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BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of **GERALD CALLAWAY,** Holder of License No. S007717 As a Pharmacist In the State of Arizona	Board Case No. 10-0002-PHR **CONSENT AGREEMENT FOR CIVIL PENALTY AND CONTINUING EDUCATION**

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.*, Gerald Callaway ("Respondent"), holder of Pharmacist License Number S007717 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 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. 3652 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, 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.

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, he 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.

13. 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).

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ACCEPTED AND AGREED BY RESPONDENT

Gerald Callaway

Dated: 8-10-09

Subscribed and sworn to before me in the County of Maricopa, State of Arizona, this 10th day of August, 2009, by Gerald Callaway.

SANJA HABIBIC
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
July 18, 2011

NOTARY PUBLIC

My Commission expires: July 18, 2011

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 S007717 to practice as a pharmacist in the State of Arizona.

3. During all relevant times to these findings, Respondent worked as a pharmacist at Walgreens Drug #6599 (the "Pharmacy") in Phoenix, Arizona.

4. In February 2009, the complainant had a prescription for ropinirole 0.25 mg refilled at the pharmacy. The prescription was incorrectly refilled with risperidone 0.25 mg. Respondent checked the data entry, filled the prescription, and did the product verification, but did not catch the error. The complainant took two of the incorrect tablets.

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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 pharmacist who has engaged in unprofessional conduct. A.R.S. § 32-1927(A)(1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy).

4. The conduct described above violated Arizona Administrative Code R4-23-402(A)(11) (In dispensing a prescription medication from a prescription order, a pharmacist shall make a final accuracy check on the completed prescription medication).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT Respondent shall:

1. Pay a civil penalty of $1,000.00 within **90 days** of the effective date of this Order; and

2. Successfully complete and provide proof of successful completion to the Board of eight (8) contact hours (0.8 C.E.U.) of American Council on Pharmaceutical Education (ACPE) courses within **6 months** of the effective date of this Order. The courses shall be pre-approved by Board staff, shall be limited to topics dealing with error prevention, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

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. . .

DATED this 10th day of September, 2009.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

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

ORIGINAL OF THE FORGOING FILED
this 10 day of Sept, 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 10 day of Sept, 2009, to:

Gerald Callaway
816 E. Corte Oro
Phoenix, Arizona 85020
Respondent

EXECUTED COPY OF THE FOREGOING MAILED
this 10 day of Sept., 2009, to:

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

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#515493

Paid $1000.00
C# 2046 8/12/09
CE Completed
8/12/09