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By

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of **MICHAEL KELLAM,** Holder of License No. S016382 As a Pharmacist In the State of Arizona	Board Case No. 12-0001-PHR **CONSENT AGREEMENT FOR CIVIL PENALTY AND CONTINUING EDUCATION**

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.*, Michael Kellam ("Respondent"), holder of Pharmacist License Number S016382 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.

RECITALS

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 this 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. 3911 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. This Consent Agreement is subject to the approval of the Board and is effective only when accepted by the Board and signed by the Executive Director. In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

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 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.

12. 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).

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

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ACCEPTED AND AGREED BY RESPONDENT

Dated: Sept 13th 2011

Michael Kellam

Subscribed and sworn to before me in the County of MOHAVE, State of Az., this 13th day of SEPTEMBER, 2011, by Michael Kellam

Susan C. Kirkpatrick
NOTARY PUBLIC

My Commission expires: Nov. 20, 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 S016382 to practice as a pharmacist in the State of Arizona.

3. During all relevant times to these findings, Respondent worked as the pharmacist in charge at Walgreens Pharmacy #12880 (the "Pharmacy") in Kingman, Arizona.

4. In December 2010, a refill request for Diazepam 10 mg and Tylenol with Codeine #3 was made to the patient's provider on Walgreen's standard refill form. The provider faxed back a response to the Pharmacy using her own form, which from reading the top of the form appeared to Respondent to authorize the refill. In the denial, which was included only on the very bottom of the form, the provider explained that she was refusing the refill request because the patient had overdosed on the medications the

month before. Respondent incorrectly read the provider's fax and refilled the patient's medications.

5. In January 2011, a refill request from the same patient for Tylenol with Codeine #3 was made to the same provider. The provider faxed back a denial to the Pharmacy. Respondent incorrectly read the provider's fax and refilled the patient's medication.

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)(5) (In dispensing a prescription medication from a prescription order, a pharmacist shall verify the legality and pharmaceutical feasibility of dispensing a drug based upon a patient's allergies, incompatibilities with a patient's currently taken medications, a patient's use of unusual quantifies of dangerous drugs or narcotics, a medical practitioner's signature, and the frequency of refills).

5. The conduct described above violated Arizona Administrative Code R4-23-402(A)(13) (In dispensing a prescription medication from a prescription order, a

pharmacist shall obtain, or assume responsibility to obtain, permission to refill a prescription order).

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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 six (6) contact hours (0.6 C.E.U.) of American Council on Pharmaceutical Education course(s) on the topic of error prevention. The required course(s) must be completed within **90 days** of the effective date of this Order, must be pre-approved by Board staff, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

3. Respondent shall pay all costs associated with complying with this Consent Agreement.

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

DATED this 27th day of September, 2011.

ARIZONA STATE BOARD OF PHARMACY

(Seal)

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

ORIGINAL OF THE FORGOING FILED
this 27 day of Sept, 2011, with:

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

EXECUTED COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
this 27 day of Sept, 2011, to:

Michael Kellam
3182 Kiersten Circle
Kingman, Arizona 86401
Respondent

EXECUTED COPY OF THE FOREGOING MAILED
this 27 day of Sept, 2011, to:

Christine Cassetta, Esq.
Roger N. Morris, Esq.
Quarles & Brady, P.A.
One Renaissance Square, Two N. Central Ave.
Phoenix, AZ 85004
Attorney for Respondent

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

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