1 2 3 4 5 6 7 8	 Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	м	
9 10	9 STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against: Case No. 3233		
12	MARK HOWARD BRAUN		
13	Culver City, California 90232A C C U S A T I O N13		
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15	15 Respondent.		
16	Complainant alleges:		
17	PARTIES		
18	18 1. Virginia Herold (Complainant) brings this Accusation solely in her	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
20	2. On or about September 7, 1990, the Board of Pharmacy issued Pharmacist License		
21	No. RPH 43806 to Mark Howard Braun (Respondent). The License was in full force and effect at		
22	all times relevant to the charges herein and will expire on September 30, 2010, unless renewed.		
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24	JURISDICTION		
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26	Consumer Affairs, under the authority of the following laws. All section references are to the		
27	Business and Professions Code (Code) unless otherwise indicated.		
28			
	1	Accusation	

Accusation

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances.
Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, 6 7 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 8 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not 9 renewed within three years following its expiration may not be renewed, restored, or reinstated 10 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of 11 the Code provides that any other license issued by the Board may be canceled by the Board if not 12 renewed within 60 days after its expiration, and any license canceled in this fashion may not be 13 reissued but will instead require a new application to seek reissuance. 14

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STATUTORY AND REGULATORY PROVISIONS

7. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this
division or under any initiative act referred to in this division may be unable to practice his or her
profession safely because the licentiate's ability to practice is impaired due to mental illness, or
physical illness affecting competency, the licensing agency may order the licentiate to be
examined by one or more physicians and surgeons or psychologists designated by the agency.
The report of the examiners shall be made available to the licentiate and may be received as direct
evidence in proceedings conducted pursuant to Section 822."

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8. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession
safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
licensing agency may take action by any one of the following methods:

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"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

6 "The licensing agency shall not reinstate a revoked or suspended certificate or license until 7 it has received competent evidence of the absence or control of the condition which caused its 8 action and until it is satisfied that with due regard for the public health and safety the person's 9 right to practice his or her profession may be safely reinstated."

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation of the licensing
act to pay a sum not to exceed reasonable costs of investigation and enforcement.

FACTUAL/PROCEDURAL BACKGROUND

15 10. On or about October 14, 2008, based on incidents or events detailed therein between
16 1996 and 2008 that led to concerns about Respondent's mental state, Complainant filed a Petition
17 for an Order to Compel Psychological Examination (Bus. & Prof. Code, § 820) before the Board
18 of Pharmacy. On or about September 25, 2009, pursuant to the Petition, the Board entered an
19 Order Compelling Psychological Examination, commanding Respondent to undergo an
20 evaluation to determine mental fitness to practice safely within thirty (30) days.

11. On or about October 9, October 14, and October 23, 2009, Respondent met with and
was evaluated by mental health professionals in the USC Institute of Psychiatry and Law, Keck
School of Medicine, University of Southern California. In a report dated January 29, 2010, Philip
C. O'Donnell, M.J., Ph.D., Timothy Botello, M.D., M.P.H., and Shoba Sreenivasan, Ph.D., after
having evaluated Respondent by way of clinical interview, psychological testing, and review and
consideration of other sources including Board investigation reports, reported to the Board on the
fitness of Respondent to practice safely as a Pharmacist, and concluded, inter alia:

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a. That Respondent's history and presentation are consistent with a mood disorder and anxiety disorder, as well as an underlying personality disorder; he meets DSM-IV-TR diagnostic criteria for Bipolar I Disorder, Social Phobia, and Personality Disorder Not Otherwise Specified;

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b. That Respondent's mental illnesses impair his ability to safely practice pharmacy in
that they contribute to hostile interactions with coworkers and patients, in which he is perceived
as unstable, threatening, and potentially dangerous;

c. That several clinical (e.g., active symptoms of his mental illnesses) and historical
(e.g., past episodes of hostile and verbally threatening behavior) factors elevate his risk for danger
to himself or others, and during periods of heightened stress his mental functioning is likely to
deteriorate, resulting in the expression of anger towards himself and others;

d. That psychotherapy is an important component of treatment for his mental disorders,
that combined with psychotropic medications could improve his ability to practice safely; and
e. That it may also be appropriate to restrict Respondent's work environment(s) based
on potential stressors that could exacerbate his mental illnesses, e.g., the nature and extent of his
contact with patients and coworkers, and/or the degree of stress associated with the position.

CAUSE FOR DISCIPLINE

(Mental Impairment)

Respondent is subject to disciplinary action and/or to suspension, revocation, or
 probation of/on his Pharmacist License Number RPH 43806, pursuant to section 822 of the Code,
 because his ability to practice safely under his Pharmacist License is impaired due to his mental
 illness or disorder, as detailed in paragraph 11, above.

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:

Revoking or suspending Pharmacist License Number RPH 43806, issued to Mark
 Howard Braun (Respondent);

Ordering Respondent to pay the Board the reasonable costs of the investigation and 2. enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as is deemed necessary and proper. 3. DATED: 6/17/10 VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2008400306 20280192.doc Accusation