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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against,

Case No. 3536

14 **STEPHEN MASON OTIS**
1100 Garden View Rd #308
15 Encinitas, CA 92024

**FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION**

16 Pharmacist License No. RPH 62442

17 One.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this First Amended Accusation and Petition to
22 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
23 Pharmacy, Department of Consumer Affairs.

24 2. On or about May 14, 2009, the Board of Pharmacy issued Pharmacist License
25 Number RPH 62442 to Stephen Mason Otis, Respondent. The Pharmacist License was in effect
26 at all times relevant to the charges brought herein and will expire on February 28, 2011, unless
27 renewed.

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1 3. In a disciplinary action entitled "*In the Matter of Statement of Issues Against Stephen*
2 *Mason Otis*," Case No. 3045, the Board of Pharmacy, issued a decision, effective May 12, 2009,
3 in which Respondent's Pharmacist License was revoked. However, the revocation was stayed
4 and Respondent's license was placed on probation for a period of five (5) years with certain terms
5 and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

6 JURISDICTION

7 4. This Accusation and Petition to Revoke Probation is brought before the Board of
8 Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.
9 All section references are to the Business and Professions Code unless otherwise indicated.

10 5. Section 118(b) of the Code states:

11 The suspension, expiration, or forfeiture by operation of law of a license issued
12 by a board in the department, or its suspension, forfeiture, or cancellation by order of
13 the board or by order of a court of law, or its surrender without the written consent of
14 the board, shall not, during any period in which it may be renewed, restored,
15 reissued, or reinstated, deprive the board of its authority to institute or continue a
disciplinary proceeding against the licensee upon any ground provided by law or to
enter an order suspending or revoking the license or otherwise taking disciplinary
action against the licensee on any such ground.

16 6. Section 4300 of the Code states:

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

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

20 (1) Suspending judgment.

21 (2) Placing him or her upon probation.

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

24 (4) Revoking his or her license.

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

26 ...
27 (e) The proceedings under this article shall be conducted in accordance with
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
Government Code, and the board shall have all the powers granted therein. The

1 action shall be final, except that the propriety of the action is subject to review by the
2 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

3 STATUTORY PROVISIONS

4 7. Section 4022 of the Code states:

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
6 self-use in humans or animals, and includes the following:

7 (a) Any drug that bears the legend: "Caution: federal law prohibits
8 dispensing without thout prescription," "Rx only," or words of similar
9 import.

10 (b) Any device that bears the statement: "Caution: federal law restricts this
11 device to sale by or on the order of a _____," "Rx only," or words of similar import,
12 the blank to be filled in with the designation of the practitioner licensed to use or
13 order use of the
14 device.

15 (c) Any other drug or device that by federal or state law can be lawfully
16 dispensed only on prescription or furnished pursuant to Section 4006.

17 8. Section 4023.5 of the Code states:

18 For the purposes of this chapter, "direct supervision and control" means that a
19 pharmacist is on the premises at all times and is fully aware of all activities
20 performed by either a pharmacy technician or intern pharmacist.

21 9. Section 4036 of the Code states:

22 "Pharmacist" means a natural person to whom a license has been issued by the
23 board, under Section 4200, except as specifically provided otherwise in this chapter.
24 The holder of an unexpired and active pharmacist license issued by the board is
25 entitled to practice pharmacy as defined by this chapter, within or outside of a
26 licensed pharmacy as authorized by this chapter.

27 10. Section 4043(a) of the Code states:

28 (a) "Wholesaler" means and includes a person who acts as a wholesale
merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident
wholesaler, who sells for resale, or negotiates for distribution, or takes possession of,
any drug or device included in Section 4022. Unless otherwise authorized by law, a
wholesaler may not store, warehouse, or authorize the storage or warehousing of
drugs with any person or at any location not licensed by the board.

11. Section 4052 of the Code states:

(a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded drug product to a
prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

1 (3) Administer, orally or topically, drugs and biologicals pursuant to a
prescriber's order.

2 (4) Perform procedures or functions in a licensed health care facility as
3 authorized by Section 4052.1.

4 (5) Perform procedures or functions as part of the care provided by a
health care facility, a licensed home health agency, a licensed clinic in which there is
5 a physician oversight, a provider who contracts with a licensed health care service
6 plan with regard to the care or services provided to the enrollees of that health care
service plan, or a physician, as authorized by Section 4052.2.

7 (6) Manufacture, measure, fit to the patient, or sell and repair
8 dangerous devices or furnish instructions to the patient or the patient's representative
concerning the use of those devices.

9 (7) Provide consultation to patients and professional information,
10 including clinical or pharmacological information, advice, or consultation to other
11 health care professionals.

12 (8) Furnish emergency contraception drug therapy as authorized by
13 Section 4052.3.

14 (9) Administer immunizations pursuant to a protocol with a prescriber.

15 (b) A pharmacist who is authorized to issue an order to initiate or adjust a
16 controlled substance therapy pursuant to this section shall personally register with the
17 federal Drug Enforcement Administration.

18 (c) Nothing in this section shall affect the requirements of existing law relating
19 to maintaining the confidentiality of medical records.

20 (d) Nothing in this section shall affect the requirements of existing law relating
21 to the licensing of a health care facility.

22 12. Section 4052.1 of the Code states:

23 (a) Notwithstanding any other provision of law, a pharmacist may perform the
24 following procedures or functions in a licensed health care facility in accordance with
25 policies, procedures, or protocols developed by health professionals, including
26 physicians, pharmacists, and registered nurses, with the concurrence
27 of the facility administrator:

28 (1) Ordering or performing routine drug therapy-related patient
assessment procedures including temperature, pulse, and respiration.

(2) Ordering drug therapy-related laboratory tests.

(3) Administering drugs and biologicals by injection pursuant to a
prescriber's order.

(4) Initiating or adjusting the drug regimen of a patient pursuant to an order
or authorization made by the patient's prescriber and in accordance with the policies,
procedures, or protocols of the licensed health care facility.

1 (b) Prior to performing any procedure authorized by this section, a pharmacist
2 shall have received appropriate training as prescribed in the policies and
3 procedures of the licensed health care facility.

4 13. Section 4052.2 of the Code states:

5 (a) Notwithstanding any other provision of law, a pharmacist may perform the
6 following procedures or functions as part of the care provided by a health care
7 facility, a licensed home health agency, a licensed clinic in which there is a physician
8 oversight, a provider who contracts with a licensed health care service plan with
9 regard to the care or services provided to the enrollees of that health care service
10 plan, or a physician, in accordance with the policies, procedures, or protocols of that
11 facility, home health agency, licensed clinic, health care service plan, or physician,
12 and in accordance with subdivision (c):

13 (1) Ordering or performing routine drug therapy-related patient
14 assessment procedures including temperature, pulse, and respiration.

15 (2) Ordering drug therapy-related laboratory tests.

16 (3) Administering drugs and biologicals by injection pursuant to a
17 prescriber's order.

18 (4) Initiating or adjusting the drug regimen of a patient pursuant
19 to a specific written order or authorization made by the individual
20 patient's treating prescriber, and in accordance with the policies,
21 procedures, or protocols of the health care facility, home health
22 agency, licensed clinic, health care service plan, or physician.
23 Adjusting the drug regimen does not include substituting or selecting
24 a different drug, except as authorized by the protocol. The
25 pharmacist shall provide written notification to the patient's
26 treating prescriber, or enter the appropriate information in an
27 electronic patient record system shared by the prescriber, of any
28 drug regimen initiated pursuant to this paragraph within 24 hours.

(b) A patient's treating prescriber may prohibit, by written
instruction, any adjustment or change in the patient's drug regimen
by the pharmacist.

(c) The policies, procedures, or protocols referred to in this
subdivision shall be developed by health care professionals,
including physicians, pharmacists, and registered nurses, and shall,
at a minimum, do all of the following:

(1) Require that the pharmacist function as part of a
multidisciplinary group that includes physicians and direct care
registered nurses. The multidisciplinary group shall determine the
appropriate participation of the pharmacist and the direct care
registered nurse.

(2) Require that the medical records of the patient be available
to both the patient's treating prescriber and the pharmacist.

(3) Require that the procedures to be performed by the pharmacist

1 relate to a condition for which the patient has first been seen by a
2 physician.

3 (4) Except for procedures or functions provided by a health care
4 facility, a licensed clinic in which there is physician oversight, or
5 a provider who contracts with a licensed health care plan with
6 regard to the care or services provided to the enrollees of that
7 health care service plan, require the procedures to be performed in
8 accordance with a written, patient-specific protocol approved by the
9 treating or supervising physician. Any change, adjustment, or
10 modification of an approved preexisting treatment or drug therapy
11 shall be provided in writing to the treating or supervising physician
12 within 24 hours.

13 (d) Prior to performing any procedure authorized by this section,
14 a pharmacist shall have done either of the following:

15 (1) Successfully completed clinical residency training.

16 (2) Demonstrated clinical experience in direct patient care
17 delivery.

18 14. Section 4114(a) of the Code states:

19 An intern pharmacist may perform all functions of a pharmacist at the
20 discretion of and under the direct supervision and control of a pharmacist whose
21 license is in good standing with the board.

22 15. Section 4116 (a) of the Code states:

23 No person other than a pharmacist, an intern pharmacist, an authorized officer
24 of the law, or a person authorized to prescribe shall be permitted in that area, place,
25 or premises described in the license issued by the board wherein controlled
26 substances or dangerous drugs or dangerous devices are stored, possessed, prepared,
27 manufactured, derived, compounded, dispensed, or repackaged. . . .

28 16. Section 4160(a) of the Code states:

A person may not act as a wholesaler of any dangerous drug or dangerous
device unless he or she has obtained a license from the board.

17. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of
unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud,
deceit, or corruption, whether the act is committed in the course of relations as a
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of this chapter
3 or of the applicable federal and state laws and regulations governing pharmacy,
4 including regulations established by the board or by any other state or federal
5 regulatory agency.

6

7 COST RECOVERY

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

12 FACTUAL ALLEGATIONS REGARDING CALIFORNIA 13 PHYSICIANS RESEARCH ALLIANCE

14 19. Respondent is and at all times mentioned herein was the CEO of California
15 Physicians Research Alliance (CPRA), a clinical research company for the testing of
16 pharmaceuticals and/or medical devices. CPRA was registered with the Secretary of State as a
17 corporate entity on November 19, 2007. CPRA is a clinical research organization that acts as a
18 site management coordinator for physicians performing clinical assessments required by research
19 studies such as collecting data, and inputting data obtained from the studies. CPRA is not
20 licensed as a health care facility, a licensed home health facility or a licensed clinic.

21 20. Respondent became licensed as a pharmacy intern on August 13, 2008, and prior to
22 that time, Respondent, as the CEO of CPRA performed patient assessments, took vital signs,
23 performed EKGs and drew blood samples for analysis, all while unlicensed as either a pharmacy
24 intern or as a pharmacist and while not under the direct supervision of a pharmacist or other
25 health care provider. After Respondent became licensed as a pharmacy intern, but before
26 becoming licensed as a registered pharmacist on May 14, 2009, Respondent performed patient
27 assessments, took vital signs, performed EKGs and drew blood samples for analysis without the
28 oversight of a licensed pharmacist.

29 21. In or about July of 2006, physician J.N., M.D., was solicited by Respondent to
30 become involved in conducting clinical research trials studying the efficacy of various

1 pharmaceuticals/devices. Respondent represented himself to Dr. J.N. as a clinical pharmacist
2 with a Pharm.D. degree, although at that time and unbeknownst to Dr. J.N., Respondent was not
3 licensed as a pharmacist in the state of California. Dr. J.N. agreed to be an investigator in at least
4 three trials coordinated by Respondent. Dr. J.N. was involved with investigating a diverticulitis
5 drug in the Shire Diverticulitis Study, and Dr. J.N. was the primary investigator in the Fralex
6 Fibromyalgia Study and the Roche Acute Coronary Syndrome Study. In these studies the drug or
7 device was shipped to Dr. J.N.'s office and stored in a locked cabinet. Respondent conducted the
8 patient assessments such as obtaining temperature, blood pressure, drawing blood samples and
9 helping to dispense medications to the patients. Dr. J.N. told board investigators that he first
10 became concerned about Respondent when Respondent was removed from the Shire study
11 because of unprofessional conduct. He also stated that he fired Respondent from the Roche study
12 in September of 2008, when he noted irregularities, falsification of data and numerous
13 professional and clinical errors. Thereafter, Dr. J.N. reported Respondent to the Western
14 Investigational Review Board, the Food and Drug Administration, the California Medical Board
15 and the California Board of Pharmacy.

16 22. In the later part of 2006, Respondent solicited physician R.H., M.D., to be the
17 primary investigator in research studies involving post-surgical patients and an anti-coagulant
18 medication used following total knee replacement. The drugs used in these studies were shipped
19 directly to Respondent and he brought them to Tri-City Medical Center to be dispensed to
20 patients.

21 23. Between September of 2007 and February of 2008, E.S. was a research coordinator
22 employed by Respondent. She performed clinical assessments, took vital signs, EKGs, drew
23 blood, entered clinical data information and obtained patient consent for treatment. She worked
24 at Respondent's Oceanside office where investigational drugs were delivered, and records were
25 kept documenting the receipt and disposition of investigational drugs.

26 24. In or about 2007 through 2009, physician B.F., M.D., was also involved with research
27 studies coordinated by Respondent. She worked on studies involving fibromyalgia, diabetes and
28 rheumatoid arthritis. Respondent brought the medications used in the study to her office where

1 they were dispensed to the patients. Respondent introduced himself to her patients as a
2 pharmacist. He dispensed the investigational drugs, obtained vital signs, collected data and
3 interviewed patients.

4 25. Prior to being licensed as a pharmacy intern on August 13, 2008, Respondent was
5 taking vital signs, dispensing investigational drugs, conducting patient interviews and collecting
6 research data without any license in the State of California. Between August 13, 2008 and May
7 14, 2009, Respondent was performing the tasks of an intern pharmacist of taking vital signs,
8 dispensing medications, storing investigational drugs on the premises of CPRA, collecting data
9 and interviewing patients without the oversight of a licensed pharmacist.

10 26. The unused tablets used in the post-surgical total knee replacement study coordinated
11 by CPRA, were shipped to Fisher Scientific for destruction. Fed Ex tracking documents show
12 that these tablets were sent from CPRA's Oceanside California address to Fisher Scientific.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Commission of Acts of Dishonesty, Fraud, Deceit or Corruption)

15 27. Respondent is subject to disciplinary action under Code sections 4301, subdivision
16 (f), in that prior to being licensed as a pharmacist in California, Respondent represented himself
17 as a pharmacist to physicians and patients during investigational studies, as set forth above in
18 paragraphs 19 through 26.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Unlicensed Practice of Pharmacy)

21 28. Respondent is subject to disciplinary action under Code sections 4301(o) for violating
22 Code Section 4036, in that prior to being licensed as a pharmacist in California, Respondent
23 performed the duties of a pharmacist, in that, among other things, he took vital signs, performed
24 EKGs, took blood pressures and drew blood samples for analysis, and maintained dangerous
25 drugs at his unlicensed business office for use in clinical studies without the oversight of a
26 licensed pharmacist, as set forth above in paragraphs 19 through 26.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Practicing as an Unsupervised Pharmacist Intern)

3 29. Respondent is subject to disciplinary action under Code Section 4301(o) for violating
4 Code Section 4114, in that between August 13, 2008 and May 14, 2009, while licensed as an
5 intern pharmacist, and while working as a research coordinator for California Physicians
6 Research Alliance, Respondent took vital signs, performed EKGs, took blood pressures, drew
7 blood samples for analysis, and maintained dangerous drugs at his unlicensed business office for
8 use in clinical studies without the direct supervision and control of a pharmacist, as set forth
9 above in paragraphs 19 through 26.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 (Performed Medical Procedures at an Unlicensed Facility)

12 30. Respondent is subject to disciplinary action under Code Section 4301(o) for violating
13 Code Sections 4052(a)(5) and 4052.1, in that while working as a research coordinator for
14 California Physicians Research Alliance, Respondent performed the duties of a pharmacist by
15 taking blood pressures, temperatures, performing EKGs and drawing blood at a facility not
16 licensed as a pharmacy or a health care facility, and Respondent maintained dangerous drugs at
17 his business location without the required policies, procedures or protocols in use at licensed
18 facilities, as set forth above in paragraphs 19 through 26.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 (Respondent Acted as a Wholesaler of Dangerous Drugs Without a License)

21 31. Respondent is subject to disciplinary action under Code Section 4301(o) for violating
22 Code Sections 4160 in that while working as a research coordinator for California Physicians
23 Research Alliance, Respondent acted as a wholesaler of dangerous drugs or dangerous devices
24 without a license from the Board, as set forth above in paragraphs 19 through 26.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 (Warehousing Dangerous Drugs at a Location Not Licensed by the Board)

27 32. Respondent is subject to disciplinary action under Code Section 4301(o) for violating
28 Code Sections 4043(a) in that while working as a research coordinator for California Physicians

1 Research Alliance, Respondent acted as a wholesaler of dangerous drugs or dangerous devices
2 without a license from the Board, as set forth above in paragraphs 19 through 26.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 (Permitted Unlicensed Persons in Areas Where Dangerous Drugs Were Maintained)

5 33. Respondent is subject to disciplinary action under Code Section 4301(o) for
6 violating Code Sections 4116, in that while working as a research coordinator for California
7 Physicians Research Alliance, Respondent permitted unlicensed persons to be present in the areas
8 where dangerous drugs or dangerous devices were stored and or possessed, as set forth above in
9 paragraphs 19 through 26.

10 **PRIOR PROCEEDINGS**

11 34. On or about February 14, 2006, the Board of pharmacy received an application for a
12 Pharmacist License and Examination and registration as an interim pharmacist from Respondent.
13 On or about January 22, 2006, Respondent certified under penalty of perjury to the truthfulness of
14 all statements, answers, and representations in the application. The Board denied the application
15 on June 16, 2006. Respondent timely filed an appeal on the denial and request for hearing.

16 35. On or about July 19, 2007, the Board filed a Statement of Issues against Stephen Otis,
17 Case No. 3045.

18 36. Respondent signed a stipulated settlement agreement with the Board on April 17,
19 2008, wherein he admitted the truth of each and every allegation contained in the Statement of
20 Issues, and thereby agreed to be bound by the Board's imposition of discipline as set forth in the
21 board's Disciplinary Order in Case No. SI 3045. On or about July 14, 2008, the Board adopted
22 the stipulated settlement agreement as its final Decision in Statement of Issues Case No. 3045
23 against Respondent, and assigned an effective date of August 1, 2008 to the Board's Disciplinary
24 Order in Case No SI 3045. A copy of the Board's Decision and Order in Statement of Issues
25 Case No. 3045, is attached hereto as Exhibit B and is incorporated herein by reference.

26 37. On or about August 13, 2008, in accordance with the Board's Disciplinary Order in
27 Case No SI 3045, Respondent's Application for Registration as an Intern Pharmacist was granted,
28 the registration was immediately revoked, the revocation was stayed and Respondent's

1 registration was placed on probation, under terms and conditions including taking and passing the
2 California pharmacist licensure examination. Thereafter, Respondent successfully took and
3 passed the California pharmacist licensure examination.

4 38. On May 14, 2009, in accordance with the Board's Disciplinary Order in Case No.
5 3045, the Board issued Original Pharmacist License Number RPH 62442 to Respondent, the
6 license was immediately revoked, the revocation was stayed and the license was placed on
7 probation for five years, under terms and condition. See, Exhibit B, attached.

8 **FACTUAL ALLEGATIONS REGARDING FAILING**
9 **TO COMPLY WITH TERMS OF PROBATION**

10 39. On June 16, 2009, Respondent appeared in person at a probation office conference,
11 during which the terms and conditions of Respondent's probation, including the requirement that
12 he participate in and successfully complete the Pharmacist Recovery Program (PRP), were
13 explained and discussed. At the close of the conference, Respondent signed a declaration stating
14 his thorough understanding of the requirements of his probation terms and conditions, dated
15 June 16, 2009.

16 40. On or about June 22, 2009, Respondent enrolled in the Pharmacist Recovery Program
17 (PRP). As part of the intake assessment for the PRP, Respondent was instructed to promptly
18 contact the PRP drug testing vendor, FirstLab, to set up his account. Respondent did not register
19 with FirstLab until approximately three weeks later, on or about July 14, 2009. Respondent did
20 not begin to contact FirstLab daily, as required by the terms of his participation, until July 27,
21 2009. Respondent failed to perform his scheduled random fluid test on each of the following
22 dates: July 21, 2009, July 30, 2009, August 10, 2009, August 17, 2009, September 9, 2009,
23 September 21, 2009, October 6, 2009, and October 9, 2009. In fact, Respondent did not
24 participate in any random fluid testing during his participation in the PRP.

25 41. On September 9, 2009, the Board requested Respondent to appear at another
26 probation office conference to discuss, among other things, his failure to comply with the terms of
27 his probation and the Pharmacist Recovery Program. During the conference, the terms and
28 conditions of Respondent's probation were again discussed, and especially the requirement that

1 Respondent participate in, and successfully complete, the PRP. Respondent was specifically
2 informed that his failure to comply with the PRP contract terms was a violation of his probation.
3 Respondent again signed a declaration stating that he thoroughly understood his probation terms.

4 42. On or about October 8, 2009, a PRP representative contacted Respondent regarding
5 his participation in scheduled random fluid testing. Respondent admitted that he did not
6 participate in any of his scheduled random fluid testing on the following dates: July 21, 2009,
7 July 30, 2009, August 10, 2009, August 17, 2009, September 9, 2009, September 21, 2009, and
8 October 6, 2009. Respondent subsequently failed to participate in his next scheduled random
9 fluid testing on October 9, 2009.

10 43. On or about October 14, 2009, the PRP sent Respondent a letter notifying him that he
11 was terminated from PRP and deemed a public risk in his role as a pharmacist. PRP also sent a
12 letter to the Board as notification of Respondent's termination from PRP.

13 **FIRST CAUSE TO REVOKE PROBATION**

14 (Failure to Comply with Pharmacist Recovery Program)

15 44. At all times after the effective date of Respondent's probation, Condition 13 stated:

16 **Rehabilitation Program - Pharmacist Recovery Program (PRP)**

17 Within 30 days of the effective date of this decision, respondent shall
18 contact the pharmacist recovery Program for evaluation and shall successfully
19 participate and complete the treatment contract and any subsequent addendums
20 as recommended and provided by PRP and as approved by the board. The costs
for PRP shall be borne by respondent.

21 If respondent is currently enrolled in the PRP, said participation is not
22 mandatory and is no longer considered a self-referral under business and
23 professions Code section 4363, as of the effective date of this decision
24 Respondent shall successfully participate in and complete his or her current
25 contract and any subsequent addendums with the PRP. Probation shall be
26 automatically extended until respondent successfully completes his or her
27 treatment contract. Any person terminated from the program shall be
28 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.

1 45. Respondent's probation is subject to revocation because he failed to comply with
2 Probation Condition 13, referenced above, in that he failed to comply with and was terminated
3 from the PRP, as described above in paragraphs 39 through 43.

4 **SECOND CAUSE TO REVOKE PROBATION**

5 (Random Fluid Testing)

6 46. At all times after the effective date of Respondent's probation, Condition 14 stated:

7 **Random Drug Screening**

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

19 47. Respondent's probation is subject to revocation because he failed to comply with
20 Probation Condition 14, referenced above, in that he failed to participate in scheduled random
21 fluid testing on July 21, 2009, July 30, 2009, August 10, 2009, August 17, 2009, September 9,
22 2009, September 21, 2009, October 6, 2009, and October 9, 2009, as described above in
23 paragraphs 39 through 43.

24 **DISCIPLINE CONSIDERATIONS**

25 48. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges the following prior unprofessional conduct by Respondent:

27 **Discipline Imposed by Another State Against Pharmacist License on September 3, 1997**

28 49. On or about September 3, 1997, in an administrative proceeding entitled *Agency for
Health Care Administration v. Stephen M. Otis*, before the State of Florida Board of Pharmacy,
case number 97-06132, Respondent entered into a stipulation and a final order taking
administrative action against Respondent's pharmacy license.

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1 a. As a result of the final order, Respondent's license to practice pharmacy was
2 suspended and he was required to enter into a written contract with the Physician's Recovery
3 Network (PRN) to obtain drug treatment.

4 b. The facts that led to the discipline were that on or about February 7 to February
5 15, 1997, while Respondent was employed by Medical Center Pharmacy in Pensacola, Florida,
6 Respondent illegally procured two Demerol prescriptions using fraudulent authorizations while
7 the pharmacy supervisor was on vacation. Respondent further filled a prescription for a child
8 with the incorrect antibiotic, was late to work and late returning from lunch, appeared ill, and
9 failed to report for work on one occasion. Respondent's employment was terminated. As a result
10 of the board's investigation into the matter, Respondent was deemed unfit to practice pharmacy
11 by reason of an abnormal physical or mental condition.

12 **Federal Criminal Conviction on January 9, 1998, for Medicare Fraud**

13 50. On or about January 8, 1998, in a criminal proceeding entitled *United States v.*
14 *Stephen Mason Otis*, United States District Court, Northern District of Florida (Pensacola) in
15 Case Number 97-cr-00105-RV-1, Respondent was convicted on his plea of guilty to violating
16 18 U.S.C. § 287 (making false, fictitious, or fraudulent claims against the United States), a felony.

17 a. As a result of the conviction, on or about January 9, 1998, Respondent was
18 sentenced to one month in federal prison, three years supervised release with conditions as to
19 home detention, electronic monitoring, substance abuse treatment, mental health counseling, and
20 approximately \$2,000 in fines. On or about November 28, 2000, the federal court found that
21 Respondent violated the terms of his supervised release (see paragraph 51), and re-sentenced
22 Respondent to seven months in federal prison with no supervised release to follow.

23 b. The facts that led to the conviction were that Respondent knowingly made and
24 presented Medicare claims to the United States Department of Health and Human Services
25 (requests for payment for lymphedema pumps), knowing that the claims were false, fictitious and
26 fraudulent in that the Medical Necessity Forms, the Physician's Prescription Forms, and Patient
27 Agreement Information Forms for each claim had either been forged by Respondent or obtained
28 by deceit.

**Criminal Convictions on November 29, 2000, for Possession of
Controlled Substances, and for Larceny/Petty Theft on June 19, 2000**

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2 51. On or about November 20, 2000, in a criminal proceeding entitled *People v. Stephen*
3 *Mason Otis*, Okaloosa County Circuit Court (Florida), case number 2000CF001053, Respondent
4 was convicted of possessing a Schedule I controlled substance, possessing a controlled substance
5 without a prescription, and larceny/petty theft.

6 a. As a result of the state conviction, the terms of Respondent's federal supervised
7 release program were violated (as set forth in paragraph 50). Respondent's sentencing was
8 deferred and he was referred to drug court concurrent with his November 29, 2000, order
9 (paragraph 50) and re-sentenced to seven months in federal prison.

10 b. The facts that led to the conviction were that on or about June 19, 2000, while
11 employed by the Fort Walton Beach (Florida) Medical Center pharmacy, Respondent was
12 contacted by the Okaloosa County Sheriff's Office as a result of a complaint filed by the head
13 pharmacist who suspected that Respondent was stealing drugs from the pharmacy's drug vault.
14 Sheriff's deputies discovered in Respondent's lab coat tablets containing Hydrocodone bitartate
15 and acetaminophen, a Schedule III controlled substance subject to the Federal Controlled
16 Substances Act. A consent search of Respondent's automobile was performed and deputies
17 found additional Hydrocodone tablets, as well as one vial of morphine and a syringe. An
18 inventory of the vault revealed missing vials of Hydromorphone, morphine, Demerol, and
19 Fentanyl, all controlled substances. An inventory entry for morphine on the Pharmacy Narcotic
20 Record form showed evidence of tampering (use of white-out). Respondent admitted to the head
21 pharmacist that he was on a substance abuse program, that he still had a drug problem, and that he
22 had been taking drugs from the vault for his own use. Respondent's arms showed evidence of
23 recent intravenous drug use.

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1 **August 8, 2001, Criminal Conviction for Stalking**

2 52. On or about August 8, 2001, in a criminal proceeding entitled *People v. Stephen*
3 *Mason Otis*, Santa Rosa County Circuit Court, case number 01000029CFMA, Respondent was
4 convicted of misdemeanor stalking and felony aggravated stalking.

5 a. As a result of the conviction, Respondent was sentenced to one year probation,
6 and payment of fines and court costs.

7 b. The facts that lead to the conviction were that Respondent continuously made
8 telephone calls to a former girlfriend at her residence and her place of employment over a period
9 of several weeks in December 2000, in violation of a domestic violence injunction. The victim
10 reported the incidents to the Santa Rosa County Sheriff's Office and described the telephone calls
11 as harassment that placed her in reasonable fear of harm. Respondent was taken into custody by
12 sheriff's deputies on January 17, 2001.

13 **Discipline Imposed by Another State Against Pharmacy License**
14 **As A Result of Federal Conviction**

15 53. On or about November 13, 2001, in an administrative proceeding entitled *Department*
16 *of Health v. Stephen Otis, R.Ph.*, before the State of Florida Board of Pharmacy, case number 98-
17 01994, Respondent entered into a stipulation and a final order taking administrative action against
18 Respondent's pharmacy license.

19 a. As a result of the final order, Respondent's pharmacy license was "suspended
20 indefinitely and until such time he appears before the Board to request reinstatement and
21 demonstrates the then present ability to practice with reasonable skill and safety, which shall
22 include an evaluation through the Physician's Recovery Network . . ."

23 b. The facts that lead to the discipline were that on or about January 9, 1998,
24 Respondent was convicted on his plea of guilty to violating 18 U.S.C. § 287 (making false,
25 fictitious, or fraudulent claims against the U.S.), a felony, as set forth above in paragraph 50.

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**Discipline Imposed by Another State Against Pharmacy License
For Violating Terms of Order**

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3 54. On or about November 13, 2001, in an administrative proceeding entitled *Department*
4 *of Health v. Stephen Otis, R.Ph.*, before the State of Florida Board of Pharmacy, case number 99-
5 62600, Respondent entered into a stipulation and final order taking administrative action against
6 Respondent's pharmacy license.

7 a. As a result of the final order, Respondent's pharmacy license was "suspended
8 indefinitely and until such time he appears before the Board to request reinstatement and
9 demonstrates the then present ability to practice with reasonable skill and safety, which shall
10 include an evaluation through the Physician's Recovery Network . . ."

11 b. The facts that lead to the discipline were that on or about November 24, 1999,
12 and February 3, 2000, the Department of Health performed inspections and discovered
13 Respondent practicing pharmacy at a Pensacola, Florida, CVS Pharmacy, without first appearing
14 before the Board of Pharmacy as required by the Final Order set forth in above in paragraph
15 54(a).

**Discipline Imposed by Another State Against Pharmacy License
for Refusing to Submit to Toxicology Screens**

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17
18 55. On or about November 13, 2001, in an administrative proceeding entitled *Department*
19 *of Health v. Stephen Otis, R.Ph.*, State of Florida Board of Pharmacy case number 00-07689,
20 Respondent entered into a stipulation and final order taking administrative action against
21 Respondent's pharmacy license.

22 a. As a result of the final order, Respondent was determined to be unfit or
23 incompetent to practice pharmacy by reason of habitual intoxication, and the misuse or abuse of
24 scheduled drugs. Respondent's pharmacy license was "suspended indefinitely and until such time
25 as he appears before the Board to request reinstatement and demonstrates the then present ability
26 to practice with reasonable skill and safety, which shall include an evaluation through the
27 Physician's Recovery Network . . ."

1 b. The facts that lead to the discipline were that on two occasions in February
2 2000, Respondent refused to submit urine samples for toxicology screens as required by his PRN
3 contract. (See paragraph 23, above.) Two urine toxicology screens submitted in March 2000
4 tested positive for hydrocodone and hydromorphone. In April 2000, Respondent admitted to his
5 counselor that he continuously used alcohol in violation of his PRN contract. Respondent was
6 subsequently terminated from the PRN program.

7 **Discipline Imposed by Another State Against Pharmacy License -
8 Emergency Suspension Order**

9 56. On or about July 3, 2000, as a result of the Florida state conviction set forth in
10 paragraph 51, Respondent was the subject of an administrative proceeding entitled *Department of*
11 *Health v. Stephen Otis, R.P.H., State of Florida Board of Pharmacy*, case number 2000-09721.

12 a. As a result of the administrative proceeding, Respondent entered into a
13 stipulation and order suspending Respondent's pharmacy license indefinitely with imposed terms
14 and conditions.

15 b. The facts that lead to the license suspension were that on or about June 19,
16 2000, Respondent was arrested by Okaloosa County Sheriff's Deputies for possession of
17 controlled substances determined to be stolen from his place of employment. (See paragraph 51,
18 above.)

19 **Discipline Imposed by Another State Suspending
20 Alabama Pharmacy License on February 3, 2003**

21 57. On or about February 3, 2003, Respondent was the subject of an administrative
22 proceeding entitled *In the Matter of: Stephen Mason Otis, License Number 11915, Alabama State*
23 *Board of Pharmacy*.

24 a. As a result of the administrative proceeding, Respondent's license to practice
25 pharmacy in the State of Alabama was suspended indefinitely based upon Respondent's federal
26 conviction (see paragraph 51, above), and the Florida Board of Pharmacy's multiple disciplinary
27 proceedings (see paragraphs 49, 53-56).
28

1 b. The facts that lead to the license suspension were that in a Statement of Charges
2 and Notice of Hearing dated December 3, 2002, Respondent was notified at his address of record
3 and requested to appear at an administrative hearing before the Alabama State Board of
4 Pharmacy. The certified mail was unclaimed and Respondent failed to appear at the hearing.

5 **Discipline Imposed by Another State for Failure to Pay Fine and Costs**

6 58. On or about October 15, 2004, Respondent was the subject of an administrative
7 complaint charging Respondent for failure to pay a \$2,5000 fine and costs in the amount of
8 \$1,018.24, as ordered in paragraph 50, above.

9 a. As a result of the administrative proceeding, on or about September 25, 2006,
10 the Florida Board of Pharmacy entered a Final Order requiring Respondent to pay investigative
11 costs of \$218.20 and an administrative fine of \$250.00.

12 b. On or about February 7, 2007, Respondent and his attorney petitioned the board
13 for a termination of his suspension. A doctor from PRN was also present at the hearing. The
14 board granted the petition.

15 PRAYER

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

18 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3045
19 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
20 RPH 62442 issued to Stephen Mason Otis;

21 2. Revoking or suspending Pharmacist License No. RPH 62442, issued to Stephen
22 Mason Otis;

23 3. Ordering Stephen Mason Otis to reimburse the Board for the costs of enforcing this
24 matter.

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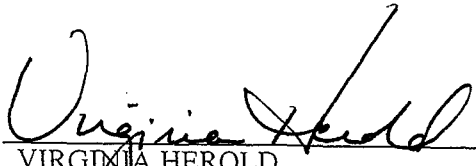
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4. Taking such other and further action as deemed necessary and proper.

DATED: 10/29/10



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2009805033