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Attorneys for the Arizona State Board of Pharmacy

**BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

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|---|---|
| In the Matter of<br><br>**JASON KURNETA**<br><br>Holder of License No. 9397<br>As a Pharmacy Technician<br>In the State of Arizona | Board Case No. 08-0024-PHR<br><br>**CONSENT AGREEMENT AND ORDER FOR SUSPENSION AND PROBATION** |

## 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") under A.R.S. §§ 32-1901, *et. seq.*, Jason Kurneta ("Respondent"), holder of Arizona Pharmacy Technician License Number 9397, 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 he has a right to a public administrative hearing concerning the above-captioned matter, at which hearing he 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 him.

5. Respondent understands this Consent Agreement deals with Board Complaint No. 3429 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, he may not revoke his 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, he 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(C)(16), -1927.01(A)(1).

RECEIVED
MAR 26 2008
ARIZONA STATE
BOARD OF PHARMACY

ACCEPTED AND AGREED BY RESPONDENT

Jason Kurneta

Dated: 3/25/08

Subscribed and sworn to before me in the County of MARICOPA, State of ARIZONA, this 25 day of MARCH, 2008, by Jason Kurneta.

NOTARY PUBLIC

ERIC CACCIACARDO
Notary Public - Arizona
Maricopa County
Expires 03/15/10

My Commission expires: 3/15/2010

## FINDINGS OF FACT

1. The Board is the duly constituted authority for licensing and regulating the practice of pharmacy in the State of Arizona.

2. Respondent is the holder of license number 9397 to work as a pharmacy technician in the State of Arizona.

3. During all times relevant to these Findings, Respondent worked as a pharmacy technician at CVS Pharmacy #9277 in Tucson, Arizona ("Pharmacy").

4. On or about July 7, 2007, the Board received information from Pharmacy that Respondent was diverting the controlled substances hydrocodone and diazepam for his own personal use.

5. In an interview with CVS personnel on July 7, 2007, Respondent admitted that he stole 100 tablets of hydrocodone 10 mg and about 30 tablets of diazepam from the Pharmacy. During the interview, 3 tablets of diazepam were found in Respondent's pocket.

6. Diazepam is a Schedule IV controlled substance. A.R.S. § 36-2515(A)(2)(n).

7. Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-2514(A)(5)(d).

8. A subsequent Board controlled substance audit documented shortages of certain strengths of hydrocodone/APAP, diazepam 5 mg and 10 mg, alprazalam 0.25 mg, lorazapam 2 mg, and pentazocine-APAP 25/650 at the Pharmacy. The audit did not disclose who was responsible for the shortages.

## 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. Pursuant to A.R.S. § 32-1927.01(A)(1), the Board may discipline a pharmacy technician who has engaged in unprofessional conduct.

3. The conduct and circumstances described above constitutes 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.").

4. Respondent's conduct, as described in the Findings of Fact, constitutes a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority, the person knowingly controls another person's property with the intent to deprive that other person of such property). Theft is a crime of moral turpitude. *Du Vall v. Board of Medical Examiners of Arizona*, 49 Ariz. 329, 339, 66 P.2d 1026, 1031 (1939); *State v. Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves moral turpitude and bears a close relationship to the common law crime of larceny).

5. Respondent's conduct, as described in the Findings of Fact, constitutes a violation of A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a prescription-only drug unless the person obtains the prescription-only drug pursuant to a valid prescription of a licensed prescriber). Furthermore, a person may not knowingly obtain or procure the administration of a prescription-only drug by fraud, deceit, misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-3406(B)(1).

6. Respondent's conduct, as described in the Findings of Fact, constitutes a violation of A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception or subterfuge). A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony.

7. Respondent's conduct, as described in the Findings of Fact, constitutes a violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical practitioner's manual signature; (3) 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; (4) 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; (5) On an oral prescription order that is reduced promptly to writing and filed by the pharmacist; (6) 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.")

8. 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.")

## ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED THAT Pharmacy Technician License No. 9397 is placed on **SUSPENSION,** for a period of not less than six (6) months but not more than one (1) year. The period of suspension shall be determined by the Board after receiving a recommendation from the PAPA Steering Committee. Thereafter, Respondent's license shall be placed on **PROBATION** for a period of at least four (4) years, but not more than four and one-half (4.5) years from the final date of suspension. Respondent's disciplinary period under the suspension and probation shall not exceed five (5) years, unless Respondent affirmatively fails to petition the Board to terminate the probation in accordance with paragraph 9 below.

The SUSPENSION and PROBATION are subject to the following conditions:

1. Respondent shall immediately return his pharmacy technician license to the Board for the period of suspension.

2. Respondent shall, within ten days of the effective date of this order, sign a five (5) year contract with PAPA and abide by each and every requirement

of the PAPA contract. Failure to sign a PAPA contract or abide by the PAPA contract's terms is a violation of this Order.

3. Respondent shall pay all necessary fees and complete all Continuing Education requirements throughout the term of his probation to maintain Pharmacy Technician License No. 9397.

4. Respondent shall furnish all pharmacy employers with a copy of this Board Order throughout the term of his probation.

5. Respondent shall advise the Board immediately of any change in pharmacy employment status throughout the term of his probation.

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

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

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

9. Respondent shall appear before the Board at a regularly scheduled Board meeting five years after the effective date of this Order to request that the probation imposed by this order be terminated. Respondent's failure to petition the Board to terminate the probation shall extend the probation period.

DATED this 16th day of May, 2008.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

By: _____
HAL WAND, R.Ph.
Executive Director

ORIGINAL OF THE FORGOING FILED
this 28 day of August, 2008, with:

Arizona State Board of Pharmacy
1700 West Washington, Suite 250
Phoenix, Arizona 85007

EXECUTED COPY OF THE FOREGOING MAILED
BY FIRST-CLASS and CERTIFIED MAIL
this 28 day of August, 2008, to:

Jason Kurneta
1211 N. Jones Blvd. #3
Tucson, Arizona 85716

Jason Kurneta
5025 N. 1st #1320
Tucson, Arizona 85718

EXECUTED COPY OF THE FOREGOING MAILED
this 28 day of August, 2008, to:

Elizabeth A. Campbell
Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007

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