

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

In the Matter of the Accusation Against:

DONALD FRANK TOOMBS  
PMB 343  
703 Pier Ave., Ste. B  
Hermosa Beach, CA 90254

Pharmacist License No. RPH 48396

Respondent.

Case No. 2988

OAH No. L-2007040147

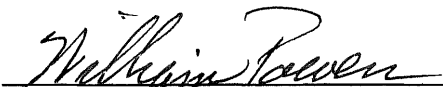
**DECISION AND ORDER**

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 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 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 MARC D. GREENBAUM, State Bar No. 138213  
Deputy Attorney General  
3 JAMI L. CANTORE, State Bar No. 165410  
Deputy Attorney General  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2569  
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2988

12 DONALD FRANK TOOMBS  
PMB 343  
13 703 Pier Ave., Ste. B  
Hermosa Beach, CA 90254

OAH No. L-2007040147

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Pharmacist License No. RPH 48396

16 Respondent.

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to  
19 the above-entitled proceedings 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  
23 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Jami L.  
24 Cantore, Deputy Attorney General.

25 2. Donald Frank Toombs (Respondent) is represented in this proceeding  
26 by attorney Herbert L. Weinberg, whose address is McGuire Woods LLP, 1800 Century Park  
27 East, 8th Floor, Los Angeles, CA 90067.

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3. On or about September 22, 1995, the Board of Pharmacy issued Pharmacist License No. RPH 48396 to Donald Frank Toombs. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2988 and will expire on August 31, 2007, unless renewed.

## JURISDICTION

4. Accusation No. 2988 was filed on October 31, 2006, before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 8, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2988 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 2988. Respondent has also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2988.

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

4                               CIRCUMSTANCES IN MITIGATION

5           10.       Respondent Donald Frank Toombs has never been the subject of any  
6 disciplinary action. He is admitting responsibility at an early stage in the proceedings.

7                               RESERVATION

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

12                              CONTINGENCY

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

23                              OTHER MATTERS

24           13.       The parties understand and agree that facsimile copies of this  
25 Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall  
26 have the same force and effect as the originals.

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IT IS HEREBY ORDERED that Pharmacist License No. RPH 48396 issued to Respondent Donald Frank Toombs is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

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

4

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

4. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

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

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case No. 2988 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in Case No. 2988.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in Case No. 2988 in advance of the Respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the Respondent is considered an employee or independent contractor.

7. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** During the first two (2) years of probation, Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

1                   8.     **Reimbursement of Board Costs.** Respondent shall pay to the Board  
2 its costs of investigation and prosecution in the amount of \$3900.00. Respondent shall make  
3 said payments as follows: equal quarterly payments over the five (5) year probation period.

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

6                   9.     **Probation Monitoring Costs.** Respondent shall pay the costs  
7 associated with probation monitoring as determined by the Board each and every year of  
8 probation. Such costs shall be payable to the Board at the end of each year of probation.  
9 Failure to pay such costs shall be considered a violation of probation.

10                  10.    **Status of License.** Respondent shall, at all times while on probation,  
11 maintain an active current license with the Board, including any period during which  
12 suspension or probation is tolled.

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

16                  11.    **License Surrender while on Probation/Suspension.** Following the  
17 effective date of this decision, should Respondent cease practice due to retirement or health,  
18 or be otherwise unable to satisfy the terms and conditions of probation, Respondent may  
19 tender his license to the Board for surrender. The Board shall have the discretion whether to  
20 grant the request for surrender or take any other action it deems appropriate and reasonable.  
21 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject  
22 to the terms and conditions of probation.

23                  Upon acceptance of the surrender, Respondent shall relinquish his pocket  
24 license to the Board within 10 days of notification by the Board that the surrender is accepted.  
25 Respondent may not reapply for any license from the Board for three years from the effective  
26 date of the surrender. Respondent shall meet all requirements applicable to the license  
27 sought as of the date the application for that license is submitted to the Board.

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1                   12.     **Notification of Employment/Mailing Address Change.** Respondent  
2 shall notify the Board in writing within 10 days of any change of employment. Said  
3 notification shall include the reasons for leaving and/or the address of the new employer,  
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in  
5 writing within 10 days of a change in name, mailing address or phone number.

6                   13.     **Tolling of Probation.** Should Respondent, regardless of residency,  
7 for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar  
8 month in California, Respondent must notify the Board in writing within 10 days of cessation  
9 of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of  
10 time shall not apply to the reduction of the probation period. It is a violation of probation for  
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a  
12 period exceeding three years.

13                "Cessation of practice" means any period of time exceeding 30 days in which  
14 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of  
15 the Business and Professions Code.

16                   14.     **Violation of Probation.** If Respondent violates probation in any  
17 respect, the Board, after giving Respondent notice and an opportunity to be heard, may  
18 revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke  
19 probation or an accusation is filed against Respondent during probation, the Board shall have  
20 continuing jurisdiction and the period of probation shall be extended, until the petition to  
21 revoke probation or accusation is heard and decided.

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

27                   15.     **Rehabilitation Program - Pharmacists Recovery Program (PRP).**  
28 Within 30 days of the effective date of this decision, Respondent shall contact the



1 Pharmacists Recovery Program for evaluation and shall successfully participate in and  
2 complete the treatment contract and any subsequent addendums as recommended and  
3 provided by the PRP and as approved by the Board. The costs for PRP participation shall be  
4 borne by the Respondent.

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

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

24 17. **Abstain from Drugs and Alcohol Use.** Respondent shall completely  
25 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and  
26 their associated paraphernalia except when the drugs are lawfully prescribed by a licensed  
27 practitioner as part of a documented medical treatment. Upon request of the Board,  
28 Respondent shall provide documentation from the licensed practitioner that the prescription

1 was legitimately issued and is a necessary part of the treatment of the Respondent.

2           18.     **Supervised Practice.** Respondent shall practice only under the  
3 supervision of a pharmacist not on probation with the Board. Respondent shall not practice  
4 until the supervisor is approved by the Board. The supervision shall be, as required by the  
5 Board or as determined by the Pharmacists Recovery Program, either:

- 6           •       Continuous - 75% to 100% of a work week
- 7           •       Substantial - At least 50% of a work week
- 8           •       Partial - At least 25% of a work week
- 9           •       Daily Review - Supervisor's review of probationer's daily activities within 24  
10           hours.

11       Within 30 days of the effective date of this decision, Respondent shall have his supervisor  
12 submit notification to the Board in writing stating the supervisor has read the decision in  
13 Case No. 2988 and is familiar with the level of supervision as determined by the Board.

14           If Respondent changes employment, Respondent shall have his new  
15 supervisor, within 15 days after employment commences, submit notification to the Board in  
16 writing stating the direct supervisor and pharmacist-in-charge have read the decision in Case  
17 No. 2988 and is familiar with the level of supervision as determined by the Board.

18           Within 10, days of leaving employment, Respondent shall notify the Board in  
19 writing.

20           19.     **No Ownership of Premises.** Respondent shall not own, have any  
21 legal or beneficial interest in, or serve as a manager, administrator, member, officer, director,  
22 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter  
23 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any  
24 entity licensed by the Board within 90 days following the effective date of this decision and  
25 shall immediately thereafter provide written proof thereof to the Board.

26           20.     **Completion of Probation.** Upon successful completion of probation,  
27 Respondent's license will be fully restored.

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1 ACCEPTANCE

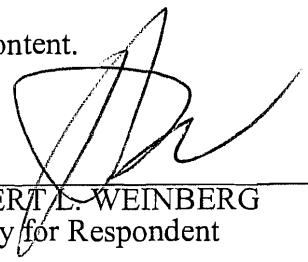
2 I have carefully read the above Stipulated Settlement and Disciplinary Order  
3 and have fully discussed it with my attorney, Herbert L. Weinberg. I understand the  
4 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the Board of Pharmacy.

7 DATED: 7/10/07

8   
9 DONALD FRANK TOOMBS  
Respondent

10  
11 I have read and fully discussed with Respondent Donald Frank Toombs the  
12 terms and conditions and other matters contained in the above Stipulated Settlement and  
13 Disciplinary Order. I approve its form and content.

14 DATED: 7/11/07

15   
16 HERBERT L. WEINBERG  
Attorney for Respondent

17  
18 ENDORSEMENT

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

22 DATED: \_\_\_\_\_

23 EDMUND G. BROWN JR., Attorney General  
24 of the State of California

25 MARC D. GREENBAUM  
26 Supervising Deputy Attorney General

27 JAMI L. CANTORE  
28 Deputy Attorney General  
Attorneys for Complainant

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg. 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: 6/29/07

  
DONALD FRANK TOOMBS  
Respondent

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

DATED: 6/29/07

  
HERBERT L. WEINBERG  
Attorney for Respondent

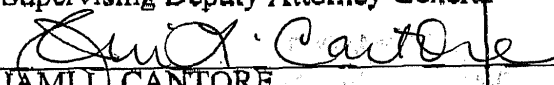
ENDORSEMENT

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: 7/9/07

EDMUND G. BROWN JR., Attorney General  
of the State of California

MARC D. GREENBAUM  
Supervising Deputy Attorney General

  
JAMIL L. CANTORE  
Deputy Attorney General  
Attorneys for Complainant

**Exhibit A**  
**Accusation No. 2988**

BILL LOCKYER, Attorney General  
of the State of California  
JAMI L. CANTORE, State Bar No. 165410  
Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-2569  
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Attorneys for Complainant

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PMB 343  
703 Pier Ave., Suite B  
Hermosa Beach, CA 90254

**A C C U S A T I O N**

Pharmacist License No. RPH 48396

Respondent.

Complainant alleges:

**PARTIES**

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

2. On or about September 22, 1995, the Board issued Pharmacist License No. RPH 48396 to Donald Frank Toombs (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2007, unless renewed.

**JURISDICTION**

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

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

5                   5.       Section 4300 of the Business and Professions Code provides, in pertinent  
6 part, that every license issued by the Board is subject to discipline, including suspension or  
7 revocation.

8                   6.       Section 4301 of the Code states:

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

13                   .....

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

17                   .....

18                   "(j) The violation of any of the statutes of this state or of the United States  
19 regulating controlled substances and dangerous drugs.

20                   .....

21                   "(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
22 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
23 applicable federal and state laws and regulations governing pharmacy, including regulations  
24 established by the board."

25                   7.       Section 4327 of the Code states:

26                   "Any person who, while on duty, sells, dispenses or compounds any drug while  
27 under the influence of any dangerous drug or alcoholic beverages shall be guilty of a  
28 misdemeanor."

1                   8.       Health and Safety Code section 11170 states:

2                   "No person shall prescribe, administer, or furnish a controlled substance for  
3 himself."

4                   9.       Health and Safety Code section 11173, subdivision (a) states:

5                   "No person shall obtain or attempt to obtain controlled substances, or procure or  
6 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,  
7 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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

12                   11.       CONTROLLED SUBSTANCES

13                   "Demerol," is the brand name for Meperidine. It is a Schedule II controlled  
14 substance as designated by Health and Safety Code section 11055, subdivision (c)(17), and is  
15 categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

16                                   FIRST CAUSE FOR DISCIPLINE

17                   (Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud or Deceit)

18                   12.       Respondent is subject to disciplinary action under sections 4300 and  
19 4301, subdivision (f), of the Code on the grounds of unprofessional conduct for violating Health  
20 and Safety Code section 11173, subdivision (a), in that from on or about September 21, 2005  
21 through September 30, 2005, while on duty as a clinical pharmacist at Little Company of Mary  
22 Hospital Pharmacy (LCMHP), Respondent committed acts of moral turpitude, dishonesty, fraud  
23 or deceit by diverting 10 carpjects (pre-filled disposable cartridges) of Demerol 100 mg., 10  
24 carpjects of Demerol 50 mg., and 1 carpject of Demerol 75 mg. from LCMHP.

25                                   SECOND CAUSE FOR DISCIPLINE

26                   (Unprofessional Conduct: Self-Administered Controlled Substances)

27                   13.       Respondent is subject to disciplinary action under sections 4300 and  
28 4301, subdivisions (j) and (o), of the Code on the grounds of unprofessional conduct for violating



1 Health and Safety Code section 11170 in that from on or about September 21, 2005 through  
2 September 30, 2005, while on duty as a clinical pharmacist at LCMHP, Respondent unlawfully  
3 self-administered the controlled substance Demerol.

4 THIRD CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct: Under the Influence of a Controlled Substance)

6 14. Respondent is subject to disciplinary action under sections 4300 and  
7 4301, subdivisions (j) and (o), of the Code on the grounds of unprofessional conduct for violating  
8 section 4327 in that from on or about September 21, 2005 through September 30, 2005, while on  
9 duty as a clinical pharmacist at LCMHP, Respondent sold, dispensed or compounded drugs while  
10 under the influence of the controlled substance Demerol. During that time, Respondent was  
11 observed as follows:

12 a. On or about September 21, 2005, Respondent reported to work, but was  
13 not scheduled to work that day.

14 b. On or about September 30, 2005, Respondent reported to work one hour  
15 late for his shift without any excuse. Respondent was subsequently observed in the restroom  
16 from approximately 11:00 a.m. until 11:30 a.m. and from approximately 4:00 p.m. until 4:20  
17 p.m. Respondent emerged from the restroom with red eyes and pale skin.

18 c. On or about September 30, 2005, Respondent refused to submit to drug  
19 testing after the pharmacist in charge observed that he was impaired.

20 PRAYER

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

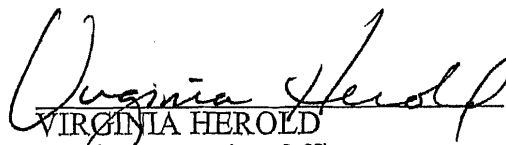
23 1. Revoking or suspending Pharmacist License No. RPH 48396 issued to  
24 Donald Frank Toombs.

25 2. Ordering Donald Frank Toombs to pay the Board the reasonable costs of  
26 the investigation and enforcement of this case pursuant to Business and Professions Code section  
27 125.3.

28 ///

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

DATED: 10/31/06

  
VIRGINIA HEROLD  
Interim Executive Officer  
Board of Pharmacy  
State of California  
Complainant

BILL LOCKYER, Attorney General  
of the State of California  
JAMI L. CANTORE, State Bar No. 165410  
Deputy Attorney General  
California Department of Justice  
300 So. Spring Street, Suite 1702  
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Attorneys for Complainant

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**A C C U S A T I O N**

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Complainant alleges:

**PARTIES**

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2. On or about September 22, 1995, the Board issued Pharmacist License No. RPH 48396 to Donald Frank Toombs (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2007, unless renewed.

**JURISDICTION**

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

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

5                   5.       Section 4300 of the Business and Professions Code provides, in pertinent  
6 part, that every license issued by the Board is subject to discipline, including suspension or  
7 revocation.

8                   6.       Section 4301 of the Code states:

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

13                   .....

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

17                   .....

18                   "(j) The violation of any of the statutes of this state or of the United States  
19 regulating controlled substances and dangerous drugs.

20                   .....

21                   "(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
22 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
23 applicable federal and state laws and regulations governing pharmacy, including regulations  
24 established by the board."

25                   7.       Section 4327 of the Code states:

26                   "Any person who, while on duty, sells, dispenses or compounds any drug while  
27 under the influence of any dangerous drug or alcoholic beverages shall be guilty of a  
28 misdemeanor."

8. Health and Safety Code section 11170 states:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

9. Health and Safety Code section 11173, subdivision (a) states:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

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

#### 11. CONTROLLED SUBSTANCES

"Demerol," is the brand name for Meperidine. It is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(17), and is categorized as a "dangerous drug" pursuant to Business and Professions Code section 4022.

#### FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud or Deceit)

12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), of the Code on the grounds of unprofessional conduct for violating Health and Safety Code section 11173, subdivision (a), in that from on or about September 21, 2005 through September 30, 2005, while on duty as a clinical pharmacist at Little Company of Mary Hospital Pharmacy (LCMHP), Respondent committed acts of moral turpitude, dishonesty, fraud or deceit by diverting 10 carpulets (pre-filled disposable cartridges) of Demerol 100 mg., 10 carpulets of Demerol 50 mg., and 1 carpulet of Demerol 75 mg. from LCMHP.

#### SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Self-Administered Controlled Substances)

13. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (j) and (o), of the Code on the grounds of unprofessional conduct for violating

1 Health and Safety Code section 11170 in that from on or about September 21, 2005 through  
2 September 30, 2005, while on duty as a clinical pharmacist at LCMHP, Respondent unlawfully  
3 self-administered the controlled substance Demerol.

4 THIRD CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct: Under the Influence of a Controlled Substance)

6 14. Respondent is subject to disciplinary action under sections 4300 and  
7 4301, subdivisions (j) and (o), of the Code on the grounds of unprofessional conduct for violating  
8 section 4327 in that from on or about September 21, 2005 through September 30, 2005, while on  
9 duty as a clinical pharmacist at LCMHP, Respondent sold, dispensed or compounded drugs while  
10 under the influence of the controlled substance Demerol. During that time, Respondent was  
11 observed as follows:

12 a. On or about September 21, 2005, Respondent reported to work, but was  
13 not scheduled to work that day.

14 b. On or about September 30, 2005, Respondent reported to work one hour  
15 late for his shift without any excuse. Respondent was subsequently observed in the restroom  
16 from approximately 11:00 a.m. until 11:30 a.m. and from approximately 4:00 p.m. until 4:20  
17 p.m. Respondent emerged from the restroom with red eyes and pale skin.

18 c. On or about September 30, 2005, Respondent refused to submit to drug  
19 testing after the pharmacist in charge observed that he was impaired.

20 PRAYER

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

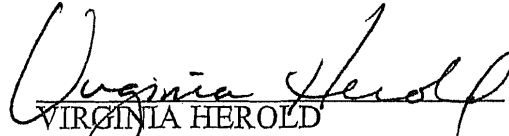
23 1. Revoking or suspending Pharmacist License No. RPH 48396 issued to  
24 Donald Frank Toombs.

25 2. Ordering Donald Frank Toombs to pay the Board the reasonable costs of  
26 the investigation and enforcement of this case pursuant to Business and Professions Code section  
27 125.3.

28 ///

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

DATED: 10/31/06

  
VIRGINIA HEROLD  
Interim Executive Officer  
Board of Pharmacy  
State of California  
Complainant