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

In the Matter of the Accusation Against:

Case No. 3071

JACK WELBY PARKER, JR. 1213 Cayetano Drive Napa, California 94559 OAH No.

Pharmacist License No. RPH 24562

Respondent.

## **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 this matter.

This Decision shall become effective on October 5, 2007

It is So ORDERED \_\_\_\_\_\_ September 5, 2007\_\_\_\_\_

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

WILLIAM POWERS Board President

ب ت		
		LOTIVING MODELA DOARD OF SHALLFAR
1	EDMUND G. BROWN JR., Attorney General of the State of California	2007 JUL 31 AM 7: 15
2	FRANK H. PACOE Supervising Deputy Attorney General	
3	JOSHUA A. ROOM, State Bar No. 214663 Deputy Attorney General	
4	California Department of Justice 455 Golden Gate Avenue, Suite 11000	
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1299	
7	Facsimile: (415) 703-5480	
8	Attorneys for Complainant	
° 9	BEFORE THE BOARD OF PHARMACY	
10	DEPARTMENT OF CON STATE OF CAL	
10	In the Matter of the Accusation Against:	Case No. 3071
11	JACK WELBY PARKER, JR.	OAH No.
12	1213 Cayetano Drive Napa, California 94559	STIPULATED SURRENDER OF LICENSE AND ORDER
14	Pharmacist License No. RPH 24562	
15	Respondent.	
16		
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 of the Department of Consumer	
19	Affairs, the parties hereby agree to the following Stip	oulated Surrender of License and Order to be
20	submitted to the Board 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 (Board). She brought this action solely in	her official capacity and is represented in
24	this matter by Edmund G. Brown Jr., Attorney Gener	ral of the State of California, by Joshua A.
25	Room, Deputy Attorney General.	
26	2. Jack Welby Parker, Jr. (Respo	ndent) is representing himself in this
27	proceeding and has chosen not to exercise his right to	b be represented by counsel.
28	///	
	1	

1 3. On or about August 12, 1966, the Board issued Pharmacist License No. RPH 24562 to Respondent. The License was in full force and effect at all times relevant to the 2 3 charges in Accusation No. 3071 and will expire on April 30, 2009, unless renewed. 4 JURISDICTION 5 Accusation No. 3071 was filed before the Board of Pharmacy (Board), 4 6 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation 7 and all other statutorily required documents were properly served on Respondent on June 8, 8 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of 9 Accusation No. 3071 is attached as exhibit A and incorporated herein by reference. ADVISEMENT AND WAIVERS 10 5. 11 Respondent has carefully read and understands the charges and allegations 12 in Accusation No. 3071, Respondent also has carefully read and fully understands the effects of 13 this Stipulated Surrender of License and Order. Respondent is fully aware of his legal rights in this matter, including the 14 6. 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 8. 24 Respondent admits the truth of each and every charge and allegation in 25 Accusation No. 3071, agrees that cause exists for discipline, and hereby surrenders his 26 Pharmacist License No. RPH 24562 for the Board's formal acceptance. 27 9. Respondent understands that by signing this stipulation he enables the 28 Board to issue an order accepting the surrender of his License without further process.

# **CONTINGENCY**

,

1

~

2	10. This stipulation shall be subject to approval by the Board of Pharmacy.	
3	Respondent understands and agrees that counsel for Complainant and the staff of the Board may	
4	communicate directly with the Board regarding this stipulation and surrender, without notice to	
5	or participation by Respondent. By signing the stipulation, Respondent understands and agrees	
6	that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the	
7	Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and	
8	Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for	
9	this paragraph, it shall be inadmissible in any legal action between the parties, and the Board	
10	shall not be disqualified from further action by having considered this matter.	
11	OTHER MATTERS	
12	11. The parties understand and agree that facsimile copies of this Stipulated	
13	Surrender of License and Order, including facsimile signatures thereto, shall have the same force	
14	and effect as the originals.	
15	12. In consideration of the foregoing admissions and stipulations, the parties	
16	agree that the Board may, without further notice or formal proceeding, issue and enter the	
17	following Order:	
18	<u>ORDER</u>	
19	IT IS HEREBY ORDERED that Pharmacist License No. RPH 24562, issued to	
20	Respondent Jack Welby Parker, Jr., is surrendered and accepted by the Board of Pharmacy.	
21	13. The surrender of Respondent's Pharmacist License and the acceptance of	
22	the surrendered license by the Board shall constitute the imposition of discipline against	
23		
23	Respondent. This stipulation constitutes a record of the discipline and shall become a part of	
23 24		
	Respondent. This stipulation constitutes a record of the discipline and shall become a part of	
24	Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.	
24 25	Respondent. This 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	
24 25 26	Respondent. This 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.	

1 16. Respondent may not apply, reapply, or petition for any licensure or
 2 registration of the Board for three (3) years from the effective date of the Decision and Order.

17. Respondent understands and agrees that if he ever applies for licensure or
petitions for reinstatement in the State of California, the Board shall treat it as a new application
for licensure. Respondent must comply with all laws, regulations and procedures for licensure in
effect at the time any such application or petition is filed, and all of the charges and allegations in
Accusation No. 3071 shall be deemed to be true, correct and admitted by Respondent when the
Board determines whether to grant or deny the application or petition.

9 18. Should Respondent ever apply or reapply for a new license or certification,
10 or petition for reinstatement of a license, by any other health care licensing agency in the State of
11 California, all of the charges and allegations contained in Accusation, No. 3071 shall be deemed
12 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
13 other proceeding seeking to deny or restrict licensure.

14 19. Respondent shall pay the Board its costs of investigation and enforcement
15 in the amount of \$2,900.00 prior to issuance of a new or reinstated license.

16

17

22

23

24

25

26

27

28

111

111

///

## <u>ACCEPTANCE</u>

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 of Pharmacy.

DATED: y Panker J. Respondent

]			
1	1 <u>ENDORSEMEN</u>	<u>Γ</u>	
2	2 The foregoing Stipulated Surrender of Lic	ense and Order is hereby respectfully	
3		submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.	
4	4 DATED: 7/27/07		
5	5 EDMUND G. BRO of the State of Calif	WN JR., Attorney General ornia	
6	6 FRANK H. PACOI		
7			
8		Λ	
9	JOSHUĂ A. ROON		
10	<i>O s s</i>		
11		olainant	
12 13	DOJ Matter ID: SF2007400757	· · · · · ·	
14			
15			
16			
10			
18	18		
19			
20	20		
21	21		
22	22		
23	23		
24	24	· · · ·	
25	25		
26	26		
27	27		
28	28		
	5		

L.

, <b>n</b> Ti		
1	EDMUND G. BROWN JR., Attorney General	
2	of the State of California FRANK H. PACOE	
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663	
4	Deputy Attorney General California Department of Justice	
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004	. <sup>4</sup> .2
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480	
. 7	Attorneys for Complainant	
8	BEFORE	ГНЕ
9	BOARD OF PH DEPARTMENT OF CON	ARMACY
10	STATE OF CAL	
11	In the Matter of the Accusation Against:	Case No. 3071
12	JACK WELBY PARKER, JR.	OAH No.
12	1213 Cayetano Drive	ACCUSATION
	Napa, California 94559	ACCUSATION
14	Pharmacist License No. RPH 24562	
15	Respondent.	
16		
. 17	Complainant alleges:	
18	PARTI	
19	1. Virginia Herold (Complainar	nt) brings this Accusation solely in her official
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
21	2. On or about August 12, 1966	, the Board of Pharmacy issued Pharmacist
22	License Number RPH 24562 to Jack Welby Parker,	Jr. (Respondent). The Pharmacist License
23	was in full force and effect at all times relevant to the	he charges brought herein and will expire on
24	April 30, 2009, unless renewed.	
25	JURISDIC	TION
26	3. This Accusation is brought b	before the Board of Pharmacy (Board),
27	Department of Consumer Affairs, under the authority of the following laws. All section	
28	references are to the Business and Professions Cod	e (Code) unless otherwise indicated.
	1	

4. Section 4011 of the Code provides that the Board shall administer and
 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
 Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the
Board may be suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension,
7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
8 proceed with a disciplinary action during the period within which the license may be renewed,
9 restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license
10 that is not renewed within three years following its expiration may not be renewed, restored, or
11 reinstated and shall be canceled by operation of law at the end of the three-year period.

## STATUTORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall
take action against any holder of a license who is guilty of "unprofessional conduct," defined to
include, but not be limited to, any of the following:

12

16

20

26

"(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.

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

1 2 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or 3 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 4 5 established by the board or by any other state or federal regulatory agency. б 7 8, Section 4059 of the Code, in pertinent part, prohibits furnishing of any 8 dangerous drug or dangerous device except upon the prescription of an authorized prescriber. 9 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order. 10 Health and Safety Code section 11170 provides that no person shall 11 10. 12 prescribe, administer, or furnish a controlled substance for himself or herself. 13 11. Health and Safety Code section 11173, subdivision (a), provides that no 14 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure 15 the administration of or prescription for controlled substances, (1) by fraud, deceit, 16 misrepresentation, or subterfuge; or (2) by the concealment of a material fact. 17 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful 18 to possess certain Schedule I-III controlled substances, or any controlled substance in Schedules 19 III-V which is a narcotic drug, unless upon written prescription of an authorized prescriber. 20 13. Section 4327 of the Code makes it unlawful for a person, while on duty, to 21 sell, dispense or compound a drug while under the influence of alcohol or a dangerous drug. 22 14. Section 125.3 of the Code provides, in pertinent part, that the Board may 23 request the administrative law judge to direct a licentiate found to have committed a violation of 24 the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement. 25 CONTROLLED SUBSTANCES / DANGEROUS DRUGS 26 15. Section 4021 of the Code states: 27 "Controlled substance' means any substance listed in Chapter 2 (commencing 28 with Section 11053) of Division 10 of the Health and Safety Code."

f e service e	
1	16. Section 4022 of the Code states, in pertinent part:
2	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for
3	self-use, except veterinary drugs that are labeled as such, and includes the following:
4	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing
5	without prescription,' 'Rx only,' or words of similar import.
6	
7	"(c) Any other drug or device that by federal or state law can be lawfully
8	dispensed only on prescription or furnished pursuant to Section 4006."
9	17. Norco, Lortab, Vicodin, and Lorcet are brand names for compounds of
10	varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled
11	substance designated by Health and Safety Code section 11056(e)(4) and a dangerous drug
12	designated by Business and Professions Code section 4022. These varying compounds are also
13	known as Hydrocodone with APAP. These are narcotic pain relief drugs.
14	FACTUAL BACKGROUND
15	18. From in or about February 2006 until on or about August 29, 2006,
16	Respondent worked as a pharmacist at a Kaiser Pharmacy (PHY 36527) in Napa, California.
. 17	19. During that term of employment, on numerous unknown occasions, while
18	on duty as a pharmacist, Respondent took from pharmacy stock and self-administered numerous
19	unknown quantities of generic Lortab elixir, without authorization from a prescriber. During an
20	interview with a Board investigator, Respondent admitted that by March or April 2006, he began
21	drinking the generic Lortab elixir on a regular basis, sometimes taking it home but more often
22	imbibing on the job. By August 2006, he was drinking from the bottle up to 4-5 times per shift.
23	Respondent admitted that he was addicted to hydrocodone-containing drugs.
24	20. A covert carnera and video recorder installed in the pharmacy by Kaiser as
25	part of its investigation into possible theft by Respondent documented 13 examples of diversion
26	of Lortab elixir by Respondent during a video recording made on August 25 and 26, 2006.
27	21. Kaiser reported total losses between February 2006 and July 31, 2006 of at
28	least 15 pints (7,082 ml) of generic Lortab elixir missing from the Kaiser Pharmacy.

τ	
1	22. Respondent further admitted to the Board investigator that in or about June
2	2006, he took from the Kaiser Pharmacy stock and self-administered approximately 20 tablets of
3	Norco 10/325, without authorization from a prescriber.
4	
5	FIRST CAUSE FOR DISCIPLINE
6	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)
7	23. Respondent is subject to discipline under section 4301(f) of the Code in
8	that Respondent, as described in paragraphs 18-22 above, committed numerous acts involving
. 9	moral turpitude, dishonesty, fraud, deceit, or corruption.
10	SECOND CAUSE FOR DISCIPLINE
11	(Unlawful Self-Administration of a Controlled Substance)
12	24. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of
13	the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that
14	Respondent, as described in paragraphs 18-22 above, repeatedly furnished and/or administered to
15	himself unknown quantities of hydrocodone-containing controlled substances.
16	THIRD CAUSE FOR DISCIPLINE
17	(Unlawful Furnishing of Dangerous Drug)
18	25. Respondent is subject to discipline under section 4301(j) and/or (o) of the
19	Code, and/or section 4059 of the Code, in that Respondent, as described in paragraphs 18-22
20	above, furnished and/or conspired to furnish, and/or assisted in or abetted the furnishing of
21	unknown quantities of hydrocodone-containing dangerous drugs, without a valid prescription.
22	FOURTH CAUSE FOR DISCIPLINE
23	(Unlawful Possession of Controlled Substances)
24	26. Respondent is subject to discipline under section 4301(j) and/or (o) of the
25	Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 18-22
26	above, possessed, conspired to possess, and/or assisted in or abetted the possession of unknown
27	quantities of hydrocodone-containing controlled substances, without a valid prescription.
28	/// · · · · · · · · · · · · · · · · · ·

1	FIFTH CAUSE FOR DISCIPLINE
2	(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)
3	27. Respondent is subject to discipline under section 4301(j) and/or (o) of the
4	Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in
5	paragraphs 18-22 above, obtained unknown quantities of hydrocodone-containing controlled
6	substances, by fraud, deceit, misrepresentation, subterfuge, or concealment of material fact.
7	SIXTH CAUSE FOR DISCIPLINE
8	(Unlawful Possession of Narcotic Controlled Substances)
9	28. Respondent is subject to discipline under section 4301(j) and/or (o) of the
10	Code, and/or Health and Safety Code section 11350, in that, as described in paragraphs 18-22
11	above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of
12	narcotic hydrocodone-containing controlled substances, without a valid prescription.
13	SEVENTH CAUSE FOR DISCIPLINE
14	(Working as Pharmacist While Under the Influence)
15	29. Respondent is subject to discipline under section 4301(j) and/or (o) of the
16	Code, and/or section 4327 of the Code, in that Respondent, as described in paragraphs 18-22
17	above, was under the influence of hydrocodone-containing controlled substances and dangerous
18	drugs, while he was on duty selling, dispensing, or compounding drugs.
19	EIGHTH CAUSE FOR DISCIPLINE
20	(Unprofessional Conduct)
21	30. Respondent is subject to discipline under section 4301 of the Code in that
22	Respondent, as described in paragraphs 18-29 above, engaged in unprofessional conduct.
23	
24	///
25	///
26	
27	
28	

١

. .

р. Т.

## DISCIPLINE CONSIDERATIONS

31. 2 To determine the level of discipline, if any, to be imposed on Respondent, 3 Complainant alleges that on or about October 22, 1998, in a prior disciplinary action titled In the Matter of the Accusation Against Jack Welby Parker, Jr., Case No. 1975 before the Board of 4 5 Pharmacy, Respondent's License was subject to prior discipline. By way of a stipulated Decision 6 and Order of the Board effective October 22, 1998, Respondent admitted to misconduct alleged 7 in Accusation No. 1975, including that between May 1 and August 18, 1996, while working as a 8 Pharmacist in Charge, Respondent took from the stock of his employer at least 36 pints of Lortab 9 Elixir, a controlled substance, for his own use and without a prescription, then furnishing and/or 10 administering the drugs to himself. In the stipulated Decision and Order, Pharmacist License No. 11 RPH 24562 was revoked, with revocation stayed and Respondent placed on probation for five (5) years with terms and conditions including a 45-day suspension, completion of the Pharmacists 12 Recovery Program, random fluid testing, and abstention from drug and alcohol testing. That 13 14 decision is now final and is incorporated by reference as if fully set forth herein.

15 32. To determine the level of discipline, if any, to be imposed on Respondent, 16 Complainant alleges that, as was alleged in Accusation No. 1975 and admitted by Respondent in 17 the stipulated Decision and Order relating thereto, effective March 1, 1982, Respondent's license 18 was disciplined in Board case number 1068, for Respondent's misconduct in obtaining controlled 19 substances from employers for self-administration without prescriber authorization, including by 20 using forged prescriptions, and using them to an extent dangerous to himself. The License was 21 revoked, with revocation stayed and Respondent placed on probation for two (2) years, on terms 22 and conditions including a 5-day suspension and chemical dependency treatment. That decision 23 is now final and is incorporated by reference as if fully set forth herein.

24 🛛 ///

1

- 25 ///
- 26 ///
- 27 ///
- 28 ///

PRAYER 1 WHEREFORE, Complainant requests that a hearing be held on the matters herein 2 alleged, and that following the hearing, the Board of Pharmacy (Board) issue a decision: 3 Revoking or suspending Pharmacist License Number RPH 24562, issued 4 A. 5 to Jack Welby Parker, Jr. (Respondent); б Β. Ordering Respondent to pay the Board reasonable costs of investigation 7 and enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as is deemed necessary and proper. 8 C. 9 DATED: 10 11 12 13 Gł Executive Officer Board of Pharmacy 14 Department of Consumer Affairs 15 State of California Complainant 16 17 18 SF2007400757 19 40141924.wpd 20 21 22 23 24 25 26 27 28