

1 TERRY GODDARD
Attorney General
2 (Firm State Bar No. 14000)

3 ELIZABETH A. CAMPBELL
Assistant Attorney General
4 State Bar No. 018311
1275 W. Washington, CIV/LES
5 Phoenix, Arizona 85007-2997
Tel: (602) 542-7681
6 Fax: (602) 364-3202

7 Attorneys for the Arizona State Board of Pharmacy

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

9
10 In the Matter of,

11 **APOTHECA, INC.,**

Board Case No. 10-0040-PHR

12 Holder of Pharmacy Permit No. M00027 in
13 the State of Arizona.

**CONSENT AGREEMENT
FOR CIVIL PENALTY**

14 In the interest of a prompt and judicious settlement of this case, consistent with the
15 public interest, statutory requirements and the responsibilities of the Arizona State Board
16 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Apotheca, Inc., holder of
17 Pharmacy Permit Number M00027 in the State of Arizona ("Respondent"), and the
18 Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
19 ("Consent Agreement") as a final disposition of this matter.

20 **RECITALS**

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

24 2. Respondent understands that it has a right to a public administrative hearing
25 concerning the above-captioned matter, at which hearing it could present evidence and
26

1 cross examine witnesses. By entering into this Consent Agreement, Respondent
2 knowingly and voluntarily relinquishes all right to such an administrative hearing, as well
3 as rights of rehearing, review, reconsideration, appeal, judicial review or any other
4 administrative and/or judicial action, concerning the matters set forth herein.

5 3. Respondent affirmatively agrees that this Consent Agreement shall be
6 irrevocable.

7 4. Respondent understands that this Consent Agreement or any part of the
8 agreement may be considered in any future disciplinary action by the Board.

9 5. Respondent understands this Consent Agreement deals with Board
10 Complaint No. 3722 involving allegations of unethical conduct against Respondent. The
11 investigation into these allegations against Respondent shall be concluded upon the
12 Board's adoption of this Consent Agreement.

13 6. Respondent understands that this Consent Agreement does not constitute a
14 dismissal or resolution of any other matters currently pending before the Board, if any,
15 and does not constitute any waiver, express or implied, of the Board's statutory authority
16 or jurisdiction regarding any other pending or future investigation, action or proceeding.

17 7. Respondent also understands that acceptance of this Consent Agreement
18 does not preclude any other agency, subdivision, or officer of this State from instituting
19 any other civil or criminal proceedings with respect to the conduct that is the subject of
20 this Consent Agreement.

21 8. Respondent acknowledges and agrees that, upon signing this Consent
22 Agreement and returning this document to the Board's Executive Director, it may not
23 revoke its acceptance of the Consent Agreement or make any modifications to the
24 document regardless of whether the Consent Agreement has been signed by the
25
26

1 Executive Director. Any modification to this original document is ineffective and void
2 unless mutually agreed by the parties in writing.

3 9. This Consent Agreement is subject to the approval of the Board and is
4 effective only when accepted by the Board and signed by the Board's Executive Director.
5 In the event that the Board does not approve this Consent Agreement, it is withdrawn and
6 shall be of no evidentiary value and shall not be relied upon nor introduced in any action
7 by any party, except that the parties agree that should the Board reject this Consent
8 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the
9 Board was prejudiced by its review and discussion of this document or any records
10 relating thereto.

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

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

18 12. Respondent understands that any violation of this Consent Agreement
19 constitutes unethical conduct and may result in disciplinary action. A.R.S. §§ 32-
20 1901.01(A)(19), -1927.02(A)(1).

21 13. Respondent agrees that the Board will adopt the following Findings of Fact,
22 Conclusions of Law and Order.

23 ...

24 ...

25 ...

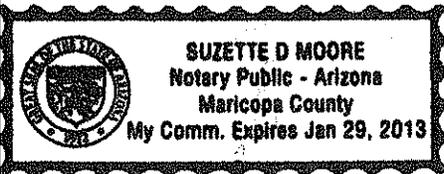
26

1 ACCEPTED AND AGREED BY RESPONDENT

2 Mitchel Hereth
3 , on behalf of
4 Apotheca, Inc.

Dated: 12/17/09

5 Subscribed and sworn to before me in the County of Maricopa, State of Arizona
6 this 17 day of December, 2009, by Mitchel Hereth, on behalf of Apotheca, Inc..



7 Suzette D Moore
8 NOTARY PUBLIC

9 My Commission expires: 1/29/2013

10 FINDINGS OF FACT

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

13 2. Respondent is the holder of Pharmacy Permit Number M00027 allowing it
14 to manufacture and repack drugs in Arizona.

15 3. In about August 2009, technicians working for Respondent incorrectly
16 labeled 6 boxes of nystatin/traimcinolone as nystatin cream. Respondent shipped the
17 incorrectly labeled medication to a health clinic.

18 4. The error was discovered at the clinic, and no patients were affected by this
19 error.
20

21 CONCLUSIONS OF LAW

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

24 2. The Board may discipline a permittee who has engaged in unethical
25 conduct. A.R.S. § 32-1927.02(A)(1).
26

1 3. The conduct and circumstances described above constitutes unethical
2 conduct pursuant to A.R.S. § 32-1901.01(A)(5) (Violating a federal or state law or
3 administrative rule relating to the manufacture, sale or distribution of drugs, devices,
4 poisons, hazardous substances or precursor chemicals).

5 4. The conduct and circumstances described above constitutes unethical
6 conduct pursuant to A.R.S. § 32-1901.01(A)(18) (Violating or attempting to violate,
7 directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate,
8 the Board's statutes or rules).

9 5. The conduct and circumstances described above constitute a violation of
10 A.R.S. § 32-1965(1) (Licensees are prohibited from manufacturing, selling, or holding or
11 offering for sale any drug, device, poison, or hazardous substance that is adulterated or
12 misbranded). Under A.R.S. § 32-1967(A)(1), a drug is misbranded if its labeling is false
13 or misleading in any particular.

14 **ORDER**

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

17 1. Respondent shall pay a civil penalty of \$3,000 within ninety (90) days of
18 the effective date of this Consent Agreement.

19
20 DATED this 13TH day of January, 2010.

21 ARIZONA STATE BOARD OF PHARMACY

22 (Seal)

23
24 By: 
25 HAL WAND, R.Ph.
26 Executive Director

1 ORIGINAL OF THE FORGOING FILED
this 14 day of Janu., 2010, with:

2
3 Arizona State Board of Pharmacy
1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

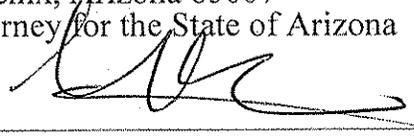
5 EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL

6 this 14 day of Jan., 2010, to:

7 Apotheca, Inc.
1622 N. 16th Street
8 Phoenix, AZ 85006
Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED
this 14 day of Janr, 2010, to:

10 Elizabeth A. Campbell
11 Assistant Attorney General
12 1275 W. Washington Street, CIV/LES
Phoenix, Arizona 85007
13 Attorney for the State of Arizona



14 #639014

15
16
17
18
19
20
21
22
23
24
25
26