

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

In the Matter of the Accusation Against:

SELWYN AGENT  
803 Farwell Blvd.  
Madison, MS 39110

Pharmacist License No. RPH 33256

Respondent.

Case No. 2934

**DECISION AND ORDER**

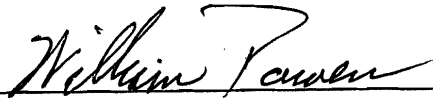
The attached Stipulated Surrender of License and Order is hereby adopted by the Board, as its Decision in this matter.

This Decision shall become effective on October 5, 2007.

It is so ORDERED September 5, 2007.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
\_\_\_\_\_

WILLIAM POWERS

Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 MARGARET A. LAFKO,  
Supervising Deputy Attorney General  
3 LORETTA A. WEST, State Bar No. 149294  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
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6 P.O. Box 85266  
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9 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 SELWYN AGENT, RPH  
803 Farwell Blvd.  
14 Madison, MS 39110

15 Pharmacist License No. RPH 33256

16 Respondent.

Case No. 2934

**STIPULATED SURRENDER**  
**of PHARMACIST LICENSE**

**and**

**ORDER**

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of  
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
23 by Bill Lockyer, Attorney General of the State of California, by Loretta A. West, Deputy  
24 Attorney General.

25 2. Selwyn Agent is represented in this proceeding by attorney John Murphy,  
26 whose address is 7955 Normal Avenue, La Mesa Avenue 91941.

27 3. On or about August 21, 1979, the Board of Pharmacy issued Pharmacist  
28 License No. RPH 33256 to Selwyn Agent (Respondent). The Pharmacy was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 2934 and will expire on  
2 October 31, 2006, unless renewed.

3 JURISDICTION

4 4. On February 22, 2006, Accusation No. 2934 was filed before the Board,  
5 and is currently pending against Respondent. The Accusation and all other statutorily required  
6 documents were properly served on Respondent on March 3, 2006. Respondent timely filed his  
7 Notice of Defense contesting the Accusation. A copy of Accusation No. 2934 is attached as  
8 exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and  
11 understands the charges and allegations in Accusation No. 2934. Respondent also has carefully  
12 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of  
13 License and Order.

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

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

23 CULPABILITY

24 8. Respondent understands that the charges and allegations in Accusation  
25 No. 2934, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacy.

26 9. For the purpose of resolving the Accusation without the expense and  
27 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
28 establish a factual basis for the charges in the Accusation and that those charges constitute cause

1 for discipline. Respondent hereby gives up his right to contest that cause for discipline exists  
2 based on those charges.

3 10. Respondent understands that by signing this stipulation he enables the  
4 Board's order accepting the surrender of his Pharmacist License without further process.

5 RESERVATION

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

9 CONTINGENCY

10 12. The parties understand and agree that facsimile copies of this Stipulated  
11 Surrender of License and Order, including facsimile signatures thereto, shall have the same force  
12 and effect as the originals.

13 13. In consideration of the foregoing admissions and stipulations, the parties  
14 agree that the Board may, without further notice or formal proceeding, issue and enter the  
15 following Order:

16 ORDER

17 IT IS HEREBY ORDERED that Pharmacist License No. RPH 33256, issued to  
18 Respondent Selwyn Agent, is surrendered and accepted by the Board.

19 14. The surrender of Respondent's Pharmacist License and the acceptance of  
20 the surrendered license by the Board shall constitute the imposition of discipline against  
21 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
22 Respondent's license history with the Board.

23 15. Respondent shall lose all rights and privileges as a Pharmacist in  
24 California as of the effective date of the Board's Decision and Order.

25 16. Respondent shall cause to be delivered to the Board both his Pharmacist  
26 wall and pocket license certificate on or before the effective date of the Decision and Order.

27 17. Respondent understands and agrees that if he ever applies for licensure or  
28 petitions for reinstatement in the State of California, the Board shall treat it as a new application

1 for licensure. Respondent must comply with all the laws, regulations and procedures for  
2 licensure in effect at the time the application or petition is filed, and all of the charges and  
3 allegations contained in Accusation No. 2934 shall be deemed to be true, correct and admitted  
4 by Respondent when the California Board of Pharmacy determines whether to grant or deny the  
5 application or petition.

6 18. Respondent shall not apply or reapply for a new license at anytime within  
7 three (3) years from the effective date of this decision and order.

8 19. Should Respondent ever apply or reapply for a new license or certification,  
9 or petition for reinstatement of a license, by any other health care licensing agency in the State of  
10 California, all of the charges and allegations contained in Accusation, No. 2934 shall be deemed  
11 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any  
12 other proceeding seeking to deny or restrict licensure.

13 20. Respondent shall pay to the Board its costs of investigation and  
14 prosecution in the amount of three thousand nine hundred dollars (\$3900.00), prior to issuance of  
15 a new or reinstated license.

16 The filing of bankruptcy by Respondent shall not relieve Respondent of his  
17 responsibility to reimburse the Board its costs of investigation and prosecution.

18  
19 ACCEPTANCE

20 I have carefully read the above Stipulated Surrender of License and Order and  
21 have fully discussed it with my attorney, John Murphy. I understand the stipulation and the  
22 effect it will have on my California Pharmacist License No. RPH 33256. I enter into this  
23 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
24 be bound by the Decision and Order of the Board.

25 DATED: \_\_\_\_\_.

26  
27 SELWYN AGENT  
28 Respondent

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2 licensure in effect at the time the application or petition is filed, and all of the charges and  
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17 responsibility to reimburse the Board its costs of investigation and prosecution.

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19 ACCEPTANCE

20 I have carefully read the above Stipulated Surrender of License and Order and  
21 have fully discussed it with my attorney, John Murphy. I understand the stipulation and the  
22 effect it will have on my California Pharmacist License No. RPH 33256. I enter into this  
23 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
24 be bound by the Decision and Order of the Board.

25 DATED: 10/24/06

26   
27 SELWYN AGENT  
28 Respondent

I have read and fully discussed with Respondent Selwyn Agent the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
JOHN PATRICK MURPHY  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board.

DATED: \_\_\_\_\_.

BILL LOCKYER, Attorney General  
of the State of California

\_\_\_\_\_  
LORETTA A. WEST  
Deputy Attorney General  
Attorneys for Complainant

I have read and fully discussed with Respondent Selwyn Agent the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 10-24-06



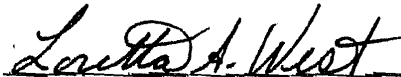
JOHN PATRICK MURPHY  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board.

DATED: 11/27/06

BILL LOCKYER, Attorney General  
of the State of California



LORETTA A. WEST  
Deputy Attorney General

Attorneys for Complainant



**Exhibit A**  
**Accusation No. 2934**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JENNIFER L. WECK, State Bar No. 173486  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101

5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2653  
Facsimile: (619) 645-2061

7 Attorneys for Complainant  
8

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

12 In the Matter of the Accusation Against:

Case No. 2934

13 SELWYN AGENT, RPH  
803 Farwell Blvd.  
14 Madison, MS 39110

**ACCUSATION**

15 Pharmacist License No. RPH 33256

16 Respondent.  
17

18 The Complainant, Patricia F. Harris, for cause of accusation against SELWYN  
19 AGENT, alleges as follows:

20 **PARTIES**

21 1. The Complainant, Patricia F. Harris, is the Executive Officer of the  
22 California State Board of Pharmacy (hereinafter the "Board") and makes this Accusation solely  
23 in her official capacity.

24 2. On or about August 21, 1979, the Board issued Original Pharmacist  
25 License Number RPH 33256 to SELWYN AGENT (hereinafter "Respondent"). At all times  
26 material herein, Respondent was and currently is licenced by the Board as a registered  
27 pharmacist. The license expires on October 31, 2006, unless renewed.

28 ///

1 **JURISDICTION**

2 3. Complainant brings this Accusation under the power vested in the Board  
3 in Business and Professions Code section 4300(a) to suspend or revoke licenses issued by the  
4 Board pursuant to the California Pharmacy Act, Chapter 9, Division 2, section 4000 et seq. of the  
5 Business and Professions Code.

6 **STATUTORY PROVISIONS AND REGULATIONS**

7 4. Business and Professions Code section 4301 provides, in part, that the  
8 Board shall take action against any holder of a license who is guilty of unprofessional conduct.

9 5. Business and Professions Code section 4301(h) provides that  
10 unprofessional conduct for a licensee includes the administering to oneself alcoholic beverages  
11 to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a  
12 license under this chapter, or to any other person or to the public, or to the extent that the use  
13 impairs the ability of the person to conduct with safety to the public the practice authorized by  
14 the license.

15 6. Business and Professions Code section 4327 states that "any person who,  
16 while on duty, sells, dispenses or compounds any drug while under the influence of any  
17 dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

18 **FACTS**

19 7. On or about December 15, 2004, Respondent was employed as a  
20 pharmacist at Paradise Valley Hospital in National City, California. At approximately 3:30 p.m.,  
21 on this day, Respondent was seen by the Pharmacist-in-Charge Tim Erwin sitting in his parked  
22 vehicle in the employee parking lot drinking amber colored fluid from a bottle. Mr. Erwin had  
23 noticed earlier that day around 2:30 p.m., a full bottle of amber colored liquid labeled "Bartles  
24 and James" in Respondent's car.

25 8. When Respondent returned to work after sitting in his car, Mr. Erwin went  
26 to the parking lot and looked inside Respondent's car. Mr. Erwin noticed that the bottle he  
27 previously identified as "Bartles and James" was now empty.

28 ///

1 9. At approximately 4:00 p.m., Mr. Erwin witnessed Respondent working in  
2 the hospital pharmacy.

3 10. Respondent then left the pharmacy around 4:30 p.m., wherein Mr. Erwin  
4 confronted Respondent about his drinking. Mr. Erwin found Respondent to have a "sweet, fruity  
5 aroma to his breath." Respondent denied drinking any alcohol and agreed to submit to alcohol  
6 testing.

7 11. Respondent underwent a neurological examination and blood and urine  
8 samples were taken by a nurse practitioner. Respondent failed the heel to toe walking test three  
9 times. His urine test was also found to be positive for alcohol.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Consuming Alcohol While on Duty as a Pharmacist)**

12 12. Complainant incorporates herein by this reference the preamble and each  
13 of the allegations set forth in paragraphs 1 through 11 hereinabove.

14 13. Respondent is subject to discipline under Business and Professions Code  
15 section 4301(h) for unprofessional conduct, in that, on or about December 15, 2004, Respondent  
16 consumed an alcoholic beverage during his shift as a pharmacist at Paradise Valley Hospital and  
17 then returned to his position in the pharmacy to perform his duties.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Dispensing or Compounding While Under the Influence of Alcohol)**

20 14. Complainant incorporates herein by this reference the preamble and each  
21 of the allegations set forth in paragraphs 1 through 11 hereinabove.

22 15. Respondent is subject to discipline under Business and Professions Code  
23 section 4327 for selling, dispensing or compounding any drug while under the influence of  
24 alcohol, in that, on or about December 15, 2004, he was seen by the Pharmacist-in-Charge  
25 performing pharmacist duties. Following the Pharmacist-in-Charge's suspicion that Respondent  
26 had been drinking, Respondent took and failed tests which confirmed his alcohol consumption.

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28 ///

1 OWNERSHIP PROHIBITION

2 16. Business and Professions Code section 4307(a) provides, in pertinent part,  
3 that any person whose license has been revoked or is under suspension shall be prohibited from  
4 serving as a manager, administrator, owner, member, officer, director, associate or partner of a  
5 licensee.

6 17. Pursuant to Business and Professions Code section 4307(a), in the event  
7 the license issued to Respondent is revoked or placed on suspension, Respondent shall be  
8 prohibited from serving as a manager, administrator, owner, member, officer, director, associate  
9 or partner of any licensee with rights issued by the Board.

10 COST RECOVERY

11 18. Business and Professions Code section 125.3 provides that, in any order  
12 issued in resolution of a disciplinary proceeding before any board within the Department of  
13 Consumer Affairs, the board may request the Administrative Law Judge to direct a licentiate  
14 found to have committed a violation or violations of the licensing act to pay a sum not to exceed  
15 the reasonable costs of the investigation and enforcement of the case.

16 19. Under Business and Professions Code section 101(d), the California State  
17 Board of Pharmacy was and is a board within the Department of Consumer Affairs of the State of  
18 California. Pursuant to Business and Professions Code section 125.3, the Board hereby requests  
19 the Administrative Law Judge who issues a Proposed Decision in this matter to include an Order  
20 which provides for the recovery by the Board of the costs of investigation and enforcement of  
21 this case against Respondent, according to proof.

22 **WHEREFORE**, Complainant prays that a hearing be had and that the California  
23 State Board of Pharmacy make its Order:

24 1. Revoking or suspending Pharmacist License Number RPH 33256 issued to  
25 Respondent SELWYN AGENT.

26 2. Prohibiting Respondent SELWYN AGENT from serving as a manager,  
27 administrator, owner, member, officer, director, associate, or partner of a licensee, pursuant to  
28 the provisions of Business and Professions Code section 4307(a).

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3. Directing Respondent SELWYN AGENT to pay the California State Board of Pharmacy the reasonable costs of the investigation and prosecution of this matter pursuant to Business and Professions Code section 125.3, according to proof.

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

DATED: 2/22/06

P. J. Harris  
PATRICIA F. HARRIS  
Executive Officer  
California State Board of Pharmacy  
Department of Consumer Affairs  
  
Attorneys for Complainant

80039734.wpd