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

10 In the Matter of

11 **REBECCA (MARKI) SHAW**

12 Holder of License No. T000424
To Practice as a Pharmacy Technician
13 In the State of Arizona

Board Case No. 09-0052-PHR

**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

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.*, Rebecca Shaw ("Respondent"),
19 holder of Pharmacy Technician License Number T000424 in the State of Arizona, and
20 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
21 Order ("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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1 2. Respondent understands that she has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing she 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 her.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3633 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, she may not
25 revoke her acceptance of the Consent Agreement or make any modifications to the
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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, she 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(C)(16), -1927.01(A)(1).

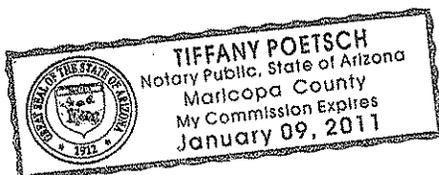
19 ACCEPTED AND AGREED BY RESPONDENT

20 Rebecca Shaw
21 Rebecca Shaw

Dated: 4/23/09

22 Subscribed and sworn to before me in the County of Maricopa State of Arizona,
23 this 23 day of April, 2009, by Rebecca Shaw

24 [Signature]
25 NOTARY PUBLIC



26 My Commission expires: January 09, 2011

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 T000424 to practice as a
5 Pharmacy Technician in the State of Arizona.

6 3. Respondent worked as a Pharmacy Technician at Fry's Pharmacy #87 in
7 Phoenix, Arizona (the "Fry's Pharmacy").

8 4. In September 2008, the Board received information from the Fry's
9 Pharmacy that Respondent had been terminated for diverting 110 ml of tussionex (cough
10 syrup with hydrocodone) and 100 ml of guaifenesin with codeine for her personal use.

11 5. In March 2009, the Board received information from Humana RightSource
12 in Phoenix, Arizona, where Respondent was working as a pharmacy technician, that
13 Respondent had diverted tramadol from the HumanaRightsource Pharmacy.

14 6. Cough syrup with hydrocodone is a Schedule III controlled substance.
15 A.R.S. § 36-2514(A)(5)(d).

16 7. Guaifenesin with codeine syrup is a Schedule V controlled substance.
17 A.R.S. § 36-2516(1)(a).

18 8. Tramadol is a prescription-only medication.

19 9. On March 24, 2009, Respondent began in-patient treatment.

20 **CONCLUSIONS OF LAW**

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

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

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1 3. The conduct described above constitutes a violation of A.R.S. § 13-
2 1802(A)(1) (A person commits theft if, without lawful authority, the person knowingly
3 controls another person's property with the intent to deprive that other person of such
4 property). Theft is a crime of moral turpitude. *State v. Superior Court of Pima County*,
5 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves moral
6 turpitude and bears a close relationship to the common law crime of larceny).

7 4. The conduct described above constitutes a violation of A.R.S. § 13-
8 3406(A)(1) (A person may not knowingly possess or use a prescription-only drug unless
9 the person obtains the prescription-only drug pursuant to a valid prescription of a licensed
10 prescriber). Furthermore, a person may not knowingly obtain or procure the
11 administration of a prescription-only drug by fraud, deceit, misrepresentation or
12 subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession
13 or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-
14 3406(B)(1).

15 5. The conduct described above constitutes a violation of A.R.S. § 36-2531(E)
16 (A person may not knowingly or intentionally acquire or obtain possession of a
17 controlled substance by means of forgery, fraud, deception or subterfuge). A person who
18 violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-2531(E).

19 6. The conduct described above constitutes a violation of A.R.S. § 36-
20 2525(H) (Except when dispensed directly by a medical practitioner to an ultimate user, a
21 controlled substance included in schedule III or IV that requires a prescription order as
22 determined under state or federal laws shall not be dispensed without a written or oral
23 prescription order of a medical practitioner).

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

4 8. The conduct described above constitutes a violation of A.R.S. § 36-
5 2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521 *et seq.* to
6 intentionally or knowingly distribute or dispense a controlled substance in violation of
7 section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of a class 4
8 felony. A.R.S. § 36-2531(B).

9 9. Respondent's conduct described above constitutes a violation of A.R.S. §
10 32-1968(A) ("A prescription-only drug shall be dispensed only under one of the
11 following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-
12 1921; (2) On a written prescription order bearing the prescribing medical practitioner's
13 manual signature; (3) On an electronically transmitted prescription order containing the
14 prescribing medical practitioner's electronic or digital signature that is reduced promptly
15 to writing and filed by the pharmacist; (4) On a written prescription order generated from
16 electronic media containing the prescribing medical practitioner's electronic or manual
17 signature. A prescription order that contains only an electronic signature must be applied
18 to paper that uses security features that will ensure the prescription order is not subject to
19 any form of copying or alteration; (5) On an oral prescription order that is reduced
20 promptly to writing and filed by the pharmacist; (6) By refilling any written,
21 electronically transmitted or oral prescription order if a refill is authorized by the
22 prescriber either in the original prescription order, by an electronically transmitted refill
23 order that is documented promptly and filed by the pharmacist or by an oral refill order
24 that is documented promptly and filed by the pharmacist.")

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1 suspension will be considered at a regularly scheduled Board meeting.
2 Respondent is required to personally appear at that Board meeting.

3 C. Respondent shall, within ten (10) days of the effective date of this
4 Order, return her Pharmacy Technician license to the Board office for the period
5 of suspension.

6 D. On March 24, 2009, Respondent entered in-patient treatment.
7 Respondent shall successfully complete the in-patient treatment. Failure to
8 successfully complete the inpatient treatment is a violation of this Consent
9 Agreement.

10 E. When directed by the PAPA Administrative Coordinator,
11 Respondent shall sign a five (5) year contract with PAPA. Respondent shall
12 successfully complete the five-year program and abide by each and every
13 requirement of the PAPA contract. Failure to complete the five-year PAPA
14 program or abide by the PAPA contract's terms is a violation of this Order.

15 2. Upon termination of the period of suspension by the Board, Respondent's
16 reinstated license shall immediately be placed on **PROBATION**. Respondent's
17 probation is subject to the following conditions:

18 A. No sooner than five (5) years from the beginning of Respondent's
19 probationary period, Respondent shall request in writing that the Board terminate
20 her probation. Respondent's request for termination will be considered at the
21 Board's next regularly scheduled Board meeting. Respondent is required to
22 personally appear at that Board meeting. Respondent's probationary period will
23 continue until Respondent's request for termination is received and the Board
24 terminates the probation.

1 B. Respondent shall continue to participate in the PAPA program and
2 comply with the terms of her PAPA contract.

3 C. Respondent shall furnish all pharmacy employers with a copy of this
4 Consent Agreement. Respondent shall ensure that all pharmacy employers submit
5 to the Board a written acknowledgement that they have received a copy of this
6 Consent Agreement within ten (10) days of entering into an employment
7 relationship with Respondent.

8 D. Respondent shall advise the Board within ten (10) days of any
9 change in pharmacy employment status.

10 E. Within five (5) years from the beginning of Respondent's
11 probationary period, Respondent shall complete 400 hours of community service
12 approved by Board staff. Respondent shall ensure that all entities to which she
13 provides community service verify in writing to the Board the number of hours
14 completed within 30 days of completing the community service.

15 3. Respondent shall pay all necessary fees and complete all continuing
16 education requirements throughout the term of her suspension and probation.

17 4. Throughout the term of Respondent's suspension and probation,
18 Respondent shall personally appear before the Board when requested to do so by the
19 Board or Board staff.

20 5. Respondent shall furnish the Board with a list of all jurisdictions in which
21 she maintains or has maintained licensure in the profession of pharmacy along with the
22 registration numbers of said licenses.

23 6. Respondent shall obey all federal and state laws and rules governing
24 pharmacy technicians.

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

6 DATED this 7th day of MAY, 2009.

7 ARIZONA STATE BOARD OF PHARMACY

8 (Seal)

9 By: Hal Wand
10 HAL WAND, R.Ph.
11 Executive Director

12 ORIGINAL OF THE FOREGOING FILED
13 this 7th day of May, 2009, with:

14 Arizona State Board of Pharmacy
15 1700 West Washington, Suite 250
16 Phoenix, Arizona 85007

17 EXECUTED COPY OF THE FOREGOING MAILED
18 BY FIRST CLASS and CERTIFIED MAIL
19 this 7th day of May, 2009, to:

20 Rebecca Shaw
21 3570 E. Baranca Rd.
22 Gilbert, Arizona 85297

23 EXECUTED COPY OF THE FOREGOING MAILED
24 this 7th day of May, 2009, to:

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

