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

10 In the Matter of
11 **KENNETH SMITH**
12 Holder of License No. S009235
To Practice as a Pharmacist in the State of
13 Arizona

Board Case No. 11-0012-PHR
**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

14
15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Pharmacy (“Board”) under A.R.S. § 32-1901, *et. seq.*, Kenneth Smith (“Respondent”),
18 holder of Pharmacist License Number S009235 in the State of Arizona, and the Board
19 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
20 (“Consent Agreement”) as a final disposition of this matter.

21 **RECITALS**

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 he has a right to a public administrative
2 hearing concerning this matter, at which hearing he could present evidence and cross
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
6 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 number 3820 involving allegations of unprofessional conduct against
13 Respondent. The investigation into these allegations against Respondent shall be
14 concluded upon the 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
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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. This Consent Agreement is subject to the approval of the Board and is
5 effective only when accepted by the Board and signed by the Executive Director. In the
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by
8 any party, except that the parties agree that should the Board reject this Consent
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the
10 Board was prejudiced by its review and discussion of this document or any records
11 relating thereto.

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

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

19 12. Respondent understands that any violation of this Consent Agreement
20 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
21 1901.01(B)(20), -1927(A)(1).

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

24 ...

25 ...

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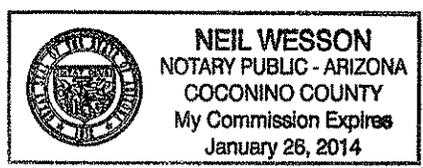
1 ACCEPTED AND AGREED BY RESPONDENT

2
3 Kenneth P. Smith
Kenneth Smith

Dated: 08-30-10

4 Subscribed and sworn to before me in the County of Cocconino, State of Arizona,
5 this 30th day of August, 2010, by Kenneth Smith.

6
7 Neil Wesson
NOTARY PUBLIC



8 My Commission expires: 1-26-2014

9 **FINDINGS OF FACT**

- 10 1. The Board is the duly constituted authority for licensing and regulating the
11 practice of pharmacy in the State of Arizona.
- 12 2. Respondent is the holder of license number S009235 to practice as a
13 pharmacist in the State of Arizona.
- 14 3. On December 23, 2008, Respondent signed a contract with Pharmacists
15 Assisting Pharmacists of Arizona ("PAPA"). The PAPA contract required, among other
16 things that Respondent completely abstain from mood-altering drugs except on
17 prescription from his family physician after consultation with PAPA.
- 18 4. On May 4, 2010, Respondent tested positive for Xanax in violation of the
19 PAPA Contract.
- 20 5. On or about May 6, 2010, Respondent was charged with aggravated driving
21 under the influence. Respondent's criminal case is pending in the Yavapai County
22 Superior Court. Respondent failed to report his arrest or criminal charges to the Board.
- 23 6. On May 17, 2010, Julian S. Pickens, Ed.D., expressed his opinion that
24 Respondent needed treatment for psychological issues and recommended that
25 Respondent attend a relapse prevention group.
- 26

1 1. Respondent's Pharmacist License No. S009235 is hereby **SUSPENDED**,
2 subject to the following terms and conditions:

3 A. Respondent's license is suspended for at least six (6) months from
4 July 13, 2010, the date Respondent entered in-patient substance abuse treatment.
5 The period of suspension shall be determined by the Board after reviewing (i)
6 information from Pharmacists Assisting Pharmacists of Arizona ("PAPA")
7 regarding Respondent's compliance with the terms of his PAPA program/contract;
8 (ii) a progress report/recommendation from Respondent's PAPA counselor, which
9 may be submitted in writing to the Board; and (iii) any input from Respondent.

10 B. No sooner than six (6) months from July 13, 2010, Respondent may
11 request in writing that the Board terminate the suspension. Respondent's request
12 to terminate suspension will be considered at a regularly scheduled Board meeting.
13 Respondent is required to personally appear at that Board meeting.

14 C. Respondent shall, within ten (10) days of the effective date of this
15 Order, return his pharmacist license to the Board office for the period of
16 suspension.

17 D. When directed by the PAPA Administrative Coordinator,
18 Respondent shall immediately sign a contract with PAPA, which contract shall
19 extend through the remainder of Respondent's suspension and until Respondent's
20 probation is terminated by the Board as set forth in paragraph 2(A) below.
21 Respondent shall successfully complete the PAPA program and abide by each and
22 every requirement of the PAPA contract. Failure to complete the PAPA program
23 or abide by the PAPA contract's terms is a violation of this Order.

24 E. During the period of suspension and probation, Respondent shall
25 attend therapy with a psychiatrist or a masters or higher level mental health
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1 professional licensed at the independent level (“Mental Health Professional”), who
2 shall be pre-approved by the PAPA Administrative Coordinator. Within 10 days
3 of the effective date of this Consent Agreement, Respondent shall submit the name
4 of a proposed Mental Health Professional and the Mental Health Professional’s
5 curriculum vitae for pre-approval by the PAPA Administrative Coordinator.
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7 F. For the first six months following the effective date of this Consent
8 Agreement, Respondent shall meet with the Mental Health Professional as
9 recommended by the Mental Health Professional, but in no event less than twice
10 every month. Thereafter, Respondent shall meet with the Mental Health
11 Professional as recommended by the Mental Health Professional. Failure to
12 comply with the Mental Health Professional’s treatment recommendations is a
13 violation of this Order.

14 G. Respondent shall provide the Mental Health Provider with a list of
15 all prescriptions and over-the-counter medications he is taking. In the case of
16 prescription medications, Respondent shall also provide a copy of the prescription.
17 Respondent shall immediately update the Mental Health Provider if he
18 discontinues any medication or begins any additional medication.

19 H. Respondent shall instruct the Mental Health Provider to release to
20 PAPA and Board Staff upon request all records relating to Respondent’s
21 treatment, and to submit monthly written reports to PAPA regarding diagnosis,
22 prognosis, medications, and recommendations for continuing care and treatment of
23 Respondent. The reports shall be submitted on or before the 15th day of each
24 month for the first six months following the effective date of this Consent
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1 Agreement. Thereafter, the Mental Health Provider shall submit reports to PAPA
2 on a quarterly basis.

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

6 A. No sooner than five (5) years from the beginning of Respondent's
7 probationary period, Respondent shall request in writing that the Board terminate
8 his probation. Respondent's request for termination will be considered at a
9 regularly scheduled Board meeting. Respondent is required to personally appear
10 at that Board meeting. Respondent's probationary period will continue until
11 Respondent's request for termination is received and the Board terminates the
12 probation.

13 B. Respondent shall continue to participate in the PAPA program and
14 comply with the terms of his PAPA contract.

15 C. Respondent shall furnish all pharmacy employers with a copy of this
16 Consent Agreement. Respondent shall ensure that all pharmacy employers submit
17 to the Board within ten (10) days of entering into an employment relationship with
18 Respondent a written acknowledgement that they have received a copy of this
19 Consent Agreement.

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

22 E. Respondent shall not serve as a preceptor pharmacist or pharmacist
23 in charge.

24 3. Within five (5) years from the effective date of this Consent Agreement,
25 Respondent shall complete 400 hours of community service approved by Board staff.

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1 Respondent shall ensure that all entities to which he provides community service verify
2 in writing to the Board the number of hours completed within 30 days of completing the
3 community service.

4 4. Respondent shall pay all necessary fees and complete all continuing
5 education requirements throughout the term of his suspension and probation.

6 5. Throughout the term of Respondent's suspension and probation,
7 Respondent shall personally appear before the Board when requested to do so by the
8 Board or Board staff.

9 6. Respondent shall furnish the Board with a list of all jurisdictions in which
10 he maintains or has maintained licensure as a pharmacist along with the registration
11 numbers of said licenses.

12 7. Respondent shall obey all federal and state laws and rules governing the
13 practice of pharmacy.

14 8. Respondent shall execute all appropriate release of information forms to
15 permit the Respondent's treatment professionals and PAPA to communicate directly with
16 the Board regarding Respondent's treatment.

17 9. Respondent shall pay all costs associated with complying with this Consent
18 Agreement, including all expenses associated with treatment, therapy, evaluation and
19 PAPA.

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

1 DATED this 15th day of September, 2010.

3 ARIZONA STATE BOARD OF PHARMACY

4 (Seal)

5 By:



6 HAL WAND, R.Ph.
Executive Director

8 ORIGINAL OF THE FORGOING FILED
9 this 16 day of Sept, 2010, with:

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

11 EXECUTED COPY OF THE FOREGOING MAILED
12 BY FIRST-CLASS and CERTIFIED MAIL
13 this 16 day of Sept, 2010, to:

14 Kenneth Smith
3220 W. Shannon Dr.
Flagstaff, Arizona 86001

15 EXECUTED COPY OF THE FOREGOING MAILED
16 this 16 day of Sept, 2010, to:

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

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21 937814