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

11 In the Matter of

12 **RORY ALBERT, R.Ph.**

Board Case No. 06-0013-PHR

13 Holder of License No. 6403
14 For the Practice of Pharmacy
15 In the State of Arizona

**CONSENT AGREEMENT FOR
PROBATION**

16 **RECITALS**

17 In the interest of a prompt and judicious settlement of this case, consistent with the
18 public interest, statutory requirements and the responsibilities of the Arizona State Board
19 of Pharmacy ("Board") and under A.R.S. §§ 32 1901, *et. seq.* and 41 1092.07(F)(5), Rory
20 Albert, R.Ph., ("Respondent"), holder of Pharmacist License Number 6403 to practice
21 pharmacy in the State of Arizona, and the Board enter into the following Recitals,
22 Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final
23 disposition of this matter.

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

1 2. Respondent understands that he has a right to a public administrative hear-
2 ing concerning the above-captioned matter, at which hearing he could present evidence
3 and cross examine witnesses. By entering into this Consent Agreement, Respondent
4 knowingly and voluntarily relinquishes all right to such an administrative hearing, as well
5 as rights of rehearing, review, reconsideration, appeal, judicial review or any other
6 administrative and/or judicial action, concerning the matters set forth herein.

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

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

11 5. Respondent understands this Consent Agreement deals with Board Case
12 No. 06-0013-PHR involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. All admissions made by the Respondent in this Consent Agreement are
24 made solely for the final disposition of this matter, and any related administrative pro-
25 ceedings or civil litigation involving the Board and Respondent. Therefore, any admis-
26

1 sions made by Respondent in this Consent Agreement are not intended for any other use,
2 such as in the context of another regulatory agency's proceedings, or civil or criminal
3 proceedings, whether in the State of Arizona or in any other state or federal court.

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

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

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

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

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

22 14. Respondent understands that any violation of this Consent Agreement
23 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
24 1901.01(B)(20), -1927(A)(1).

1 ACCEPTED AND AGREED BY RESPONDENT

2 Rory J. Albert
3 Rory Albert, R.Ph.

Dated: 10-25-06

4 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
5 this 25th day of October, 2006, by Rory Albert, P.Ph.

6 [Signature]
7 NOTARY PUBLIC
8 My Commission expires:



10 **FINDINGS OF FACT**

11 1. The Arizona State Board of Pharmacy ("Board") is the duly constituted
12 authority for licensing and regulating the practice of pharmacy in the State of Arizona.

13 2. Rory Albert, R.Ph. ("Respondent") is the holder of license number 6403 for
14 the practice of pharmacy in the State of Arizona.

15 3. On or about December 21, 2005, a Board Compliance Officer conducted an
16 inspection of Diamondback Drugs in Scottsdale, Arizona ("Pharmacy"). As part of that
17 inspection, a controlled substance audit for the period of April 4 through December 21,
18 2005 showed a shortage of #60 Ambien 10mg tablets. Ambien is a schedule IV control-
19 led substance. A.R.S. § 36-2515(A)(5)(xx).

20 4. Respondent, a co-owner of the Pharmacy, told the Compliance Officer that
21 the shortage occurred because he did not process through the computer system some pre-
22 scriptions for his father-in-law. He explained to the Compliance Officer that a medical
23 practitioner had authorized him to dispense the medications to his father-in-law.

1 medical practitioner's electronic or digital signature that is reduced promptly to writing
2 and filed by the pharmacist; (iv) On a written prescription order generated from electron-
3 ic media containing the prescribing medical practitioner's electronic or manual signature.
4 A prescription order that contains only an electronic signature must be applied to paper
5 that uses security features that will ensure the prescription order is not subject to any
6 form of copying or alteration; (v) On an oral prescription order that is reduced promptly
7 to writing and filed by the pharmacist; (vi) By refilling any written, electronically trans-
8 mitted or oral prescription order if a refill is authorized by the prescriber either in the
9 original prescription order, by an electronically transmitted refill order that is documented
10 promptly and filed by the pharmacist or by an oral refill order that is documented prompt-
11 ly and filed by the pharmacist. A.R.S. § 32-1968(A).

12 6. A person registered to dispense controlled substances must keep and main-
13 tain prescription orders for controlled substances listed in schedules III, IV and V either
14 in a separate prescription file for controlled substances listed in schedules III, IV and V
15 only or in a form that allows them to be readily retrievable from the other prescription
16 records of the registrant. "Readily retrievable" means that when the prescription is initial-
17 ly filed, the face of the prescription is stamped in red ink in the lower right corner with
18 the letter "C" in a font that is not less than one inch high and that the prescription is filed
19 in the usual consecutively numbered prescription file for noncontrolled substance pre-
20 scriptions. The requirement to stamp the hard copy prescription with a red "C" is waived
21 if a registrant employs an electronic data processing system or other electronic record
22 keeping system for prescriptions that permits identification by prescription number and
23 retrieval of original documents by prescriber's name, patient's name, drug dispensed and
24 date filled. A.R.S. § 36-2525(C)(2).

1 Glendale, Arizona 85302

2
3 EXECUTED COPY OF THE FOREGOING MAILED
4 BY CERTIFIED AND REGULAR MAIL
5 this 10th day of November, 2006, to:

6 Rory Albert, R.Ph.
7 10430 E. Sheena Drive
8 Scottsdale, Arizona 85255

9 Roger Morris
10 Quarles & Brady Streich Lang LLP
11 One Renaissance Square
12 Two N. Central Ave.
13 Phoenix, Arizona 85004

14 EXECUTED COPY OF THE FOREGOING MAILED
15 this 10th day of November, 2006, to:

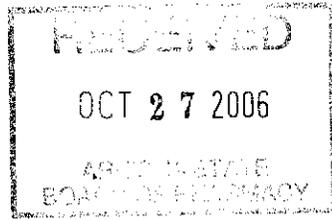
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October 25, 2006

Hal Wand, Jr., RPh.
Executive Director
Arizona State Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

Re: Rory Albert - Case No. 06-0013-PHR

Dear Hal:

Enclosed is the signed original Consent Agreement and Order for Probation. I appreciate your cooperation in getting this matter settled.

If you have any questions, please contact me.

Very truly yours,

Roger N. Morris

RNM:krb
Enclosure

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