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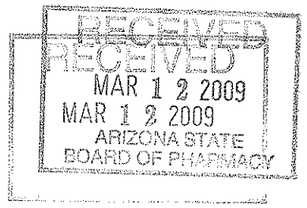

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of	
CANDACE McELROY, Holder of License No. T010534 As a Pharmacy Technician In the State of Arizona	Board Case No. 09-0032-PHR **CONSENT AGREEMENT FOR REVOCATION**

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.*, Candace McElroy ("Respondent"), holder of Pharmacy Technician License Number T010534 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 Complaint No. 3613 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. 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.

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

10. 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.

11. 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.

12. 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.

ACCEPTED AND AGREED BY RESPONDENT

Candace McElroy

Dated: 3/11/09

Subscribed and sworn to before me in the County of Maricopa, State of Arizona, this 11 day of March, 2009, by Candace McElroy.

Cathy Lambertus
NOTARY PUBLIC

My Commission expires: 08/07/12

NOTARY PUBLIC
STATE OF ARIZONA
Maricopa County
CATHY LAMBERTUS
My Appointment Expires 08/07/12

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 holds Arizona Pharmacy Technician License Number T010534.

3. During all times relevant to this Complaint, Respondent was employed as a pharmacy technician at Fry's Pharmacy #87 in Laveen, Arizona (the "Pharmacy").

4. In December 2008, Respondent signed a written statement admitting to stealing 10 bottles of promethazine with codeine. Respondent diverted the medication from the Pharmacy with the intention of selling it.

5. A subsequent audit by the Pharmacy documented that the Pharmacy was short 20 pints of promethazine with codeine. The audit did not disclose who was responsible for the shortages.

6. Promethazine with codeine is a Schedule V controlled substance. A.R.S. § 36-2516(1)(a).

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 who has engaged in unprofessional conduct. A.R.S. § 32-1927.01(A)(1).

3. The conduct 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. *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).

4. The conduct 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).

5. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 13-3406(A)(7) (A person may not sell, transfer or offer to sell or transfer a prescription-only drug). Such illegal transfer of a prescription-only drug is a class 6 felony. A.R.S. § 13-3406(B)(2).

6. The conduct 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. A.R.S. § 36-2531(E).

7. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 36-2525(I) (Except when dispensed directly by a medical practitioner to an ultimate user, a controlled substance included in schedule V that requires a prescription order as determined under state or federal laws shall not be dispensed without a written or oral prescription order of a medical practitioner).

8. The conduct described in the Findings of Fact constitutes a violation of A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in violation of section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of a class 4 felony. A.R.S. § 36-2531(B).

9. 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.")

10. 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.").

11. 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 License No. T010534, which was issued to Candace McElroy to practice as a pharmacy technician in the State of Arizona, is hereby **REVOKED**. Respondent shall immediately return her pharmacy technician license to the Board. Respondent shall not reapply for licensure with the Board or petition for reinstatement of her Arizona pharmacy technician license for a period of at least five (5) years from the effective date of this Consent Agreement.

DATED this 19th day of March, 2009.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

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

ORIGINAL OF THE FORGOING FILED
this 19 day of March, 2009, with:

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

EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
this 19 day of March, 2009, to:

Candace McElroy
6407 W. Toronto Way
Phoenix, AZ 85043
Respondent

EXECUTED COPY OF THE FOREGOING MAILED
this 19 day of March, 2009, to:

Elizabeth A. Campbell
Assistant Attorney General
1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
Attorneys for the State of Arizona

#404578