

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

In the Matter of the Accusation Against:

Case No. 2991

DAVID NEWTON KILE  
19351 Sunray Lane, Apt. #204  
Huntington Beach, CA 92648

Pharmacist License No. RPH 27989

Respondent.

**DECISION AND ORDER**

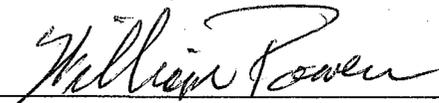
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy as its Decision in this matter.

This Decision shall become effective on April 11, 2008.

It is so ORDERED March 12, 2008.

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 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 KATHLEEN B.Y. LAM, State Bar No. 95379  
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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2991

13 DAVID NEWTON KILE  
19351 Sunray Lane, Apt. #204  
14 Huntington Beach, CA 92648

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 Pharmacist License No. RPH 27989

16 Respondent.

17 In the interest of a prompt and speedy resolution of this matter, consistent with the  
18 public interest and the responsibility of the Board of Pharmacy (Board), the parties hereby agree  
19 to the following Stipulated Surrender of License and Order which will be submitted to the Board  
20 for approval and adoption as the final disposition of the Accusation.

21 PARTIES

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of  
23 Pharmacy. She brought this action solely in her official capacity, and is represented in this  
24 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Kathleen B.Y.  
25 Lam, Deputy Attorney General.

26 2. David Newton Kile (Respondent) is representing himself in this  
27 proceeding and has chosen not to exercise his right to be represented by counsel.

28 3. On or about July 14, 1972, the Board of Pharmacy issued Pharmacist

1 License No. RPH 27989 to Respondent. The license was in full force and effect at all times  
2 relevant to the charges brought in Accusation No. 2991, and will expire on January 31, 2008,  
3 unless renewed.

4 JURISDICTION

5 4. Accusation No. 2991 was filed before the Board, and is currently pending  
6 against Respondent. The Accusation and all other statutorily required documents were properly  
7 served on Respondent on October 17, 2007. Respondent filed his Notice of Defense contesting  
8 the Accusation. A copy of Accusation No. 2991 is attached as Exhibit A, and incorporated  
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations  
12 in Accusation No. 2991. Respondent also has carefully read, and understands the effects of this  
13 Stipulated Surrender of 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 be represented by  
16 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;  
17 the right to present evidence and to testify on his own behalf; the right to the issuance of  
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
19 reconsideration and court review of an adverse decision; and all other rights accorded by the  
20 California Administrative Procedure Act and other applicable 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 admits the truth of each and every charge and allegation in  
25 Accusation No. 2991, agrees that cause exists for discipline and hereby surrenders his Pharmacist  
26 License No. RPH 27989 for the Board's formal acceptance.

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1           15.    Respondent shall lose all rights and privileges as a licensed pharmacist in  
2 California as of the effective date of the Board's Decision and Order.

3           16.    Respondent shall cause to be delivered to the Board both his wall and  
4 pocket license certificates on or before the effective date of the Decision and Order.

5           17.    Respondent understands and agrees that if he ever applies for licensure or  
6 petitions for reinstatement in the State of California, the Board shall treat it as a new application  
7 for licensure. Respondent must comply with all the laws, regulations and procedures for  
8 licensure in effect at the time the application or petition is filed, and all of the charges and  
9 allegations contained in Accusation No. 2991 shall be deemed to be true, correct and admitted  
10 by Respondent when the Board determines whether to grant or deny the application or petition.

11           18.    Respondent shall pay the Board its costs of investigation and enforcement  
12 in the amount of \$2,780.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: January 10, 2008

  
DAVID NEWTON KILE  
Respondent

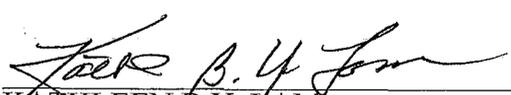
ENDORSEMENT

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

DATED: 1/15/08

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

JAMES M. LEDAKIS  
Supervising Deputy Attorney General

  
KATHLEEN B.Y. LAM  
Deputy Attorney General

Attorneys for Complainant

**Exhibit A**  
**Accusation No. 2991**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 JAMES LEDAKIS  
Supervising Deputy Attorney General  
3 KATHLEEN B.Y. LAM, State Bar No. 95379  
Deputy Attorney General  
4 California Department of Justice  
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San Diego, CA 92186-5266  
7 Telephone: 619-645-2091  
Facsimile: 619-645-2061  
8  
9 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 2991

14 **DAVID NEWTON KILE**

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

15 19512 Pompano Lane #112  
16 Huntington Beach, CA 92648

17 Original Pharmacist License No. RPH 27989

18 Respondents.

19 Complainant alleges:

20 **PARTIES**

21 1. (Complainant) Virginia Herold brings this Accusation solely in her  
22 official capacity as the Executive Officer for the California State Board of Pharmacy, Department  
23 of Consumer Affairs.

24 2. On or about July 14, 1972, the Board of Pharmacy issued Original  
25 Pharmacist license no. 27989 to David Newton Kile. Said license will expire on January 31,  
26 2008, unless renewed.

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JURISDICTION

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3. This Accusation is brought before the California State 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 unless otherwise indicated.

A. Section 4059 (a) of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

B. Section 4301 of the Code states:

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

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

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

(o) Violating . . .any provision or term of this chapter. . .

C. Section 4327 states, in pertinent part:

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

D. Section 4060 provides that no person shall possess a controlled substance without a legitimately issued prescription.

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

5 4. This Accusation also refers to the following sections of the Health &  
6 Safety Code (H&S Code):

7 A. H&S Code section 11170 states that "no person shall prescribe,  
8 administer, or furnish a controlled substance to himself."

9 B. H&S Code section 11173 states in pertinent part:

10 "(a) No person shall obtain or attempt to obtain controlled substances,  
11 or procure or attempt to procure the administration of or prescription for  
12 controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge;  
13 or (2) by the concealment of a material fact.  
14 . . . .

15 **ALLEGATIONS:**

16 5. On September 14, 2005, a Kaiser Pharmacy Compliance Internal Auditor  
17 for Kaiser Permanent Orange County Medical Center, Brea Medical Offices, discovered that  
18 several bottles of the generic drug, Lortab Elixir, (Hydrocodone/Apap Elixir, a Schedule III drug)  
19 was missing and/or unaccounted for. Following the discovery, a Special Investigations Unit  
20 investigator set up a covert camera in the Brea pharmacy for the purposes of recording any  
21 suspicious activity.

22 6 On September 26, 2005 and again on September 29, 2005, the covert  
23 camera captured Respondent removing Lortab bottles that were later unaccounted for, and  
24 removing Xanax tablets out of bottles and dispensing them directly into his bare hand.  
25 Moreover, on September 29, 2005, the camera showed Respondent removing Xanax tablets out  
26 of a bottle and actually dispensing them into his bare hand and swallowing them on the premises  
27 during his work shift.

28 7 On October 11, 2005, Respondent was interviewed at the Brea Medical  
Offices by Investigator Howell and others, and in the presence of Respondent's representative  
from the Guild for Professional Pharmacists. During the questioning, Respondent told the



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FOURTH CAUSE FOR DISCIPLINE

(Dispensing Drugs While Under the Influence)

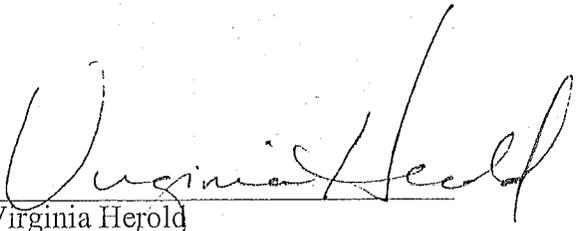
12. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4327 for dispensing drugs while under the influence of drugs as set forth in the allegation paragraphs above.

PRAYER

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

1. Revoking or suspending Original Pharmacist License Number RPH 27989 issued to David Newton Kile;
2. Ordering David Newton Kile to pay the Board of Pharmacy 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 deemed necessary and proper.

DATED: 10/11/07

  
Virginia Herold  
Executive Officer, Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant