

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

In the Matter of the Accusation Against:

GERALD CHARLES BAKER
P.O. Box 2042
Carmichael, CA 95609

Pharmacist License No. RPH 30905

Respondent.

Case No. 3005

OAH No. 2006120569

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 June 15, 2007.

It is so ORDERED May 15, 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 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3005

12 GERALD CHARLES BAKER
13 P.O. Box 2042
Carmichael, CA 95609

OAH No. 2006120569

14 Pharmacist License No. RPH 30905

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.
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17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:
20

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 matter
24 by Edmund G. Brown Jr., Attorney General of the State of California, by Kent D. Harris, Deputy
25 Attorney General.

26 2. Respondent Gerald Charles Baker (Respondent) is represented in this
27 proceeding by attorney Edward O. Lear, whose address is 5200 West Century Boulevard, Suite
28 940, Los Angeles, California 90045.

3. On or about July 26, 1977, the Board of Pharmacy issued Pharmacist License No. RPH 30905 to Gerald Charles Baker (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 3005 and will expire on June 30, 2008, unless renewed.

JURISDICTION

4. Accusation No. 3005 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on November 9, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 3005 is attached as exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 3005. 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. 3005.

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

RESERVATION

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

CONTINGENCY

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

OTHER MATTERS

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

DISCIPLINARY ORDER

In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by respondent, issue and enter the following Disciplinary Order:

1 IT IS HEREBY ORDERED that Pharmacist License No. RPH 30905 issued to
2 Respondent Gerald Charles Baker is revoked. However, the revocation is stayed and Respondent
3 is placed on probation for five (5) years on the following terms and conditions.

4 1. **Actual Suspension** . License number RPH 30905, issued to Respondent
5 Gerald Charles Baker is suspended for a period of 90 days. However, Respondent is to be given
6 credit for the entire 90 days of suspension as already served, due to the suspension he has
7 previously served at the direction of PRP as part of his self-referral.

8 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
9 regulations substantially related to or governing the practice of pharmacy.

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

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

22 3. **Reporting to the Board.** Respondent shall report to the Board
23 quarterly. The report shall be made either in person or in writing, as directed. Respondent
24 shall state under penalty of perjury whether there has been compliance with all the terms and
25 conditions of probation. If the final probation report is **not** made as directed, probation shall
26 be extended automatically until such time as the final report is made and accepted by the
27 Board.

1 4. **Interview with the Board.** Upon receipt of reasonable notice,
2 Respondent shall appear in person for interviews with the Board upon request at various
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled
4 interview without prior notification to Board staff shall be considered a violation of probation.

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

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

11 7. **Notice to Employers.** Respondent shall notify all present and
12 prospective employers of the decision in case number 3005 and the terms, conditions and
13 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
14 this decision, and within 15 days of Respondent undertaking new employment, Respondent
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
16 writing acknowledging the employer has read the decision in case number 3005.

17 If Respondent works for or is employed by or through a pharmacy employment
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
19 every pharmacy of the and terms conditions of the decision in case number 3005 in advance of
20 the Respondent commencing work at each pharmacy.

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

24 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
25 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
26 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
27 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
28 order.

1 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
2 its costs of investigation and prosecution in the amount of \$2,000. Respondent shall make
3 said payments as follows: Quarterly during the period of probation.

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 10. **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 11. **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 otherwise,
14 upon renewal or reapplication, Respondent's license shall be subject to all terms and
15 conditions of this probation not previously satisfied.

16 12. **License Surrender while on Probation/Suspension.** Following the
17 effective date of this decision, should Respondent cease practice due to retirement or health, or
18 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender
19 his license to the Board for surrender. The Board shall have the discretion whether to grant
20 the request for surrender or take any other action it deems appropriate and reasonable. Upon
21 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
22 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 sought
27 as of the date the application for that license is submitted to the Board.
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1 13. **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 14. **Tolling of Probation.** Should Respondent, regardless of residency, for
7 any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
8 California, Respondent must notify the Board in writing within 10 days of cessation of the
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
10 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 the
15 Business and Professions Code.

16 15. **Violation of Probation.** If Respondent violates probation in any
17 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
18 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 16. **Completion of Probation.** Upon successful completion of probation,
28 Respondent's license will be fully restored.

1 17. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**

2 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists
3 Recovery Program for evaluation and shall successfully participate in and complete the
4 treatment contract and any subsequent addendums as recommended and provided by the PRP
5 and as approved by the Board. The costs for PRP participation shall be borne by the
6 Respondent.

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

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

26 19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
27 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
28 associated paraphernalia except when the drugs are lawfully prescribed by a licensed

1 practitioner as part of a documented medical treatment. Upon request of the Board,
2 Respondent shall provide documentation from the licensed practitioner that the prescription
3 was legitimately issued and is a necessary part of the treatment of the Respondent.

4 20. **Supervised Practice.** Respondent shall practice only under the
5 supervision of a pharmacist not on probation with the Board. Respondent shall not practice
6 until the supervisor is approved by the Board. The supervision shall be, as required by the
7 Board, either:

8 Continuous - 75% to 100% of a work week

9 Substantial - At least 50% of a work week

10 Partial - At least 25% of a work week

11 Daily Review - Supervisor's review of probationer's daily activities within 24
12 hours

13 Within 30 days of the effective date of this decision, Respondent shall have his supervisor
14 submit notification to the Board in writing stating the supervisor has read the decision in case
15 number 3005 and is familiar with the level of supervision as determined by the Board.

16 If Respondent changes employment, Respondent shall have his new supervisor,
17 within 15 days after employment commences, submit notification to the Board in writing
18 stating the direct supervisor and pharmacist-in-charge have read the decision in case number
19 3005 and is familiar with the level of supervision as determined by the Board.

20 Within 10, days of leaving employment, Respondent shall notify the Board in
21 writing.

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DATED: 3/20/2007. *Gerald Charles Baker*
GERALD CHARLES BAKER
Respondent

DATED: 3/22/07 Edward O. Lear
EDWARD O. LEAR
Attorney for Respondent

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

Attorneys for Complainant

10

Exhibit A
Accusation No. 3005

1 BILL LOCKYER, Attorney General
of the State of California
2 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3005

12 GERALD CHARLES BAKER
13 P.O. Box 2042
Carmichael, CA 95609

A C C U S A T I O N

14 Pharmacist License No. RPH 30905

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 26, 1977, the Board of Pharmacy issued Pharmacist
23 License Number RPH 30905 to Gerald Charles Baker (Respondent). The Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2008, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4301 of the Code states in pertinent part:

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

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

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

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

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

21 5. Section 4022 of the Code states:

22 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
23 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

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

1 device.

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

4 6. Section 4060 of the Code states:

5 "No person shall possess any controlled substance, except that furnished to a
6 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
7 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
8 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
9 section shall not apply to the possession of any controlled substance by a manufacturer,
10 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
11 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
12 and address of the supplier or producer.

13 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
14 or a physician assistant to order his or her own stock of dangerous drugs and devices."

15 7. Section 4327 of the Code states:

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

19 8. Health and Safety Code section 11170 states:

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

22 9. Health and Safety Code section 11350(a) states in pertinent part:

23 " Except as otherwise provided...every person who possesses...any controlled
24 substance...unless upon the written prescription of a physician.. shall be punished by
25 imprisonment in state prison...."

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1 10. 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 11. Section 125.3 of the Code states, in pertinent part, that the Board may
6 request the administrative law judge to direct a licensee found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case.

9 **DRUGS**

10 12. "Klonopin" is the brand name for the generic drug Clonazepam, which is a
11 dangerous drug and a Schedule IV controlled substance used for the control of nerves.

12 13. "Vicodin" or "Norco" are the brand names for the generic drug
13 Hydrocodone/acetaminophen, which is a dangerous drug and a Schedule III controlled substance
14 used for the control of pain.

15 14. "Valium" is the brand name for the generic drug Diazepam, which is a
16 dangerous drug and a Schedule IV controlled substance used for the control of nerves.

17 15. "Dilauded" is the brand name for the generic drug "Hydromorphone",
18 which is a dangerous drug and a Schedule II controlled substance used for the control of pain.

19 **FACTS**

20 16. Between the dates of early 2004 and March 2006, Respondent was
21 employed at Kaiser Hospital of Sacramento as a licensed pharmacist. During that time period, on
22 numerous occasions, respondent, by his own admission, stole multiple different controlled
23 substances, including hydrocodone/acetaminophen, clonazepam, diazepam, and dilauded. The
24 exact totals of drugs stolen by respondent are unknown, but an audit by Kaiser confirmed at least
25 902 pills of the various controlled substances to be missing. Respondent accomplished the theft
26 primarily by taking the drugs from the expired medications storage box.

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1 17. Respondent further admitted that he self-administered said substances,
2 generally ingesting 2 to 3 tablets per day, and was under the influence of the substances when he
3 worked as a pharmacist and provided patient care.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Stealing Controlled Substances)

6 18. Respondent is subject to disciplinary action under section 4301(f) in that
7 he stole drugs from Kaiser pharmacy as set forth above in paragraphs 12 through 17 above.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unlawful Possession of Controlled Substances)

10 19. Respondent is subject to disciplinary action under section 4301(j), by and
11 through his violation of section 4060 and Health and Safety Code section 11350(a) in that he
12 illegally possessed the controlled substances he stole from Kaiser pharmacy as set forth in
13 paragraphs 12 through 17 above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Unlawful Self-Administration of Controlled Substances)

16 20. Respondent is subject to disciplinary action under section 4301(h) and
17 Health and Safety Code section 11170 in that he unlawfully self-administered the controlled
18 substances he stole from Kaiser pharmacy as set forth in paragraphs 12 through 17 above.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 (Working as a Pharmacist While Under the Influence Of Drugs)

21 21. Respondent is subject to disciplinary action under section 4301(o) and
22 4327 in that he was regularly under the influence of the controlled substances he stole from
23 Kaiser pharmacy while he worked as a pharmacist providing patient care and dispensing drugs
24 as defined by section 4022.

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1 PRAYER

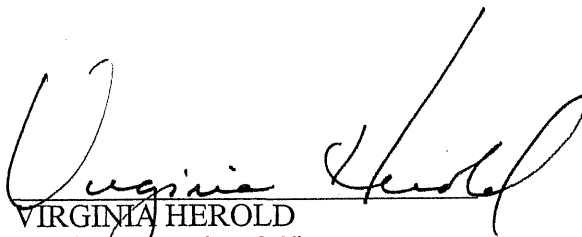
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

4 A. Revoking or suspending Pharmacist License Number RPH 30905, issued
5 to Gerald Charles Baker;

6 B. Ordering Gerald Charles Baker to pay the Board of Pharmacy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 C. Taking such other and further action as deemed necessary and proper.

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12 DATED: 10/31/06



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15 VIRGINIA HEROLD
16 Interim Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
State of California
Complainant

19 03583110-SA2006101904
20 Baker Accusation.wpd
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1 BILL LOCKYER, Attorney General
of the State of California
2 ARTHUR D. TAGGART, Supervising
Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
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6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643

7 Attorneys for Complainant
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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 3005

13 GERALD (JERRY) CHARLES BAKER

REQUEST FOR DISCOVERY

14 Respondent.

[Gov. Code § 11507.6]

15
16 TO RESPONDENT:

17 Under section 11507.6 of the Government Code of the State of California, parties
18 to an administrative hearing, including the Complainant, are entitled to certain information
19 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
20 Government Code concerning such rights is included among the papers served.

21 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
22 ARE HEREBY REQUESTED TO:

- 23 1. Provide the names and addresses of witnesses to the extent known to the
24 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
25 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
26 the following in the possession or custody or under control of the Respondent:
27 a. A statement of a person, other than the Respondent, named in the initial
28 administrative pleading, or in any additional pleading, when it is claimed that the act or

1 omission of the Respondent as to this person is the basis for the administrative
2 proceeding;

3 b. A statement pertaining to the subject matter of the proceeding made by any
4 party to another party or persons;

5 c. Statements of witnesses then proposed to be called by the Respondent and
6 of other persons having personal knowledge of the acts, omissions or events which are the
7 basis for the proceeding, not included in (a) or (b) above;

8 d. All writings, including but not limited to reports of mental, physical and
9 blood examinations and things which the Respondent now proposes to offer in evidence;

10 e. Any other writing or thing which is relevant and which would be
11 admissible in evidence, including but not limited to, any patient or hospital records
12 pertaining to the persons named in the pleading;

13 f. Investigative reports made by or on behalf of the Respondent pertaining to
14 the subject matter of the proceeding, to the extent that these reports (1) contain the names
15 and addresses of witnesses or of persons having personal knowledge of the acts,
16 omissions or events which are the basis for the proceeding, or (2) reflect matters
17 perceived by the investigator in the course of his or her investigation, or (3) contain or
18 include by attachment any statement or writing described in (a) to (e), inclusive, or
19 summary thereof.

20 For the purpose of this Request for Discovery, "statements" include written
21 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
22 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
23 and written reports or summaries of these oral statements.

24 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
25 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
26 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
27 work product.

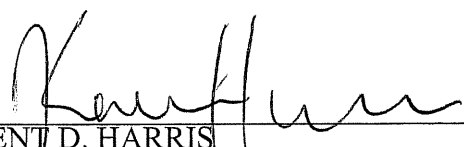
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1 Your response to this Request for Discovery should be directed to the undersigned
2 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
3 **30 days after service** of the Accusation.

4 Failure without substantial justification to comply with this Request for Discovery
5 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
6 of the Government Code.

7 DATED: 11/9/06

8 BILL LOCKYER, Attorney General
9 of the State of California
ARTHUR D. TAGGART, Supervising
10 Deputy Attorney General

11 
12 KENT D. HARRIS
13 Deputy Attorney General

14 Attorneys for Complainant

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BILL LOCKYER, Attorney General
of the State of California
ARTHUR D. TAGGART, Supervising
Deputy Attorney General
KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-7859
Facsimile: (916) 327-8643

Attorneys for Complainant

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

In the Matter of the Accusation Against:

GERALD (JERRY) CHARLES BAKER

Respondent.

Case No. 3005

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

Enclosed is a copy of the Accusation that has been filed with the Board of Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Board, represented by Deputy Attorney General Kent D. Harris, within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the Board may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code, to

**Kent D. Harris
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, California 94244-2550.**

1 You may, but need not, be represented by counsel at any or all stages of these
2 proceedings.

3 The enclosed Notice of Defense, if signed and filed with the Board, shall be
4 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any
5 objection to the form of the Accusation unless you file a further Notice of Defense as provided in
6 section 11506 of the Government Code within fifteen (15) days after service of the Accusation
7 on you.

8 If you file any Notice of Defense within the time permitted, a hearing will be held
9 on the charges made in the Accusation.

10 The hearing may be postponed for good cause. If you have good cause, you are
11 obliged to notify the Office of Administrative Hearings, 560 J Street, Suite 340/360, Sacramento,
12 California 95814, within ten (10) working days after you discover the good cause. Failure to
13 notify the Office of Administrative Hearings within ten (10) days will deprive you of a
14 postponement.

15 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
16 enclosed.

17 If you desire the names and addresses of witnesses or an opportunity to inspect
18 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
19 custody or control of the Board you may send a Request for Discovery to the above designated
20 Deputy Attorney General.

21 **NOTICE REGARDING STIPULATED SETTLEMENTS**

22 It may be possible to avoid the time, expense and uncertainties involved in an
23 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
24 settlement is a binding written agreement between you and the government regarding the matters
25 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
26 Board of Pharmacy but, once approved, it would be incorporated into a final order.

27 Any stipulation must be consistent with the Board's established disciplinary
28 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the

1 Board's Disciplinary Guidelines will be provided to you on your written request to the state
2 agency bringing this action.

3 If you are interested in pursuing this alternative to a formal administrative hearing,
4 or if you have any questions, you or your attorney should contact Deputy Attorney General Kent
5 D. Harris at the earliest opportunity.

6 *****

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

In the Matter of the Accusation Against:

GERALD (JERRY) CHARLES BAKER

Respondent.

Case No. 3005

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

- ☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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

In the Matter of the Accusation Against:

GERALD (JERRY) CHARLES BAKER

Respondent.

Case No. 3005

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

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The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE

(Certified & First Class Mail (separate mailing))

In the Matter of the Accusation Against:
Gerald Charles Baker

OAH No.

Board of Pharmacy Case No. 3005

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, P.O. Box 944255, Sacramento, CA 94244-2550

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

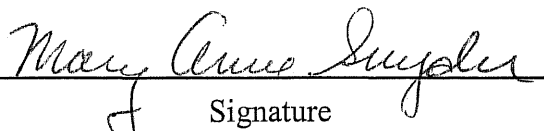
On November 9, 2006, I served the attached **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies), and Government Code sections** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies), and Government Code sections** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General; addressed as follows:

Gerald Charles Baker
P.O. Box 2042
Carmichael, CA 95609
Respondent
Cert. Article No. 7160 3901 9848 9137 8572

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 9, 2006, at Sacramento, California.

Mary Anne Snyder

Typed Name


Signature

cc: Kim deLong, Board of Pharmacy

7160 3901 9848 9137 8572

TO:
Gerald Charles Baker
P.O. Box 2042
Carmichael, CA 95609

SENDER: Kent D. Harris, DAG

REFERENCE: Baker/AccusPkt

PS Form 3800, June 2000

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service
**Receipt for
Certified Mail**
No Insurance Coverage Provided
Do Not Use for International Mail

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11/09/00