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Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: MELANIE HICKEY 2840 C Street #2 San Diego, CA 92102 Pharmacist License No. RPH 36032 Respondent.	Case No. 3217 **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Virginia K. Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy.

2. On or about December 12, 1980, the Board of Pharmacy issued Pharmacist License Number RPH 36032 to Melanie Hickey (Respondent). The pharmacist license was suspended on January 2, 2008. The license expired on December 31, 2008, and has not been renewed.

STATUTES

3. This Accusation and Petition to Revoke Probation is brought before the Board of Pharmacy, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

. . . .

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

FACTS

6. In a disciplinary action entitled *In the Matter of the Accusation Against Melanie Hickey*, Accusation Case No. 2813, before the Board of Pharmacy, Respondent entered into a Stipulated Settlement whereby she admitted all allegations contained in Accusation No. 2813. Respondent agreed to comply with the Board's final decision in the matter. The Board's final decision adopted the Stipulated Settlement, effective January 16, 2006. Accordingly, Respondent's pharmacist license was revoked. However, the revocation was stayed

and Respondent was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated herein by reference.

7. On or about January 12, 2006, Respondent met with a Board representative and received a full explanation and opportunity to discuss all of the terms and conditions of her probation. At the conclusion of the meeting, Respondent signed a declaration stating that she thoroughly understood the terms and conditions of her probation and that failure to comply may result in further disciplinary action.

8. Since October 2007, Respondent has failed to comply with several terms and conditions of her probation, as described in detail below.

9. On or about October 19, 2007, Respondent sent a letter to the Board requesting that the Board inactivate her pharmacist license. Respondent enclosed her pharmacist license inside said letter.

10. On or about December 19, 2007, the Board sent a letter to Respondent advising her that the Board could not inactivate her pharmacist license because her probation condition No. 11 specifically required Respondent to maintain an active license throughout the term of her probation. The Board enclosed Respondent's pharmacist license inside said letter to Respondent.

11. On or about January 2, 2008, Respondent was terminated from the Pharmacist Recovery Program (PRP) for non-compliance, as described in detail below.

12. Respondent's termination from the PRP caused her license to be immediately suspended, effective on or about January 15, 2008, when the Board provided notice to Respondent of said suspension, and pursuant to her probation condition No. 15, as described in detail below.

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Submit Quarterly Reports)

13. At all times after the effective date of Respondent's probation, Condition No. 3 stated:

> **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

14. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 3, referenced above, in that she failed to submit Quarterly Report(s) that were due on each of the following dates: January 10, 2008; April 10, 2008; July 10, 2008; October 10, 2008; and January 10, 2009.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Submit Cost Recovery Payments)

15. At all times after the effective date of Respondent's probation, Condition No. 9 stated:

> **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $8,030.75.
>
> Respondent shall said payments as follows: quarterly payments of $401.50 for the five-year term of probation.
>
> The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

16. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 9, referenced above, in that she has failed to make any cost recovery payments, quarterly or otherwise, since October 2007, and through the present date.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Comply with Pharmacist Recovery Program)

17. At all times after the effective date of Respondent's probation, Condition No. 15 stated:

> **Rehabilitation Program - Pharmacists Recovery Program (PRP).** Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The costs for PRP participation shall be borne by the Respondent.
>
> If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

18. Respondent enrolled and participated in the Pharmacist in Recovery Program ("PRP") until October 2006. In October 2006, Respondent began failing to comply with the terms and condition of her participation in PRP, which she had previously agreed to follow. Specifically, Respondent repeatedly failed to make required contacts with a PRP representative. During October and November 2007, PRP representative(s) made numerous unsuccessful attempts, by voice-mail and first-class mail, to contact Respondent and receive current contact information for her. Respondent's last contact with a PRP representative was a voice-mail from her in or about December 2007, wherein Respondent failed to provide any contact information. On or about January 2, 2008, Respondent was terminated from the PRP due to her non-compliance, described above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2813 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. RPH 36032 issued to Melanie Hickey;

2. Taking such other and further action as deemed necessary and proper.

DATED: 3/19/09

VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

SD2008802560

Exhibit A

Decision and Order

Board of Pharmacy Case No. 3217

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of the State of California
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Attorneys for Complainant

BEFORE THE
CALIFORNIA STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MELANIE M. HICKEY 1451 Babham Street, #412 El Cajon, CA 92019 Pharmacist License No. RPH 36032 Respondent.	Case No. 2813 OAH No. L-2005050539 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the California State Board of Pharmacy and brought this action solely in her official capacity. Complainant is represented in this matter by Bill Lockyer, Attorney General of the State of California, through Linda K. Schneider, Deputy Attorney General.

2. Respondent, MELANIE M. HICKEY, is represented in this matter by Michael J. Messina of Wood & Messina, 550 West C Street, Suite 1670, San Diego, CA 92101.

3. On December 12, 1980, the California State Board of Pharmacy (Board) issued original Pharmacist License Number RPH 36032 to respondent HICKEY. Said license was in full force and effect at all times relevant to the charges brought herein. Said license will expire on December 31, 2006, unless renewed.

JURISDICTION

4. On December 27, 2004, an Accusation, Case No. 2813, was filed before the Board, and is currently pending against respondent HICKEY. On January 10, 2005, the Accusation, together with all other statutorily required documents, was duly served on respondent at her address of record which is 1451 Babham Street, #412, El Cajon, California 92019. On January 17, 2005, respondent submitted a Notice of Defense contesting the Accusation. A copy of Accusation, Case No. 2813, is attached hereto as Exhibit A and incorporated herein by this reference.

ADVISEMENT AND WAIVERS

5. Respondent HICKEY has carefully read the charges and allegations in the Accusation, Case No. 2813, and the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent HICKEY is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation, the right to be represented by counsel at her own expense, the right to confront and cross-examine the witnesses against her, the right to present evidence and to testify on her own behalf, the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to reconsideration and court review of an adverse decision, and all other rights accorded by the California Administrative Procedure Act, and other applicable laws.

7. Respondent HICKEY voluntarily, knowingly and intelligently waives and gives up each and every right set forth above.

BASIS FOR DISCIPLINE

8. Respondent HICKEY admits to the truth of the charges set forth in the Accusation, Case No. 2813, and agrees that her pharmacist license is subject to discipline under

Business and Professions Code section 4300 for violations of Business and Professions Code sections 4301(h) and 4301(l). Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

9. This Stipulated Settlement shall be subject to the approval of the Board. Respondent HICKEY understands and agrees that the Board's staff and counsel for Complainant may communicate directly with the Board regarding this Stipulated Settlement, without notice to or participation by respondent. If the Board fails to adopt this Stipulated Settlement as its Order, the agreement shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action in this matter by virtue of its consideration of this Stipulated Settlement and Disciplinary Order.

10. The parties agree that facsimile signatures to this Stipulated Settlement and Disciplinary Order shall have the same force and effect as original signatures.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board shall, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacist License Number RPH 36032, issued to MELANIE M. HICKEY, is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

1. **Mental Health Examination**

Within thirty (30) days of the effective date of this Decision, and on a periodic basis as may be required by the Board, respondent shall undergo, at her own expense, psychiatric evaluation(s) by a Board-appointed or Board-approved psychiatrist or psychologist. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the Board.

If the psychiatrist or psychotherapist recommends, and the Board directs, respondent shall undergo psychotherapy. Respondent shall, within thirty (30) days of written notice of the need for psychotherapy, submit to the Board for its prior approval, the recommended program for ongoing psychotherapeutic care. Respondent shall undergo and continue psychotherapy, at respondent's own expense, until further notice from the Board. Respondent shall have the treating psychotherapist or psychiatrist submit written quarterly reports to the Board as directed. If respondent is determined to be unable to practice safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board.

Commencing on the effective date of the Decision in this matter, respondent shall not engage in the practice of pharmacy until notified in writing by the Board or its designee that respondent is psychologically fit to practice pharmacy safely, and the Board approves said recommendation. The recommendation that respondent shall be fit to practice pharmacy safely shall be made by the Pharmacist Recovery Program (see Probation Condition No. 15 below).

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which she holds an interest at the time this Decision becomes effective unless otherwise specified in this Order.

2. Obey All Laws

Respondent shall obey all federal and state laws and regulations substantially related or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

* an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
* a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
* discipline, citation, or other administrative action filed by any state and federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

3. Reporting to the Board

Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable notice, respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

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5. Cooperation with Board Staff

Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

7. Notice to Employers

Respondent shall notify all present and prospective employers of the Decision in Case No. 2813, and the terms, conditions and restrictions imposed on respondent by the Decision. Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking new employment, respondent shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the Decision in Case No. 2813.

"Employment" within the meaning of this provision shall include any full-time or part-time work as a pharmacist, whether the respondent is considered an employee or independent contractor.

Respondent shall not work as a pharmacist for any temporary or relief service or pharmacy management service, whether the respondent is considered an employee or independent contractor.

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8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant

Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this Order.

9. Reimbursement of Board Costs

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $8,030.75.

Respondent shall make said payments as follows: quarterly payments of $401.50 for the five-year term of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

11. Status of License

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

If respondent's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms of this probation not previously satisfied.

12. License Surrender while on Probation/Suspension

Following the effective date of this Decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems

appropriate and reasonable. Upon formal acceptance of the surrender of license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish her pocket license to the Board with ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

13. **Notification of Employment/Mailing Address Change**

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within ten (10) days of a change in name, mailing address or phone number.

14. **Tolling of Probation**

Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three (3) years.

"Cessation of practice" means any period of time exceeding thirty (30) days in which respondent is not engaged in the practice of pharmacy as defined in section 4052 of the Business and Professions Code.

15. **Rehabilitation Program - Pharmacist Recovery Program**

Within 30 days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The Pharmacist Recovery Program will review and consider quarterly reports from respondent's treating providers, upon submission of such reports

by her providers. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, or was previously enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete her current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until respondent successfully completes her treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

16. **Random Drug Screening**

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

17. **Abstain From Drugs and Alcohol Use**

Respondent shall abstain completely from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the respondent.

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18. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation is heard and decided.

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

19. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

ACCEPTANCE

I have carefully read and considered the above Stipulated and Disciplinary Order. I understand the effect this Stipulation will have on my pharmacist license. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently, and agree to be bound by the Disciplinary Order and Decision of the California State Board of Pharmacy set forth herein.

DATED: 10/20/2005.

MELANIE M. HICKEY, RPH
Respondent

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I have read and fully discussed with MELANIE M. HICKEY the terms and conditions and other matters contained in this Stipulated Settlement and Disciplinary Order, and approve of its form and content.

DATED: 10/20/05.

MICHAEL J. MESSINA
Wood & Messina
Attorneys for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California State Board of Pharmacy in resolution of the Accusation, Case No. 2813, against MELANIE M. HICKEY.

DATED: 10/20/05.

BILL LOCKYER, Attorney General
of the State of California

LINDA K. SCHNEIDER
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2004AD801191
10/20/05

BEFORE THE
CALIFORNIA STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: MELANIE M. HICKEY 1451 Babham Street, #412 El Cajon, CA 92019 Pharmacists License No. RPH 36032 Respondent.	Case No. 2813 OAH No.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California State Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 18, 2006.

It is so ORDERED December 19, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President