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

10 In the Matter of

11 **KENNETH SMITH,**

12 Holder of License No. S009235
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 11-0041-PHR

**CONSENT AGREEMENT
AND ORDER FOR SURRENDER**

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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.

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RECITALS

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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.

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 No. 3934 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
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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 agrees that the Board will adopt the following Findings of Fact,
20 Conclusions of Law and Order.

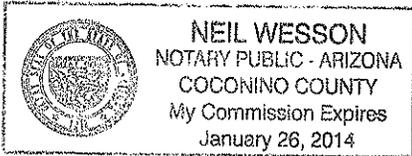
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1 ACCEPTED AND AGREED BY RESPONDENT

2
3 Kenneth J. Smith
Kenneth Smith

Dated: 6-2-11

4 Subscribed and sworn to before me in the County of Cocconino, State of Arizona,
5 this 2nd day of June, 2011, by Kenneth Smith.



Neil Wesson
NOTARY PUBLIC

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 August 30, 2010, Respondent signed a Consent Agreement and Order
15 for Suspension and Probation in Board Case No. 11-0012-PHR (the "2010 Consent
16 Agreement"). The 2010 Consent Agreement became effective on September 15, 2010.

17 4. The 2010 Consent Agreement required, among other things, that
18 Respondent sign and abide by a treatment and recovery contract with Pharmacists
19 Assisting Pharmacists of Arizona ("PAPA"), which was required to extend through the
20 entire term of Respondent's suspension and probation under the 2010 Consent
21 Agreement. 2010 Consent Agreement at 6, ¶1(D). Respondent signed a contract with
22 PAPA on August 18, 2010 (the "PAPA Contract").

23 5. On January 24, 2011, Respondent submitted a letter stating that he was
24 terminating his PAPA Contract effective that day.

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1 CONCLUSIONS OF LAW

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

4 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist
5 who has engaged in unprofessional conduct.

6 3. Respondent's practice and conduct, as described in the Findings of Fact,
7 constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(20) (Violating a
8 formal order, terms of probation, a consent agreement or a stipulation issued or entered
9 into by the Board or its executive director).

10 ORDER

11 Based upon the above Findings of Fact and Conclusions of Law, Respondent
12 hereby **SURRENDERS** License No. S009235 to practice as a pharmacist in the State of
13 Arizona. The surrender of Respondent's license shall be treated for all purposes,
14 including reporting purposes, as the revocation of his license. Respondent shall not
15 reapply for licensure in the State of Arizona or petition for reinstatement of his Arizona
16 license for a period of at least five (5) years from the effective date of this Consent
17 Agreement.

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19 DATED this 8th day of JULY, 2011.

21 ARIZONA STATE BOARD OF PHARMACY

22 (Seal)

23 By: 
24 HAL WAND, R.Ph.
25 Executive Director
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1 ORIGINAL OF THE FORGOING FILED
this 8 day of July, 2011, with:

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

5 EXECUTED COPY OF THE FOREGOING MAILED
BY FIRST-CLASS and CERTIFIED MAIL
this 8 day of July, 2011, to:

6 Kenneth Smith
7 3220 W. Shannon Dr.
8 Flagstaff, Arizona 86001
9 Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED
this 8 day of July, 2011, to:

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



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