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7 Attorneys for the Arizona State Board of Pharmacy

8  
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **HOWARD PULVER,**

12 Holder of License No. S015422  
For the Practice of Pharmacy  
13 In the State of Arizona

Board Case No. 09-0035-PHR

**CONSENT AGREEMENT  
AND ORDER FOR SUSPENSION**

14  
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona State Board  
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Howard Pulver ("Respondent"),  
19 holder of Pharmacist License Number S015422 in the State of Arizona, and the Board  
20 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order  
21 ("Consent Agreement") as a final disposition of this matter.

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

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26

1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing he could present  
3 evidence and cross examine witnesses. By entering into this Consent Agreement,  
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative  
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or  
6 any other 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  
12 Complaint No. 3621 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.     Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, he may not  
25 revoke his acceptance of the Consent Agreement or make any modifications to the  
26

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

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

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

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

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

16 13. Respondent understands that any violation of this Consent Agreement  
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
18 1901.01(B)(20), -1927(A)(1).

19 ACCEPTED AND AGREED BY RESPONDENT

20   
21 \_\_\_\_\_  
Howard Pulver

Dated: 9/17/09

22 Subscribed and sworn to before me in the County of Maricopa State of Arizona  
23 this 17<sup>th</sup> day of Sept, 2009, by Howard Pulver.

24   
25 \_\_\_\_\_  
NOTARY PUBLIC  
26 My Commission expires: 2/11/10



1 FINDINGS OF FACT

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

4 2. Respondent is the holder of license number S015422 to practice as a  
5 pharmacist in the State of Arizona.

6 3. During all times relevant to these Findings, Respondent worked as a  
7 pharmacist at Wal-Mart Pharmacy #1532 in Glendale, Arizona (the "Pharmacy").

8 4. In November 2008, Respondent was observed on video stealing \$80.00  
9 from the accounting office at the Wal-Mart store.

10 5. In October 2008, Respondent was observed on video using unauthorized  
11 coupons to load Wal-Mart gift cards. Prescription coupons had been used when a new  
12 customer transferred their prescriptions to Wal-Mart from another pharmacy. Use of  
13 prescription coupons was discontinued in July 2008. Respondent had Wal-Mart  
14 employees load gift cards for the dollar amount shown on the coupon.

15 6. Respondent used the improperly loaded gift cards to purchase prescription  
16 medications and merchandise from Wal-Mart. Wal-Mart estimates its total loss due to  
17 Respondent's gift card activity to be \$1,642.

18 7. Respondent did unauthorized price overrides at Wal-Mart. On one  
19 transaction, Respondent did a price override on a camera from \$149 to \$79. Respondent  
20 then used improperly loaded gift cards to purchase the camera. Respondent also did price  
21 overrides on two MP3 players, two bikes and a microwave. Wal-Mart estimates its total  
22 loss due to Respondent's price overrides to be \$296.61.

23 8. Respondent took merchandise, mostly food and drink items, from Wal-  
24 Mart without paying for them.



1           3.       Respondent's practice and conduct, as described in the Findings of Fact,  
2 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any  
3 federal or state law, rule or regulation relating to the manufacture or distribution of drugs  
4 and devices or the practice of pharmacy).

5           4.       The conduct and circumstances described above constitutes unprofessional  
6 conduct pursuant to A.R.S. § 32-1901.01(B)(8) (Committing a felony, whether or not  
7 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-  
8 related offense. In either case, conviction by a court of competent jurisdiction or a plea  
9 of no contest is conclusive evidence of the commission).

10          5.       The conduct and circumstances described above constitute unprofessional  
11 conduct pursuant to A.R.S. § 32-1901.01(B)(10) (Violating a federal or state law or  
12 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous  
13 drugs, controlled substances or precursor chemicals when determined by the board or by  
14 conviction in a federal or state court).

15          6.       Respondent's practice and conduct, as described in the Findings of Fact,  
16 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) (Knowingly  
17 dispensing a drug without a valid prescription order as required pursuant to section 32-  
18 1968, subsection A).

19          7.       Respondent's conduct as described in the Findings of Fact constitutes a  
20 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only  
21 under one of the following conditions: (1) By a medical practitioner in conformance with  
22 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical  
23 practitioner's manual signature; (3) On an electronically transmitted prescription order  
24 containing the prescribing medical practitioner's electronic or digital signature that is  
25 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription  
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1 order generated from electronic media containing the prescribing medical practitioner's  
2 electronic or manual signature. A prescription order that contains only an electronic  
3 signature must be applied to paper that uses security features that will ensure the  
4 prescription order is not subject to any form of copying or alteration; (5) On an oral  
5 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By  
6 refilling any written, electronically transmitted or oral prescription order if a refill is  
7 authorized by the prescriber either in the original prescription order, by an electronically  
8 transmitted refill order that is documented promptly and filed by the pharmacist or by an  
9 oral refill order that is documented promptly and filed by the pharmacist.”)

10       8.     The conduct and circumstances described in the Findings of Fact constitute  
11 a violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful  
12 authority, the person knowingly controls another person's property with the intent to  
13 deprive that other person of such property). Theft is a crime of moral turpitude. *State v.*  
14 *Superior Court of Pima County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978)  
15 (shoplifting involves moral turpitude and bears a close relationship to the common law  
16 crime of larceny).

17       9.     A person may not knowingly acquire or possess a prescription-only drug  
18 unless the person obtains the prescription-only drug pursuant to a valid prescription of a  
19 licensed prescriber. A.R.S. § 13-3406(A)(1). Furthermore, a person may not knowingly  
20 obtain or procure the administration of a prescription-only drug by fraud, deceit,  
21 misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal  
22 acquisition, possession or procurement of a prescription-only drug is a class 1  
23 misdemeanor. A.R.S. § 13-3406(B)(1).

24       10.    A person shall not provide a false prescription for a controlled substance or  
25 knowingly or intentionally acquire or obtain possession of a controlled substance by  
26

1 means of forgery, fraud, deception or subterfuge, including the forgery or falsification of  
2 a prescription or the nondisclosure of a material fact. A.R.S. § 36-2531(E). A person  
3 who violates this statute is guilty of a class 4 felony.

4 **ORDER**

5 Based upon the above Findings of Fact and Conclusions of Law, the Board issues  
6 the following Order:

7 1. Respondent's Pharmacist License No. S015422, which was issued to  
8 Respondent for the practice of Pharmacy in the State of Arizona, is immediately  
9 **SUSPENDED** for a period of six (6) months from the effective date of this Consent  
10 Agreement.

11 2. Within six (6) months of the effective date of this Consent Agreement,  
12 Respondent shall successfully complete the MPJE examination and provide proof of the  
13 successful completion to the Board.

14 3. Respondent shall pay all necessary fees and complete all continuing  
15 education requirements throughout the term of his suspension.

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

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

24 ...

25 ...

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1 DATED this 19<sup>th</sup> day of November, 2009.

2 ARIZONA STATE BOARD OF PHARMACY

3 (Seal)

4 By:   
5 HAL WAND, R.Ph.  
6 Executive Director

7  
8  
9 ORIGINAL OF THE FORGOING FILED  
10 this 19 day of November 2009, with:

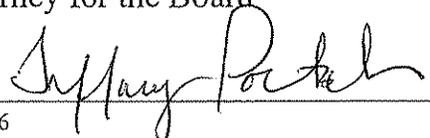
11 Arizona State Board of Pharmacy  
12 1700 West Washington, Suite 250  
13 Phoenix, Arizona 85007

14 EXECUTED COPY OF THE FOREGOING MAILED  
15 BY FIRST-CLASS and CERTIFIED MAIL  
16 this 19 day of November, 2009, to:

17 Howard Pulver  
18 4115 W. Charma Dr.  
19 Glendale, Arizona 85310

20 EXECUTED COPY OF THE FOREGOING MAILED  
21 this 19 day of November, 2009, to:

22 Elizabeth A. Campbell  
23 Assistant Attorney General  
24 1275 W. Washington Street, CIV/LES  
25 Phoenix, Arizona 85007  
26 Attorney for the Board

  
397506