THOMAS C. HORNE
Attorney General
(Firm State Bar No. 14000)

MONTGOMERY LEE
Assistant Attorney General
State Bar No. 005658
1275 W. Washington, CIV/LES
Phoenix, Arizona 85007-2997
Tel: (602) 542-7980
Fax: (602) 364-3202

Attorneys for the Arizona State Board of Pharmacy

BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of **DAVID MARTINEZ,** Holder of License No. S015190 As a Pharmacist In the State of Arizona	Board Case No. 12-0011-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.*, David Martinez ("Respondent"), holder of Pharmacist License Number S015190 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. 3943 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.

. . .

. . .

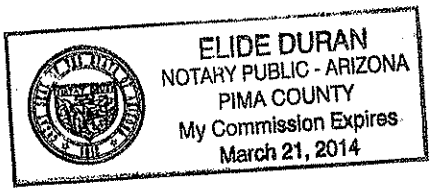
. . .

ACCEPTED AND AGREED BY RESPONDENT

Dated: 10/27/11

David Martinez

Subscribed and sworn to before me in the County of Pima, State of Arizona, this 27 day of October, 2011, by David Martinez.



NOTARY PUBLIC

My Commission expires: 03/21/2014

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 S015190 to practice as a pharmacist in the State of Arizona.

3. During all relevant times to these findings, Respondent worked a pharmacist at Basha's Pharmacy #160 (the "Pharmacy") located at 2000 W. River Rd. in Tucson, Arizona.

4. On or about January 10, 2011, a patient had a prescription for Morphine Sulfate ER 30mg incorrectly filled with Morphine Sulfate IR 30mg. The patient took 10 tablets of the wrong medication before the error was discovered.

5. Respondent was the pharmacist on duty when the medication was dispensed. Counseling was declined because the patient had taken the medication previously.

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)(10)(b) (In dispensing a prescription medication from a prescription order, a pharmacist shall check prescription order data entry to ensure that the data input is for the correct drug by verifying the drug name, strength, and dosage form).

5. 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 $250.00 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 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 17th day of November, 2011.

(Seal)

ARIZONA STATE BOARD OF PHARMACY

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

ORIGINAL OF THE FORGOING FILED
this 17 day of Nov., 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 17 day of Nov., 2011, to:

David Martinez
10394 E. Valley Quail Dr.
Oro Valley, Arizona 85747
Respondent