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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for the Reinstatement of the License to Practice Pharmacy of: RICHARD A. SCHWEITZ, Pharmacist License No. RPH 31616, Petitioner.	Case No. 2548 OAH No. L2007010634

DECISION

On February 1, 2007, in La Jolla, California, a quorum of the Board of Pharmacy, Department of Consumer Affairs, State of California, heard and decided the Petition for the Reinstatement of the License to Practice Pharmacy of Richard A. Schweitz.

Present at the hearing were Board of Pharmacy President William Powers and Board Members Kenneth Schell, Pharm.D., Ruth Conroy, Pharm.D., Timothy Daze, Stanley Goldenberg, R.Ph., Clarence Hiura, Pharm.D., Henry Hough, Susan Ravnan, Pharm.D., Robert Swart, Pharm.D., and Andrea Zinder. Administrative Law James Ahler, Office of Administrative Hearings, State of California, conducted the administrative proceeding.

Deputy Attorney General Joshua Room appeared on behalf of the Office of the Attorney General, State of California.

Petitioner Richard A. Schweitz represented himself and was present throughout the hearing on the petition.

The matter was submitted and was decided in executive session by the Board of Pharmacy on February 1, 2007.

FACTUAL FINDINGS

License History

1. On December 7, 1977, the Board of Pharmacy, Department of Consumer Affairs, State of California (the board), issued Pharmacy License No. RPH 31616 to Richard A. Schweitz (petitioner or Schweitz).

Citation No. CI 2003 25583:

2. From May 1, 2002, to May 1, 2003, in his role as pharmacist-in-charge, petitioner failed to maintain complete and accurate records of the acquisition and disposition of controlled substances, failed to provide sufficient security of those controlled substances, and failed to secure those controlled substances in a manner calculated to prevent their unlawful diversion, in violation of Business and Professions Code section 4061, Health and Safety Code section 11208, and California Code of Regulations, title 16, section 1714, subdivision (c).

Citation No. CI 2003 25583 was issued on November 4, 2004.

A $5,000 fine was imposed.

License Revocation:

3. On October 28, 2002, an accusation was filed in Case No. 2548, alleging petitioner was subject to disciplinary action as a result of the self-administration of a controlled substance, furnishing dangerous drugs to himself, possessing a controlled substance, and violating statutes, laws and regulations governing the practice of pharmacy.

On July 10, 2003, petitioner signed a stipulation, decision, and order adopted by the board as its decision in the matter. Petitioner was represented by counsel. In the stipulation, petitioner admitted the truth of the allegations related to his furnishing of Ultram, a dangerous drug, to himself for his own use, that in doing so he violated the laws and regulations governing the practice of pharmacy, and that those allegations provided cause to revoke his pharmacy license.

Petitioner's license was revoked effective October 25, 2003.

Citation No. CI 2004 28481:

4. From October 26, 2003, through December 2003, petitioner fraudulently represented himself as a pharmacist in violation of Business and Professions Code section 4322.

Modified Citation No. CI 2004 28481 was issued on June 23, 2005.

A $2,500 fine was imposed.

The Criminal Conviction

5. The conduct giving rise to Citation No. CI 2004 28481 (Factual Finding 4) resulted in petitioner's conviction on April 30, 2004, based on his plea of nolo contendere, of violating Business and Professions Code section 4322, a misdemeanor, in the Superior Court of California, County of Stanislaus. Imposition of sentence was suspended and petitioner

was placed on three years informal probation on condition that he provide 350 hours of community service and pay fines and fees of approximately $2,100. Petitioner completed the terms of and was granted an early release from probation on October 12, 2006.

The Petition for Reinstatement

6. On July 10, 2006, petitioner signed a petitioner for reinstatement that was subsequently filed with the board. In that petition, petitioner represented: That he became addicted to Norco and other controlled substances; that when he overcame his denial about his addiction, he sought education and treatment; and that he has been in rehabilitation since then. Petitioner represented that his rehabilitation had included his participation in the Living Center in Patterson, California, in February and March 2004, and involved working at Maynord's Chemical Dependency Recovery Center in Tuolumne, California. Petitioner represented that he "would very much like to continue relief pharmacy three days a week and continue to offer two days a week to the alcohol and drug treatment center that offers me the chance to given back and, hopefully, help others."

Attached to the petition were five letters of recommendation, proof of 33 hours of board-approved continuing education courses taken in 2005-2006, proof of completion of an 18-day residential treatment program at The Living Center, and proof of membership in the San Joaquin Pharmacists Association.

Letters of Reference

7. Michael R. Clark, PharmD. (Clark), Manager of the Wal-Mart Pharmacy in Sonora, California, stated he had known petitioner for 13 years and that during his tenure at Wal-Mart, petitioner was a very competent, efficient, and hard-working pharmacist. Clark was aware of petitioner's problems with drugs, his graduation from the rehabilitation program, and his attendance at weekly recovery meetings.

8. Kenji Yorkimura, P.Ph. (Yorkimura), represented he had known petitioner for many years and had employed petitioner for several years. Yorkimura stated petitioner was very accurate, punctual, and conscientious in his role as a pharmacist. Petitioner was forthright in discussing his substance abuse problems with Yorkimura. Yorkimura was aware that petitioner had completed a residential treatment program and was currently employed in a drug and alcohol treatment program.

9. Richard Hurych (Hurych) stated he had been friends with petitioner since 1972, and that he had observed petitioner on a social and professional basis. Hurych knew petitioner to be a hard worker, personable, and a good family man. Hurych was surprised to learn of petitioner's problems, but nevertheless felt petitioner was capable of being a good pharmacist.

10. Neal Parrish, Director of Maynord's Chemical Dependency Recovery Center in Tuolumne, California stated that petitioner had been employed at Maynord's for eight months. Parrish described petitioner as having an excellent work ethic and being a

responsible and trustworthy individual. In his employment with Maynord's, petitioner oversees the client support office, observes the clients' self-administration of medications, provides charting services, and monitors detox clients. Petitioner serves as the facility night manager on an as needed basis.

11. Finally, Jeffrey A. Mason, a drug counselor, wrote that he had known petitioner since September 2005 and was "quite impressed with his professionalism and genuine empathy for our clients." Mason believed petitioner made enormous mistakes as a result of his addiction, but had overcome that addiction. Mason mentioned petitioner's honesty concerning his addiction, as well as the consequences thereof. Mason stated petitioner regularly facilitated recovery groups, educated clients about the physiology and pharmacology of various drugs, and demonstrated a passion for helping others. According to Mason, petitioner brought a fresh perspective to the recovery program; he believed petitioner could become a great substance abuse counselor.

12. Petitioner and his wife, Jan, testified at the hearing.

Petitioner's testimony was candid and heartfelt. He stated he was now a different person than when he was caught up in his addiction. Petitioner described how his use of narcotic analgesic medications began, how his use escalated without his realization that he was becoming addicted, the various ways in which he deceived himself into believing that he was not addicted, the depths to which he sank personally and professionally to maintain his addiction, and how the board's disciplinary actions caused him to reach [hit?] bottom without having to lose everything he had. Petitioner described himself as being grateful for his experiences, especially those occurring after he became aware he was an addict and began to rehabilitate himself.

Petitioner follows a 12-step of recovery program. Petitioner believed that Step One – in which he admitted he was powerless over drugs and his life had become unmanageable – was the foundation of his recovery. With the help of his 12-step program and the support of his family and his NA sponsor, petitioner no longer uses illegal drugs or consumes alcohol. Petitioner claimed a sobriety date of February 25, 2004, the date he finally admitted to himself and his wife that he was powerless over pain medication and agreed to enter a residential treatment program.

After completing the residential treatment program, petitioner began working in the field of substance abuse recovery. Petitioner has a sponsor and is currently working on Step Nine – making direct amends to those to whom petitioner has caused harm. Petitioner candidly admitted that his petition and presentation to the board was a part of his working through Step Nine. Petitioner testified he would consider the return to the practice of pharmacy an honor and privilege.

Petitioner currently works for Maynord's, a substance abuse treatment program in Tuolumne County, where he regularly attends NA meetings and facilitates numerous group therapy meetings related to substance abuse and addiction.

Petitioner's wife testified that she and petitioner have been married 35 years, and that they have two sons, ages 26 and 22. Petitioner's wife described the difficulty petitioner experienced with regard to the completion of his professional education courses and the passing of required examinations. She felt that petitioner's perseverance in this regard demonstrated his love of the practice of pharmacy. She described her husband's extreme state of denial when he was in the midst of his addiction, and how his recovery began once he broke through that denial. She believed that petitioner has a well organized, meaningful program of recovery.

LEGAL CONCLUSIONS

1. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

A person seeking reinstatement must present strong proof of rehabilitation and the showing of rehabilitation must be sufficient to overcome the Board's former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

2. Business and Professions Code section 4309 provides in part:

> "(a) A person whose license has been revoked . . . may petition the board for reinstatement . . . after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:
>
> (1) At least three years for reinstatement of a revoked license.
>
> . . .
>
> (b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.
>
> (c) The petition may be heard by the board sitting with an administrative law judge. . .
>
> (d) In considering reinstatement . . . the board . . . hearing the petition may consider factors including, but not limited to, all of the following:
>
> (1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability. . ."

3. Cause was established under Business and Professions Code section 4309 to grant the petition and to reinstate petitioner's license on a probationary basis.

This conclusion is based on all Factual Findings and on Legal Conclusions 1 and 2.

ORDER

The petition for reinstatement Pharmacist License No. RPH 31616 is granted as follows:

A. That petitioner Richard A. Schweitz immediately pay all costs and fines previously imposed by the board which have not yet been paid;

B. That, following the satisfaction of condition A above, petitioner's license shall be reinstated and immediately revoked, with the order of revocation being stayed and with petitioner being placed on probation for a period of five (5) years on the following terms and conditions:

1. *Obey All Laws*:

Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Petitioner 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 contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime

- the imposition of any discipline, citation, or other administrative action filed by any state and federal agency which involves petitioner's pharmacy license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

2. *Reporting to the Board*:

Petitioner shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Petitioner shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. 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, petitioner 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*:

Petitioner shall cooperate with the board's inspectional program and in the board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation

5. *Continuing Education*:

Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

6. *Notice to Employers*:

Petitioner shall notify all present and prospective employers of this decision and of the prior decision, citations and conviction referred to in Factual Findings 2, 3, 4, and 5, and of the terms, conditions and restrictions imposed on petitioner as a result of this order. Within 30 days of the effective date of this decision, and within 15 days of petitioner undertaking new employment, petitioner 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 this matter.

If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify the direct supervisor, pharmacist-in-charge, and/or owner at

each such pharmacy of the and terms and conditions of this decision in advance of the petitioner commencing work at each such 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 petitioner is considered an employee or independent contractor.

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

Petitioner shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall petitioner be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

8. *Probation Monitoring Costs*:

Petitioner 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.

9. *Status of License*:

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

10. *Restricted Practice*:

Petitioner shall not engage in the solo practice of pharmacy until permitted to do so by the board. Petitioner shall submit proof satisfactory to the board of compliance with this term of probation.

11. *Rehabilitation Program – Pharmacists Recover Program*:

Within 30 days of the effective date of this decision, petitioner shall contact the Pharmacists Recovery Program for evaluation of any substance abuse problems. If necessary, petitioner 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 petitioner.

12. *Random Drug Screening*:

Petitioner, 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 shall be determined by the board. At all times petitioner 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 petitioner. Petitioner may not resume the practice of pharmacy until notified by the board in writing that he may do so.

13. *Abstain from Drugs and Alcohol Use*:

Petitioner 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, petitioner shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of petitioner. Petitioner shall ensure that he or she is not in the presence of or in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs.

14. *Participation in 12-Step Recovery Program*:

Petitioner shall continue his participation in a 12-step recovery program related to substance abuse. Petitioner shall participate in at least one 12-step recovery meeting a week and shall submit proof of attendance to the Board's representatives upon request.

15. *Community Services Program*:

Within 60 days of the effective date of this decision, petitioner shall submit to the board, for its prior approval, a community service program in which petitioner shall provide lectures and talks with pharmacy students or pharmacists concerning his experience, strength, and hope in the field of recovery from substance abuse and addiction. Petitioner shall provide ten hours per year of such services during the period he is on probation.

16. *No Supervision*:

Petitioner shall not supervise any ancillary personnel, including, but not limited to, registered pharmacy technicians or exemptees, of any entity licensed by the board.

17. *No Ownership of Premises*:

Petitioner shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Petitioner shall sell or transfer any legal or beneficial interest in any entity licensed by the board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board.

18. *License Surrender While on Probation*:

Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner 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, petitioner will no longer be subject to the terms and conditions of probation.

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

19. *Notification of Address Change*:

Petitioner shall notify the board in writing within ten 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. Petitioner shall notify the board in writing within ten days of a change in name, mailing address or phone number.

20. *Active Practice*:

Petitioner shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will constitute a violation of probation. If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition.

21. *Violation of Probation*:

If petitioner violates the terms of probation in any respect, the board, after giving petitioner 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 petitioner 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 petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, 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.

22. *Completion of Probation*:

Upon successful completion of probation, petitioner's license will be fully restored.

DATED: March 8, 2007

Effective Date: March 12, 2007

William Powers

WILLIAM POWERS, President
Board of Pharmacy
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: RICHARD A. SCHWEITZ 12941 Sylva Lane Sonora, CA 95370 Original Pharmacist License No. RPH 31616 Respondent.	Case No. 2548 OAH No. N20030010030 **STIPULATION, DECISION AND ORDER**

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

PARTIES

1. Patricia F. Harris (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 Bill Lockyer, Attorney General of the State of California, by Janice K. Lachman, Deputy Attorney General.

2. Respondent Richard A. Schweitz (Respondent) is represented in this proceeding by attorney Robert F. Hahn of the Law Offices of Gould & Hahn, 5801 Christie Avenue, Suite 385, Emeryville, CA 94608.

3. On or about December 7, 1977, the Board of Pharmacy issued Original Pharmacist License No. RPH 31616 to Richard A. Schweitz. The license was in full force and

effect at all times relevant to the charges brought in Accusation No. 2548 and will expire on October 31, 2003, unless renewed.

JURISDICTION

4. Accusation No. 2548 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 November 8, 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2548 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. 2548. 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.

CULPABILITY

8. Respondent admits the truth of the charges and allegations pertaining to Ultram, a dangerous drug, contained in paragraphs 16 and 19 in Accusation No. 2548. Respondent understands and agrees that should he ever reapply for licensure as a Pharmacist or for any other registration or license issued by the Board, all of the charges contained in

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Accusation No. 2548 shall be deemed true and admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or re-application.

9. Respondent agrees that his 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.

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.

13. 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 31616, issued to Respondent Richard A. Schweitz, is revoked. It is further ordered that should Respondent ever reapply for licensure as a Pharmacist or apply for any other registration or license issued by the Board:

1. All of the charges contained in Accusation No. 2548 shall be deemed admitted as true; and,

2. Prior to issuance of any new license, Respondent shall pay to the Board the costs of investigation and prosecution related to Accusation No. 2548 in the amount of $4,500.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will have on my license to practice as a pharmacist. 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: 7/10/03

RICHARD A. SCHWEITZ
Respondent

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

DATED: 7/10/03

For Robert F Hahn

ROBERT F. HAHN
Attorney for Respondent

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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: 8/11/03.

BILL LOCKYER, Attorney General
of the State of California

Janice K. Lachman

JANICE K. LACHMAN
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: SA2002ad0980

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

In the Matter of the Accusation Against: RICHARD A. SCHWEITZ 12941 Sylva Lane Sonora, CA 95370 Original Pharmacist License No. RPH 31616 Respondent.	Case No. 2548 OAH No. N20030010030

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 October 25, 2003.

It is so ORDERED September 25, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

JOHN D. JONES
Board President

Exhibit A

Accusation No. 2548

BILL LOCKYER, Attorney General
of the State of California
JANICE K. LACHMAN, State Bar No. 186131
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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: RICHARD A. SCHWEITZ 12941 Sylva Lane Sonora, CA 95370 Original Pharmacist License No. RPH 31616 Respondent.	Case No. 2548 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia F. Harris (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 December 7, 1977, the Board of Pharmacy issued Original Pharmacist License No. RPH 31616 to Richard A. Schweitz (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2003, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 4301[1] of the Code provides that the Board shall take action against any licensee who is guilty of unprofessional conduct, which is defined by Code section 4301 as including, but as not limited to, any of the following:

> "(j) The violation of any of the statutes of this 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."

5. Section 4059 of the Code provides, in pertinent part, that "[n]o person shall furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . . ."

6. Section 4060 of the Code states:

> "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. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.
>
> "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

7. Under section 4022 of the Code, a dangerous drug is defined as any drug requiring a prescription under federal law.

8. Under section 4021 of the Code, a controlled substance is defined as "any substance listed in Chapter 2...of Division 10 of the Health and Safety Code."

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1. Formerly Code section 4350.5

9. Section 125.3 of the Code provides, in part, 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.

DRUGS

10. Ultram (tramadol) is a central analgesic which is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

11. Hydrocodone/acetaminophen 7.5/500 mg tablets and elixir, Lorcet 10/650, and Vicodin HP are narcotic analgesic combinations consisting of varying strengths of hydrocodone in combination with varying strengths of acetaminophen. All are classified as dangerous drugs pursuant to Business and Professions Code section 4022 as well as Schedule III controlled substances as defined by Health and Safety Code section 11056(e), pertaining to narcotic drug compounds.

12. Vicodin Tuss is a narcotic antitussive with an expectorant, a combination of 5 mg hydrocodone and 100 mg guaifenesin per teaspoon. Classified as a dangerous drug pursuant to Business and Professions Code section 4022 as well as a Schedule III controlled substance as defined by Health and Safety Code section 11056(e) (narcotic drug compounds).

13. Promethazine with codeine syrup is an antitussive combination of 6.25 mg promethazine and 10 mg codeine. Classified as a dangerous drug pursuant to Business and Professions Code section 4022 as well as a Schedule V controlled substance as defined by Health and Safety Code section 11058(c), pertaining to narcotic drug compounds.

FACTUAL BACKGROUND

14. Between late October and early November 1999, several employees of Wal-Mart in Sonora, California, witnessed respondent taking and consuming drugs from the pharmacy's inventory during times when respondent was employed and on duty at Wal-Mart as a pharmacist. On two different occasions, one of the employee-witnesses saw respondent drink from a bottle of liquid containing hydrocodone, a controlled substance. Around the same period

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of time, the other two employee-witnesses saw respondent taking and consuming prescription drugs in both tablet and liquid form from the pharmacy inventory.

15. On or about November 4, 1999, the Pharmacy District Manager for Wal-Mart and two Wal-Mart loss prevention District Managers interviewed respondent regarding the reported incidents. Respondent admitted to the unauthorized taking of both a controlled and non-controlled substance prescription drug for his own use, including Ultram. Respondent was then terminated for the unauthorized removal of company property.

FIRST CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs)

16. Respondent is subject to disciplinary action under section 4059 in that respondent furnished to himself a dangerous drug(s) without a valid prescription on file therefor, as more fully set forth in paragraphs 11 and 12.

SECOND CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

17. Respondent is subject to disciplinary action under section 4060 in that respondent had possession of a controlled substance without authorization or a valid prescription therefor, as more fully set forth in paragraph 11 and 12.

THIRD CAUSE FOR DISCIPLINE

(Violation of Statutes Regulating Controlled Substances and Dangerous Drugs)

18. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) in that respondent violated statutes regulating controlled substances and dangerous drugs, including section 4059 and section 4060, as set forth in paragraphs 13 and 14, and provisions of the Health and Safety Code, as follows:

A. Health and Safety Code section 11158 which provides that no Schedule II, III, IV or V controlled substance may be dispensed without a prescription.

B. Health and Safety Code section 11170 which provides that "[n]o person shall prescribe, administer or furnish a controlled substance for himself."

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FOURTH CAUSE FOR DISCIPLINE

(Violating Laws and Regulations Governing Pharmacy)

19. Respondent is subject to disciplinary action under section 4301(o) in that respondent violated the laws and regulations governing pharmacy, as set forth in paragraphs 16 through 18.

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:

(a) Revoking or suspending Original Pharmacist License No. RPH 31616, issued to Richard A. Schweitz;

(b) Ordering Richard A. Schweitz 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;

(c) Taking such other and further action as deemed necessary and proper.

DATED: 10/28/02.

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

DOJ Docket No. 03583110SA2002AD0980
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