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Attorneys for Complainant

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

In the Matter of the Accusation Against: **JOHN CARDWELL SIMMS** **138 Pearson Lane** **Black Mountain, North Carolina 28711** Pharmacist License No. RPH 44553, Respondent.	Case No. 3015 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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

PARTIES

1. Virginia K. Herold, (Complainant) is the Interim Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Arthur D. Taggart, Lead Supervising Deputy Attorney General.

2. John Cardwell Simms (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about August 28, 2006, the Board of Pharmacy issued Pharmacist License No. RPH 44553 to John Cardwell Simms. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 3015. The license will expire on June 30, 2007, unless renewed.

JURISDICTION

4. Accusation No. 3015 was filed 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 September 1, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3015 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the charges and allegations in Accusation No. 3015. Respondent also has carefully read and understands the effects of his Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in the 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. 3015, agrees that cause exists for discipline, and he hereby surrenders his Pharmacist License No. RPH 44553 for the Board's formal acceptance.

9. Respondent understands that by signing the stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist license without further process.

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CONTINGENCY

10. 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 the stipulation and surrender, without notice to or participation by Respondent. 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 the stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect except for this paragraph. The Stipulated Surrender and Disciplinary Order shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered it.

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

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

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 44553, issued to Respondent John Cardwell Simms is surrendered and accepted by the Board of Pharmacy.

13. The surrender of Respondent's pharmacist license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. The stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

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

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

16. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 3015 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

17. Upon reinstatement of the license, Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of Three Hundred Fifty-Five Dollars and Fifty Cents ($355.50). Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

18. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board of Pharmacy's Decision and Order.

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ACCEPTANCE

I am aware of my right to retain private counsel at my own expense. I have chosen to represent myself in these proceedings. 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 the Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11-11-06.

JOHN CARDWELL SIMMS
Respondent

ENDORSEMENT

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

DATED: 11/13/06.

BILL LOCKYER, Attorney General
of the State of California

ARTHUR D. TAGGART
Lead Supervising Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: **JOHN CARDWELL SIMMS** **138 Pearson Lane** **Black Mountain, North Carolina 28711** **Pharmacist License No. RPH 44553,** Respondent.	Case No. 3015

DECISION AND ORDER

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

The Decision shall become effective on January 18, 2007.

IT IS SO ORDERED December 19, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 3015

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of the State of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **JOHN CARDWELL SIMMS** 138 Pearson Lane Black Mountain, North Carolina 28711 Pharmacist No. 44553, Respondent.	Case No. 3015 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia K. 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 August 12, 1991, the Board issued Pharmacist License Number RPH 44553 to John Cardwell Simms (Respondent). Respondent's Pharmacist License will expire on June 30, 2007, unless renewed.

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STATUTORY PROVISIONS

3. Code section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . . .

4. Code section 4301 states, in pertinent part:

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:

. . . .

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter . . . .

Cost Recovery

5. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

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FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by the North Carolina Board of Pharmacy)

6. Respondent is subject to disciplinary action pursuant to Code section 4301, subdivision (n), on the grounds of unprofessional conduct, as follows:

A. The North Carolina Board of Pharmacy (North Carolina Board) brought a disciplinary action against Respondent in a matter titled "In the Matter of John C. Simms, License No. 17427." Based on admissions of Respondent, the North Carolina Board determined that while employed as a pharmacist at Eckerd Drugs in Marion, North Carolina, he committed acts that gave sufficient cause to take disciplinary action against him, and that he had become physically or mentally disabled to practice pharmacy with reasonable skill, competence and safety to the public. On or about June 10, 2005, the North Carolina Board terminated the right of Respondent to practice pharmacy in the State of North Carolina by accepting the surrender of his license. Respondent acknowledged the surrender of license was made voluntarily without pressure, coercion or the threat of force being made against him, in a document titled "Voluntary Surrender of License for Cause" ("surrender document"). Respondent also waived any further findings with respect to the disciplinary proceedings.

B. In the surrender document, Respondent acknowledged understanding and accepting that his license would not be returned until and unless the North Carolina Board issues a reinstatement order, that he must petition the North Carolina Board for reinstatement, that there is no time limit established for the North Carolina Board to hear a petition for reinstatement, and that there is no presumption, guarantee or other implication that the North Carolina Board will reinstate his license to practice pharmacy.

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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 Pharmacist License Number RPH 44553, issued to John Cardwell Simms;

2. Ordering John Cardwell Simms 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: 8/28/06

VIRGINIA K. HEROLD
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant