the probation
2 period.

3 **DATED and EFFECTIVE this 25th day of** January, 2007

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5 **ARIZONA STATE BOARD OF PHARMACY**

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8 Hal Wand, R.Ph.
9 Executive Director
Arizona State Board of Pharmacy

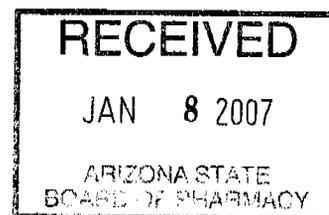
10 ORIGINAL of the foregoing, fully executed,
11 filed this 25th day of ~~December, 2006~~, with:
JANUARY 2007

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

14 Fully Executed Copy of the foregoing sent
15 via e-mail and regular mail this day of
16 January, 2007

17 Richard M. Martinez
18 3131 E. Second Street
Tucson, Arizona 85716
richard@richardmartinezlaw.com

19 487222



RM

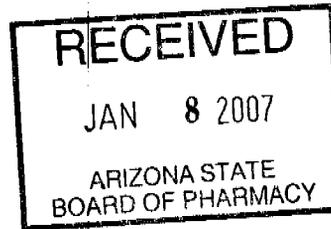
3131 E. Second Street
Tucson, Arizona 85716

RICHARD M. MARTINEZ
ATTORNEY AT LAW

Phone (520) 327-4797
Fax (520) 320-9090

December 15, 2006

Dawn Walton Lee
Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, Arizona 85007-2926



Re: Consuelo L. Pipitan;
Arizona Board of Pharmacy Case No. 06F-0004-PHR

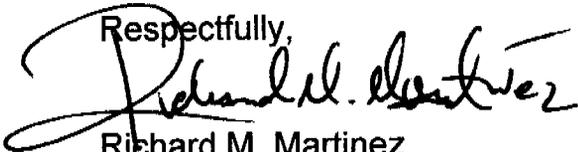
Dear Ms. Lee:

Enclosed is the original signed consent agreement that we finalized today. Ms. Pipitan signed the agreement after she had read the agreement in my office and spoke with me about the provisions contained therein.

Once the agreement has been fully executed, please send a copy of the same to me. Ms. Pipitan has been advised that the Board of Pharmacy will not consider this matter until their January 2007 meeting.

It is my understanding that due to the agreement reached, the hearing scheduled for January 3, 2007 before Grant Winston, ALJ will be vacated and this matter dismissed. You have advised that the required motion vacating the hearing will be filed by your office.

Your cooperation and professionalism throughout this matter is most appreciated.

Respectfully,

Richard M. Martinez

RMM/rm
Enclosure (1)
c: Consuelo L. Pitpitan w/o encl.