

TERRY GODDARD  
Attorney General  
(Firm State Bar No. 14000)

DAWN WALTON LEE  
Assistant Attorney General  
State Bar No. 016072  
1275 W. Washington, CIV/LES  
Phoenix, Arizona 85007-2997  
Tel: (602) 542-7027  
Fax: (602) 364-3202  
Attorneys for the Arizona State Board of Pharmacy

**BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

In the Matter of

**DIANE ORTIZ**

Holder of License No. 1404  
As a Pharmacy Technician  
In the State of Arizona

Board Case No.06f-0021-PHB

**CONSENT AGREEMENT  
FOR VOLUNTARY SURRENDER**

**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), Diane Ortiz ("Respondent"), holder of Pharmacist Technician License Number 1404 in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a 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 right

to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

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

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

5. Respondent understands this Consent Agreement deals with Board Case No. 06F-0021-PHB involving allegations of unprofessional conduct against Respondent. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

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

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

8. All admissions made by the Respondent in this Consent Agreement are made solely for the final disposition of this matter, and any related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are

not intended for any other use, such as in the context of another regulatory agency's proceedings, or civil or criminal proceedings, whether in the State of Arizona or in any other state or federal court.

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

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

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

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

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

14. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§

32-1901.01(B)(20), -1927(A)(1).

15. Respondent agrees that she shall not apply for licensure with the Board before two years after the effective date of this Order.

ACCEPTED AND AGREED BY RESPONDENT

Diane Ortiz  
Diane Ortiz

Dated: 10/31/2006

Subscribed and sworn to before me in the County of Cochise, State of Arizona, this 31<sup>st</sup> day of October, 2006, by Diane Ortiz.



[Signature]  
NOTARY PUBLIC

My Commission expires:  
May 4, 2007

### FINDINGS OF FACT

1. The Arizona State Board of Pharmacy ("Board") is the duly constituted authority for licensing and regulating the practice of pharmacy in the State of Arizona.
2. Diane Ortiz ("Respondent") is the holder of license number 1404 to practice as a pharmacy technician in the State of Arizona.
3. During all times relevant to these Findings, Respondent was employed as a pharmacy technician at Wal-Mart Pharmacy ("Pharmacy") in Douglas, Arizona.
4. On or about January 24, 2006, Respondent admitted to Pharmacy officials that she had stolen approximately #300 Viagra 100mg tablets and #300

Cialis 20mg tablets from the Pharmacy in the preceding ten months. Pharmacy officials alleged that the value of the stolen prescription-only drugs was \$6,996. Respondent also admitted that she sold the tablets for approximately \$800 to a man named Jose Luis Chin who operated a pharmacy in Mexico.

5. Based upon Respondent's admissions, the Pharmacy terminated her employment.

6. The Pharmacy reported the incident to the Board.

### **CONCLUSIONS OF LAW**

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

2. The Board may discipline a pharmacy technician trainee who has engaged in unprofessional conduct. A.R.S. § 32-1927.01(A)(1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(C)(2) ("Violating a federal or state law or administrative rule relating to the manufacture or distribution of drugs or devices.").

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1901.01(C)(6) ("Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.").

5. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1901.01(C)(8) ("Violating a federal or state law or administrative rule relating to marijuana, prescription-only

drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.”).

6. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1901.01(C)(15) (“Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.”).

7. A prescription-only drug shall be dispensed only under one of the following conditions: (i) By a medical practitioner in conformance with [A.R.S. § 32-1921; (ii) On a written prescription order bearing the prescribing medical practitioner’s manual signature; (iii) On an electronically transmitted prescription order containing the prescribing medical practitioner’s electronic or digital signature that is reduced promptly to writing and filed by the pharmacist; (iv) On a written prescription order generated from electronic media containing the prescribing medical practitioner’s electronic or manual signature. A prescription order that contains only an electronic signature must be applied to paper that uses security features that will ensure the prescription order is not subject to any form of copying or alteration; (v) On an oral prescription order that is reduced promptly to writing and filed by the pharmacist; (vi) By refilling any written, electronically transmitted or oral prescription order if a refill is authorized by the prescriber either in the original prescription order, by an electronically transmitted refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is documented promptly and filed by the pharmacist. A.R.S. § 32-1968(A).

#### **ORDER**

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

A.A.C. R4-23-122 (c),

IT IS HEREBY ORDERED THAT License No. 1404, which was issued to Diane Ortiz to practice as a Pharmacy Technician in the State of Arizona, is hereby deemed SURRENDERED.

DATED this 3<sup>rd</sup> day of November, 2006.  
ARIZONA STATE BOARD OF  
PHARMACY

(Seal)

By:   
HAL WAND, R.Ph.  
Executive Director

ORIGINAL OF THE FOREGOING FILED  
this 13<sup>th</sup> day of November, 2006, with:

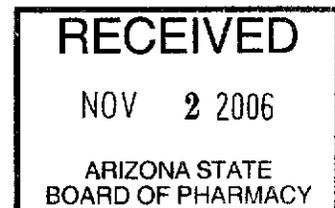
Arizona State Board of Pharmacy  
4425 W. Olive Avenue, Suite 140  
Glendale, Arizona 85302

EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED MAIL  
this 13<sup>th</sup> day of November, 2006, to:

Diane Ortiz  
204 W. Fifth Street  
Douglas, Arizona 85607

Ralph Malanga  
Malanga Law Office  
P.O. Box 1515  
Bisbee, Arizona 85603-1515

EXECUTED COPY OF THE FOREGOING MAILED  
this 13<sup>th</sup> day of November, 2006, to:



Christopher Munns  
Assistant Attorney General  
Solicitor General's Office  
1275 W. Washington Street  
Phoenix, Arizona 85007

*Suzanne Peterson*

7006 0100 0002 8652 0225