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

In the Matter of the Accusation Against: MAX AUGUST RYDEN P.O. Box 475 Big Bear Lake, CA 92315 Pharmacist Intern Permit No. INT 18460 Respondent.	Case No. 3048

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 August 8, 2008.

It is so ORDERED July 9, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Kenneth H. Schell
KENNETH H. SCHELL
Board President

EDMUND G. BROWN JR., Attorney General
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: MAX AUGUST RYDEN P.O. Box 475 Big Bear Lake, CA 92315 Pharmacist Intern Permit No. INT 18460 Respondent.	Case No. 3048 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Jennifer S. Cady, Deputy Attorney General.

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2. Respondent Max August Ryden (Respondent) is represented in this proceeding by attorney Benjamin R. Margolis, whose address is 1387 Monument Street Pacific Palisades, CA 90272-2544.

3. On or about November 3, 2005, the Board of Pharmacy issued Pharmacist Intern Permit No. INT 18460 to Max August Ryden (Respondent). The Pharmacist Intern Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 3048 and will expire on November 30, 2010, unless renewed.

JURISDICTION

4. Accusation No. 3048 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 January 4, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3048 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3048. Respondent has also carefully read, fully discussed with counsel, and 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.

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3048.

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

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 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.

11. 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.

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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist Intern Permit No. INT 18460 issued to Respondent Max August Ryden (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

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

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

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

2. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. The report shall also state the name of Respondent's employer(s) or where he has worked as an intern for the previous quarter and the number of hours he has worked during the previous quarter. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

3. **Interview with the Board.** Upon receipt of reasonable notice, 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. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case No. 3048 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. 3048.

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. 3048 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.

6. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $7,500.00. Respondent shall make said payments as follows: Payments shall be made in equal quarterly installments during the first 48 months of probation, with the first installment due thirty (30)days following the effective date of this order, and continuing until the entire $7,500.00 is paid in full.

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

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

8. **Status of License.** Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which

suspension or probation is tolled.

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

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

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

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

11. **Notification of Pharmacy School Attendance / Graduation.** Respondent must notify and advise the Board, within seven (7) days, of the time he ceases to be enrolled in and / or graduates from pharmacy school.

12. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time

shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

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

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

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

15. **Rehabilitation Program - Pharmacists Recovery Program (PRP).** Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The costs for PRP participation shall be borne by the Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully

participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

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

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

18. **Probation to Continue if Licensed as a Pharmacist.** Should the Board issue a license to practice as a Pharmacist or issue any other registration or license of any kind to Respondent during the period of probation, the registration or license shall be immediately revoked. The revocation of such registration of license shall be stayed, and the probation imposed by this agreement will continue. Respondent shall be subject to the same terms and conditions imposed by this disciplinary order. Notwithstanding this provision, the

Board reserves the right to deny Respondent's application for the pharmacist licensure exam.

19. **Additional Terms and Conditions Imposed if Licensed as a Pharmacist.** If the Board issues a license to practice as a pharmacist to Respondent, the following additional terms and conditions shall be included as a part of this Disciplinary Order:

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

B. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Benjamin R. Margolis. I understand the stipulation and the effect it will have on my Pharmacist Intern Permit. 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: 10 April, 2008.

Max Ryden

MAX AUGUST RYDEN
Respondent

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

DATED: 4-10-08.

BENJAMIN R. MARGOLIS
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: 4/19/2008

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

MARC D. GREENBAUM
Supervising Deputy Attorney General

JENNIFER S. CADY
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2006602037
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Exhibit A

Accusation No. 3048

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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: MAX AUGUST RYDEN P.O. Box 475 Big Bear Lake, CA 92315 Pharmacist Intern Permit No. INT 18460 Respondent.	Case No. 3048 ACCUSATION

Complainant alleges:

PARTIES

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

2. On or about November 3, 2005, the Board of Pharmacy issued Pharmacist Intern Permit No. INT 18460 to Max August Ryden (Respondent). The Pharmacist Intern Permit was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the 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.

4. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

5. Section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending ore revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

6. Section 4060 of the Code states, in pertinent part, as follows:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. . . ."

7. Section 4301 of the Code states, in pertinent part, as follows:

"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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

. . . .

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

(p) Actions or conduct that would have warranted denial of a license. . . ."

8. Section 11170 of the Health and Safety Code provides: "No person shall prescribe, administer, or furnish a controlled substance for himself."

9. Section 11173, subdivision (a), of the Health and Safety Code provides: "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 11350, subdivision (a), of the Health and Safety Code provides:

"Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison."

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11. Section 125.3 of the Code provides, 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.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

12. OxyContin, a brand name formation of oxycodone hydrochloride, is an opioid agonist and a Schedule II control substance, as defined in Health and Safety Code section 11055(b)(1), and a dangerous drug, as defined in section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Obtained Controlled Substance by Dishonesty, Fraud, Deceit or Subterfuge)

13. Respondent is subject to disciplinary action under section 4301, subdivisions (f), (j), and (o), and Health and Safety Code section 11173, subdivision (a), on the grounds of unprofessional conduct. The circumstances are as follows:

a. On or about April 2, 2006, while working as a pharmacist intern at USC University Hospital, Respondent removed eight (8) tablets of Oxycontin 80 mg CR from the Fourth Floor ICU Pyxis machine, by concealment, and without a valid prescription for the medication.

b. On or about April 28, 2006, while working as a pharmacist intern at USC University Hospital, Respondent removed five (5) tablets of Oxycontin 80 mg CR from the Fourth Floor ICU Pyxis machine, by concealment, and without a valid prescription for the medication.

SECOND CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance without a Valid Prescription)

14. Respondent is subject to disciplinary action under sections 4060, and 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct and for violating Health and Safety Code section 11350, subdivision (a), in that Respondent was in possession of Oxycontin, without a valid prescription, and as more fully set forth above in paragraph 13.

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THIRD CAUSE FOR DISCIPLINE

(Furnished Controlled Substances to Oneself)

15. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct and for violating Health and Safety Code section 11170, in that Respondent furnished and/or administered Oxycontin, a controlled substance as defined in Health and Safety Code section 11055(b)(1), to himself and as more fully set forth above in paragraph 13.

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 Intern Permit No. INT 18460, issued to Max August Ryden.

2. Ordering Max August Ryden 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: 12/17/07

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2006602037

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