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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

10 In the Matter of the
Petition to Revoke Probation Against:

Case No. 4411

11 **MARK HOWARD BRAUN**
12 **11827 McLain Blvd.**
13 **Houston, TX 77071**

PETITION TO REVOKE PROBATION

14 **Pharmacist License No. RPH 43806**

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
19 official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about September 7, 1990, the Board of Pharmacy issued Pharmacist License
21 Number RPH 43806 to Mark Howard Braun (Respondent). The Pharmacist License has been the
22 subject of a disciplinary suspension since on or about May 11, 2011. The Pharmacist License
23 expired on September 30, 2012, and has not been renewed.

24 3. In a disciplinary action titled "In the Matter of the Accusation Against Mark Howard
25 Braun," Case No. 3233, the Board of Pharmacy issued a Decision and Order, effective May 11,
26 2011, in which Respondent's Pharmacist License was revoked. However, the revocation was
27 stayed and Respondent was placed on probation for a period of five (5) years with certain terms
28 and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION JURISDICTION AND STATUTORY PROVISIONS

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

5. 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.].

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

7. Section 118(b) of the Code provides, in pertinent part, 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. Section 4402(e) of the Code provides that any non-pharmacist license issued by the Board may be canceled if not renewed within 60 days after expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Timely Appear for Interview(s) with Board Designee(s) Upon Request)

8. At all times after the effective date (May 11, 2011) of the Decision and Order imposing probation on Respondent's License, Term and Condition 3 of that Order required that Respondent, upon receipt of reasonable notice, appear in person for interviews with the Board or its designee, at such intervals and locations as determined by the Board or its designee, and also provided that any failure to appear for a scheduled interview without prior notification, or failure to appear for two (2) or more scheduled interviews, would constitute a violation of probation. Respondent, after receipt of reasonable notice, failed to appear for interviews at the Board offices scheduled by the Board's designee for on or about January 19, 2012 and February 21, 2012. These failures to appear for scheduled interviews subject Respondent's License to revocation.

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1 SECOND CAUSE TO REVOKE PROBATION

2 (Failure to Timely Undergo Psychiatric Evaluation(s))

3 9. At all times after the effective date (May 11, 2011) of the Decision and Order
4 imposing probation on Respondent's License, Term and Condition 8 of that Order provided that
5 Respondent would remain suspended from the practice of pharmacy until Respondent had been
6 deemed psychologically fit to practice pharmacy safely, and had been so notified by the Board or
7 its designee. Term and Condition 8 required that Respondent undergo, at his own expense, one or
8 more psychiatric evaluation(s) by mental health practitioners appointed or approved by the Board
9 or its designee, signing a release authorizing the evaluator(s) to furnish the Board or its designee
10 with written report(s) regarding Respondent's ability to function independently as a pharmacist
11 with safety to the public, and that it would be a violation of probation if Respondent, *inter alia*,
12 failed to complete an evaluation within one (1) year of the effective date of the Decision and
13 Order (May 11, 2011). Respondent failed to undergo, complete, and/or submit a report from a
14 psychiatric evaluation within one (1) year of the effective date of the Decision and Order (May
15 11, 2011), and has still failed to do so to date. This failure to timely undergo, complete, and/or
16 submit a report from a psychiatric evaluation subjects Respondent's License to revocation.

17
18 THIRD CAUSE TO REVOKE PROBATION

19 (Failure to Timely Commence Weekly Psychotherapy)

20 10. At all times after the effective date (May 11, 2011) of the Decision and Order
21 imposing probation on Respondent's License, Term and Condition 10 of that Order required that
22 within thirty (30) days of the effective date Respondent submit for approval the name of a mental
23 health practitioner, and that within thirty (30) days of approval by the Board or its designee, then
24 submit proof of commencement of psychotherapy, with treatment to be at least weekly unless
25 otherwise approved by the Board or its designee. Respondent failed to garner approval of any
26 mental health practitioner to conduct psychotherapy, and failed to commence psychotherapy on at
27 least a weekly basis. This failure to timely seek approval for a psychotherapy provider, and/or to
28 commence psychotherapy, subjects Respondent's License to revocation.

1 FOURTH CAUSE TO REVOKE PROBATION

2 (Failure to Timely Establish Prescription Coordinator/Monitor)

3 11. At all times after the effective date (May 11, 2011) of the Decision and Order
4 imposing probation on Respondent’s License, Term and Condition 11 of that Order required that
5 within thirty (30) days of the effective date Respondent submit for approval the name of a
6 medical professional (physician, nurse practitioner, physician’s assistant, or psychiatrist) to serve
7 as coordinator and monitor of any prescriptions for Respondent for dangerous drugs, controlled
8 substances, or mood-altering drugs. Respondent failed to garner approval of any licensed medical
9 professional to serve in this role. This failure to timely establish a medical professional to serve
10 as prescription coordinator/monitor subjects Respondent’s License to revocation.
11

12 FIFTH CAUSE TO REVOKE PROBATION

13 (Failure to Timely Notify Board of Change in Address)

14 12. At all times after the effective date (May 11, 2011) of the Decision and Order
15 imposing probation on Respondent’s License, Term and Condition 13 of that Order required that
16 Respondent notify the Board in writing within ten (10) days of any change in address.
17 Respondent moved from California to Texas in or prior to December 2011, yet did not notify the
18 Board in writing of this change in address until in or about May 2012. This failure to timely
19 notify the Board of a change in address subjects Respondent’s License to revocation.
20

21 SIXTH CAUSE TO REVOKE PROBATION

22 (Failure to Cooperate with Board Staff)

23 13. At all times after the effective date (May 11, 2011) of the Decision and Order
24 imposing probation on Respondent’s License, Term and Condition 4 of that Order required that
25 Respondent cooperate with the Board’s inspection program and with the Board’s monitoring and
26 investigation of Respondent’s compliance with terms and conditions of his probation. As detailed
27 in paragraphs 8-12 above, Respondent failed to timely cooperate on one or more occasions.
28 These failure(s) to timely cooperate as required subject Respondent’s License to revocation.

OTHER MATTERS – EXTENSION OF PROBATION

14. At all times after the effective date (May 11, 2011) of the Decision and Order imposing probation on Respondent's License, Term and Condition 18 of that Order required:

18. Violation of Probation.

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 satisfied 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 that was stayed.

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 that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. 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 automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Pursuant to the operation of Term and Condition 18 of the probation order applicable to Respondent's License, probation is automatically extended by the filing hereof, and/or by Respondent's failure to comply with the terms and conditions of probation, until such time as this Petition to Revoke Probation is heard and decided, or until the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation.

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:

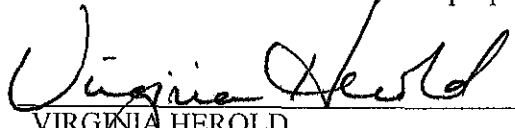
1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3233 and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License No. RPH 43806 issued to Mark Howard Braun (Respondent);
2. Revoking or suspending Pharmacist License No. RPH 43806, issued to Respondent;

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3. Taking such other and further action as is deemed necessary and proper.

DATED:

11/19/12



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

SF2012402602
40599825.doc

Exhibit A

Decision and Order

Board of Pharmacy Case No. 3233

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

In the Matter of the Accusation Against:

Case No. 3233

MARK HOWARD BRAUN
3848 Mentone avenue, #407
Culver City, CA 90232

Pharmacist License No. RPH 43806

Respondent.

DECISION AND ORDER

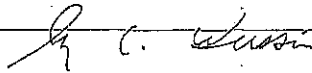
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 11, 2011.

It is so ORDERED on April 11, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STANLEY C. WEISSER
Board President

RECEIVED
APR 11 2011
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

12 In the Matter of the Accusation Against:

Case No. 3233

13 **MARK HOWARD BRAUN**
14 **3848 Mentone Avenue, # 407**
15 **Culver City, California 90232**

OAH No. 2010080079

16 **Pharmacist License No. RPH 43806**

17 **STIPULATED SETTLEMENT AND**
18 **DISCIPLINARY ORDER**

19 Respondent.

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

24 PARTIES

25 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
26 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
27 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

28 2. Respondent Mark Howard Braun (Respondent) is represented in this proceeding by
attorney Fredrick M. Ray, whose address is: Fredrick M. Ray, A Professional Corporation, 1100
W. Town & Country Road, Suite 1010, Orange, CA 92868-4651.

1 3. On or about September 7, 1990, the Board of Pharmacy issued Pharmacist License
2 No. RPH 43806 to Respondent. The License was in full force and effect at all times relevant to
3 the charges in Accusation No. 3233 and will expire on September 30, 2012, unless renewed.

4 5 JURISDICTION

6 4. Accusation No. 3233 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on June 22, 2010.
9 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
10 No. 3233 is attached as exhibit A and incorporated herein by reference.

11 12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 3233. Respondent has also carefully read, fully
15 discussed with counsel, and understands this Stipulated Settlement and Disciplinary Order.

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

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

25 26 CULPABILITY

27 8. Respondent admits that the charges and allegations in Accusation No. 3233, if proven
28 at hearing, constitute cause for discipline against his Pharmacist License.

1 9. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
 2 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

3
 4 RESERVATION

5 10. Admissions made by Respondent herein are only for the purposes of this proceeding,
 6 or any other proceedings in which the Board of Pharmacy or other professional licensing agency
 7 is involved, and shall not be admissible in any other criminal or civil proceeding.

8
 9 CONTINGENCY

10 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
 11 understands and agrees that counsel for Complainant and the staff of the Board may communicate
 12 directly with the Board regarding this stipulation and settlement, without notice to or participation
 13 by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees
 14 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
 15 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
 16 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
 17 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
 18 not be disqualified from further action by having considered this matter.

19 12. The parties understand and agree that facsimile copies of this stipulation, including
 20 facsimile signatures thereto, shall have the same force and effect as the originals.

21 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
 22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
 23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
 24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
 25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
 26 ~~writing executed by an authorized representative of each of the parties.~~

27 14. In consideration of the foregoing, the parties agree that the Board may, without
 28 further notice or formal proceeding, issue and enter the following Disciplinary Order:

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 43806, issued to Mark
3 Howard Braun (Respondent), is revoked. However, the revocation is stayed and Respondent is
4 placed on probation for five (5) years on the following terms and conditions.

5 1. **Obey All Laws**

6 Respondent shall obey all state and federal laws and regulations.

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

- 9 • an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
11 substances laws;
- 12 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
13 criminal complaint, information or indictment;
- 14 • a conviction of any crime; and/or
- 15 • discipline, citation, or other administrative action filed by any state or federal agency
16 which involves respondent's pharmacist license or which is related to the practice of
17 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
18 for any drug, device or controlled substance.

19 Failure to timely report such occurrence shall be considered a violation of probation.

20 2. **Report to the Board**

21 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
22 designee. The report shall be made either in person or in writing, as directed. Among other
23 requirements, respondent shall state in each report under penalty of perjury whether there has
24 been compliance with all the terms and conditions of probation. Failure to submit timely reports
25 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
26 ~~in submission of reports as directed may be added to the total period of probation. Moreover, if~~
27 the final probation report is not made as directed, probation shall automatically be extended until
28 such time as the final report is made and accepted by the board.

1 **3. Interview with the Board**

2 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
3 with the board or its designee, at such intervals and locations as are determined by the board or its
4 designee. Failure to appear for any scheduled interview without prior notification to board staff,
5 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
6 the period of probation, shall be considered a violation of probation.

7 **4. Cooperate with Board Staff**

8 Respondent shall cooperate with the board's inspection program and with the board's
9 monitoring and investigation of respondent's compliance with the terms and conditions of his
10 probation. Failure to cooperate shall be considered a violation of probation.

11 **5. Continuing Education**

12 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
13 pharmacist as directed by the board or its designee.

14 **6. Status of License**

15 Respondent shall, at all times while on probation, maintain an active, current license with
16 the board, including any period during which suspension or probation is tolled. Failure to
17 maintain an active, current license shall be considered a violation of probation.

18 If respondent's license expires or is cancelled by operation of law or otherwise at any time
19 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
20 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
21 probation not previously satisfied.

22 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
23 **Designated Representative-in-Charge, or Serving as a Consultant**

24 During the period of probation, respondent shall not supervise any intern pharmacist, be the
25 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board,
26 ~~nor serve as a consultant, unless authorized in writing by the board or its designee.~~ Assumption
27 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

28 ///

1 8. **Suspension Pending Mental Health Status Determination**

2 Respondent shall not engage in and shall be suspended from the practice of pharmacy until
3 notified in writing by the board or its designee that respondent has been deemed psychologically
4 fit to practice pharmacy safely, and the board or its designee has approved said finding. The
5 process for securing this return to pharmacy practice shall be as follows.

6 Respondent shall undergo, at his own expense, psychiatric evaluation(s) by one or more
7 board-appointed or board-approved licensed mental health practitioner(s). The evaluator(s) shall
8 be provided with a copy of the board's Accusation and decision, as well as a copy of the report of
9 the prior psychological status examination of respondent dated January 29, 2010. Respondent
10 shall cooperate with the evaluator(s) and shall comply with all requirements for the evaluation(s).
11 Respondent shall sign a release authorizing the evaluator(s) to furnish the board or its designee
12 with a written report regarding respondent's ability to function independently as a pharmacist with
13 safety to the public.

14 That report shall address at least the following questions:

- 15 • Whether and to what extent respondent has a mental illness or psychiatric disorder;
16 • Respondent's mental history, diagnosis, severity of illness, disorder, and symptoms;
17 • Whether and to what extent respondent's ability to safely practice pharmacy is or has
18 the potential to be impaired by his mental illness or psychiatric disorder;
19 • Under what conditions, if any, respondent may safely practice pharmacy, including
20 but not limited to suggested requirements for practice supervision, psychotherapy,
21 and prescription monitoring and coordination, beyond those listed in this decision.

22 If the report of the evaluator(s) concludes that respondent is safe to return to practice, and if
23 that conclusion is accepted by the board or its designee, respondent shall be so notified in writing.
24 Upon receipt of such written notification, respondent may return to practice as a pharmacist under
25 the terms and conditions of this decision and any additional requirements or terms and conditions
26 ~~recommended by the evaluator(s) and approved in writing by the board or its designee.~~ Nothing
27 in the report of the evaluator(s) may reduce the terms and conditions of this decision; it may only
28 augment those terms and conditions with recommendations adopted by the board or its designee.

1 If the report of the evaluator(s) concludes that respondent is not safe to return to practice,
2 under any circumstances, respondent shall remain suspended. Respondent shall then be able to
3 undergo further evaluation(s) by one or more board-appointed or board-approved licensed mental
4 health practitioner(s), at his own expense, every ninety (90) days. Each such evaluation must be
5 conducted according to the process described above. If any such subsequent evaluation report
6 concludes that respondent is safe to return to practice, the preceding paragraph shall apply.

7 It shall be considered a violation of probation if respondent: fails to complete an evaluation
8 under this term within one (1) year of the effective date of this decision; is the subject of five (5)
9 or more reports concluding he is not safe to return to practice, under any circumstances; is not
10 deemed safe to return to practice within three (3) years of the effective date of this decision; or
11 does not return to practice within four (4) years of the effective date of this decision.

12 During any suspension under this term, respondent shall not enter any pharmacy area or any
13 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
14 distributor of drugs licensed by the board, or any manufacturer, or where dangerous drugs and
15 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
16 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
17 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
18 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
19 drugs and controlled substances. Respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
21 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
22 designated representative for any entity licensed by the board.

23 Failure to comply with any such suspension shall be considered a violation of probation.

24 9. Supervised Practice

25 During the period of probation, respondent shall practice only under the supervision of a
26 ~~licensed pharmacist not on probation with the board. Respondent shall not practice pharmacy and~~
27 his license shall be automatically suspended until a supervisor is approved by the board or its
28 designee. The supervision shall be, as required by the board or its designee, either:

1 Continuous – At least 75% of a work week

2 Substantial – At least 50% of a work week

3 Partial – At least 25% of a work week

4 Daily Review – Supervisor's review of probationer's daily activities within 24 hours

5 Within thirty (30) days of a supervisor being approved, respondent shall have his approved
6 supervisor submit notification to the board in writing stating that the supervisor has read the
7 decision in case number 3233 and is familiar with the required level of supervision as determined
8 by the board or its designee. Failure to cause the supervisor to submit a timely acknowledgment
9 to the board shall be considered a violation of probation.

10 If respondent changes employment or supervisor, Respondent shall not practice pharmacy
11 and his license shall be automatically suspended until the board or its designee approves a new
12 supervisor. Within fifteen (15) days after new employment or supervision begins, Respondent
13 shall have his new supervisor submit notification to the board in writing stating the supervisor has
14 read the decision in case number 3233 and is familiar with the required level of supervision as
15 determined by the board or its designee. Failure to cause the new supervisor to submit a timely
16 acknowledgment to the board shall be considered a violation of probation.

17 During any suspension under this term, respondent shall not enter any pharmacy area or any
18 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
19 distributor of drugs licensed by the board, or any manufacturer, or where dangerous drugs and
20 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
21 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
22 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
23 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
24 drugs and controlled substances. Respondent shall not engage in any activity that requires the
25 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
26 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
27 designated representative for any entity licensed by the board.

28 Failure to comply with any such suspension shall be considered a violation of probation.

1 10. **Psychotherapy**

2 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
3 board or its designee, for prior approval, the name and qualifications of a licensed mental health
4 practitioner. Within thirty (30) days of approval thereof, respondent shall submit documentation
5 to the board demonstrating commencement of psychotherapy with the approved practitioner. If
6 respondent ceases treatment with the approved practitioner, respondent shall notify the board
7 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
8 psychotherapist or licensed mental health practitioner to the board for its prior approval. Within
9 thirty (30) days of approval thereof, respondent shall submit documentation to the board showing
10 commencement of psychotherapy with the approved replacement. Failure to comply with any
11 requirement or deadline stated by this paragraph shall be considered a violation of probation.

12 Upon approval of the initial or subsequent licensed mental health practitioner, respondent
13 shall sign a release authorizing the practitioner to communicate with the board about respondent's
14 treatment(s). Respondent shall undergo and continue treatment with that therapist, at respondent's
15 own expense, until the therapist recommends in writing to the board, and the board or its designee
16 agrees in a written notification to respondent, that no further therapy is necessary. Upon receipt
17 of such recommendation from the treating therapist, and before determining whether to accept or
18 reject said recommendation, the board or its designee may require respondent to undergo, at
19 respondent's own expense, a mental health evaluation by a board-appointed or board-approved
20 psychiatrist or psychologist. If the approved evaluator recommends that respondent continue
21 psychotherapy, the board or its designee may require respondent to continue psychotherapy.

22 Psychotherapy shall be at least once a week unless otherwise approved by the board or its
23 designee. Respondent shall provide the therapist with a copy of the board's Accusation and
24 decision, and a copy of the report dated January 29, 2010, no later than the first therapy session.
25 A record of this notification must be provided to the board upon request. Respondent shall cause
26 ~~the therapist to submit written quarterly reports to the board concerning respondent's fitness to~~
27 practice, progress in treatment, and such other information required by the board or its designee.

28 Failure to comply with any of the foregoing shall be considered a violation of probation.

1 If at any time the treating therapist determines that respondent cannot practice safely or
2 independently, the therapist shall notify the board immediately by telephone and follow up by
3 written letter within three (3) working days. Upon notification from the board or its designee of
4 this determination, respondent shall be automatically suspended and shall not resume practice
5 until notified by the board that practice may be resumed.

6 During any suspension under this term, respondent shall not enter any pharmacy area or any
7 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
8 distributor of drugs licensed by the board, or any manufacturer, or where dangerous drugs and
9 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
10 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
11 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
12 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
13 drugs and controlled substances. Respondent shall not engage in any activity that requires the
14 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
15 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
16 designated representative for any entity licensed by the board.

17 Failure to comply with any such suspension shall be considered a violation of probation.

18 **11. Prescription Coordination and Monitoring of Prescription Use**

19 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
20 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
21 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
22 history of mental illness and/or treatment, and who will coordinate and monitor any prescriptions
23 for respondent for dangerous drugs, controlled substances, or mood-altering drugs. The approved
24 practitioner shall be provided with a copy of the board's Accusation and decision, and a copy of
25 the report dated January 29, 2010. A record of this notification must be provided to the board
26 upon request. Respondent shall sign a release authorizing the practitioner to communicate with
27 the board about respondent's treatment(s). The coordinating physician, nurse practitioner,
28 physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of

1 probation regarding respondent's compliance with this condition. If any substances considered
2 addictive have been prescribed, the report shall identify a program for the time limited use of any
3 such substances. The board may require that the single coordinating practitioner be a specialist in
4 addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any
5 reason, cease supervision by the approved practitioner, respondent shall notify the board
6 immediately and, within thirty (30) days of ceasing supervision, submit the name of a
7 replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's
8 choice to the board or its designee for its prior approval. Failure to timely submit the selected
9 practitioner or replacement practitioner to the board for approval, or to ensure the required
10 reporting thereby on the quarterly reports, shall be considered a violation of probation.

11 If at any time an approved practitioner determines that respondent is unable to practice
12 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
13 telephone and follow up by written letter within three (3) working days. Upon notification from
14 the board or its designee of this determination, respondent shall be automatically suspended and
15 shall not resume practice until notified by the board that practice may be resumed.

16 During any suspension under this term, respondent shall not enter any pharmacy area or any
17 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
18 distributor of drugs licensed by the board, or any manufacturer, or where dangerous drugs and
19 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
20 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
21 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
22 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
23 drugs and controlled substances. Respondent shall not engage in any activity that requires the
24 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
25 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
26 ~~designated representative for any entity licensed by the board.~~

27 Failure to comply with any such suspension shall be considered a violation of probation.

28 ///

1 12. **Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 3233 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 3233, and terms and conditions imposed
10 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
11 submit timely acknowledgment(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the board of the terms and conditions of the decision in case number 3233 in advance
15 of the respondent commencing work at each licensed entity. A record of this notification must be
16 provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that he has read the decision in case number 3233
21 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
22 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23 Failure to timely notify employer(s) or to cause that/those employer(s) to submit timely
24 acknowledgments to the board shall be considered a violation of probation.

25 "Employment" within the meaning of this provision shall include any full-time,
26 ~~part-time, temporary, relief or pharmacy management service as a pharmacist or any~~
27 position for which a pharmacist license is a requirement or criterion for employment,
28 whether the respondent is an employee, independent contractor or volunteer.

1 **13. Notification of Change in Employment, Name, Address(es), or Phone Number(s)**

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

7 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
8 phone number(s) shall be considered a violation of probation.

9 **14. Tolling of Probation**

10 Except during periods of suspension, respondent shall, at all times while on probation, be
11 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
12 Any month during which this minimum is not met shall toll the period of probation, i.e., the
13 period of probation shall be extended by one month for each month during which this minimum is
14 not met. During any such period of tolling of probation, respondent must nonetheless comply
15 with all terms and conditions of probation.

16 Should respondent, regardless of residency, for any reason (including vacation) cease
17 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
18 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
19 must further notify the board in writing within ten (10) days of the resumption of practice. Any
20 failure to provide such notification(s) shall be considered a violation of probation.

21 Except during periods of suspension, it is a violation of probation for respondent's probation
22 to remain tolled pursuant to the provisions of this condition for a total period, counting
23 consecutive and non-consecutive months, exceeding thirty-six (36) months.

24 "Cessation of practice" means any calendar month during which respondent is
25 not practicing as a pharmacist as defined by Business and Professions Code section
26 4000 et seq. for at least forty (40) hours. "Resumption of practice" means any
27 calendar month during which respondent is practicing as a pharmacist as defined by
28 Business and Professions Code section 4000 et seq. for at least forty (40) hours.

1 **15. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, respondent shall pay to the
3 board its costs of investigation and prosecution in the amount of \$9,000.00. Respondent shall be
4 permitted to pay these costs in a payment plan approved by the board or its designee, so long as
5 payment is completed no later than four (4) years after the effective date of this decision. There
6 shall be no deviation from this schedule absent prior written approval by the board or its designee.
7 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

8 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
9 reimburse the board its costs of investigation and prosecution.

10 **16. Probation Monitoring Costs**

11 Respondent shall pay any costs associated with probation monitoring as determined by the
12 board each and every year of probation. Such costs shall be payable to the board on a schedule as
13 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
14 be considered a violation of probation.

15 **17. License Surrender While on Probation/Suspension**

16 Following the effective date of this decision, should respondent cease practice due to
17 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
18 respondent may tender his license to the board for surrender. The board or its designee shall have
19 the discretion whether to grant the request for surrender or take any other action it deems
20 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
21 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
22 record of discipline and shall become a part of the respondent's license history with the board.

23 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
24 the board within ten (10) days of notification by the board that surrender is accepted. Respondent
25 may not reapply for any license from the board for three (3) years from the effective date of the
26 ~~surrender. Respondent shall meet all requirements applicable to the license sought as of the date~~
27 the application for that license is submitted to the board, including any outstanding costs.

28 ///

1 **18. Violation of Probation**

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

7 If respondent violates probation in any respect, the board, after giving respondent notice
8 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
9 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
10 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
11 a petition to revoke probation or an accusation is filed against respondent during probation, the
12 board shall have continuing jurisdiction and the period of probation shall be automatically
13 extended until the petition to revoke probation or accusation is heard and decided.

14 **19. Completion of Probation**

15 Upon written notice by the board or its designee indicating successful completion of
16 probation, respondent's license will be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Fredrick M. Ray. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 1-17-2011 Mark Braun SUGRP
MARK HOWARD BRAUN
Respondent

I have read and fully discussed with Respondent Mark Howard Braun the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/22/11 Fredrick M Ray
FREDRICK M. RAY
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 1/24/2011

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

Joshua A. Room
JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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DATED: 1-17-2011 Mark Braun SUGRP
MARK HOWARD BRAUN
Respondent

I have read and fully discussed with Respondent Mark Howard Braun the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/17/11 Fredrick M. Ray
FREDRICK M. RAY
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 1/24/2011

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

Joshua A. Room
JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3233

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3233

11 MARK HOWARD BRAUN
12 3848 Mentone Ave, #407
13 Culver City, California 90232

ACCUSATION

14 Pharmacist License No. RPH 43806

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 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.

23
24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
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 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

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

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

15
16 STATUTORY AND REGULATORY PROVISIONS

17 7. Section 820 of the Code states:

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

25 8. Section 822 of the Code states:

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

- 1 “(a) Revoking the licentiate’s certificate or license.
- 2 “(b) Suspending the licentiate’s right to practice.
- 3 “(c) Placing the licentiate on probation.
- 4 “(d) Taking such other action in relation to the licentiate as the licensing agency in its
- 5 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.”

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

13
14

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.

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

28

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

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

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

11 d. That psychotherapy is an important component of treatment for his mental disorders,
12 that combined with psychotropic medications could improve his ability to practice safely; and

13 e. That it may also be appropriate to restrict Respondent's work environment(s) based
14 on potential stressors that could exacerbate his mental illnesses, e.g., the nature and extent of his
15 contact with patients and coworkers, and/or the degree of stress associated with the position.

16
17 CAUSE FOR DISCIPLINE

18 (Mental Impairment)

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

23
24 PRAYER

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

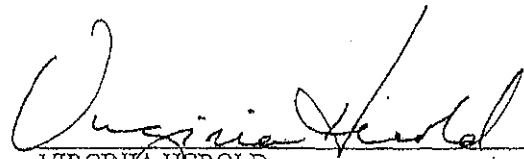
27 1. Revoking or suspending Pharmacist License Number RPH 43806, issued to Mark
28 Howard Braun (Respondent);

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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as is deemed necessary and proper.

DATED: 6/17/10



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

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