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

Case No. 3134			
OAH No.			
DECISION AND ORDER			
nd Disciplinary Order is hereby adopted by			
the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.			
on August 27, 2008 .			

Ву

KÉNNETH H. SCHELL

DEPARTMENT OF CONSUMER AFFAIRS

Board President

BOARD OF PHARMACY

STATE OF CALIFORNIA

1	EDMUND G. BROWN JR., Attorney General of the State of California	
2	FRANK H. PACOE	
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663	
4	Deputy Attorney General	
4	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004	
5	Telephone: (415) 703-1299 Facsimile: (415) 703-5480	
6	Attorneys for Complainant	
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8	BEFORE T BOARD OF PH	
9	DEPARTMENT OF CON STATE OF CAL	
	STATE OF CAL	MORNIA
10	In the Matter of the Statement of Issues Against:	Case No. 3134
11	GREGORY HAAS	OAH No.
12	2111 Saint Augustine Circle Petaluma, CA 94954	STIPULATED SETTLEMENT AND
13	,	DISCIPLINARY ORDER
14	Applicant for Registered Pharmacist License	
15	Respondent.	
16	In the interest of a prompt and speedy	settlement of this matter, consistent with the
17	public interest and responsibility of the Board of Pha	armacy, Department of Consumer Affairs,
18	the parties hereby agree to the following Stipulated S	Settlement and Disciplinary Order to be
19	submitted to the Board for approval and adoption as	final disposition of the Statement of Issues.
20		
21	PARTIE	<u> 2S</u>
22	1. Virginia Herold (Complainan	t) is the Executive Officer of the Board of
23	Pharmacy. She brought this action solely in her offi	cial capacity and is represented in this matter
24	by Edmund G. Brown Jr., Attorney General of the S	tate of California, by Joshua A. Room,
25	Deputy Attorney General.	
26	2. Gregory Haas (Respondent) is	s representing himself in this proceeding and
27	has chosen not to exercise his right to be represented	l by counsel.
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3. On or about August 13, 2007, Respondent filed an application dated August 8, 2007, with the Board of Pharmacy, to obtain a Registered Pharmacist License.

JURISDICTION

4. Statement of Issues No. 3134 was filed before the Board of Pharmacy (Board) and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on March 14, 2008. A copy of Statement of Issues No. 3134 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read and understands the charges and allegations in Statement of Issues No. 3134. Respondent has also carefully read 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 Statement of Issues; 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 Statement of Issues No. 3134.
- 9. Respondent agrees that his application for a Registered Pharmacist License is subject to denial 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

- Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, 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 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 upon confirmation of his passage of the required examination(s) and satisfaction of all other requirements of the application, the Board shall issue to Gregory Haas (Respondent) a Registered Pharmacist License which shall then be immediately revoked. However, the revocation shall be stayed and Respondent shall be placed on three (3) years probation on the following terms and conditions.

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 seventy-two (72) hours of such occurrence:

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- 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. If a 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. **Continuing Education.** Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.
- 6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 3134 and the terms, conditions and restrictions imposed on Respondent by the decision. Within thirty (30) days of the effective date of the decision, and within fifteen (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 number 3134.

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 terms and conditions of the decision in case number 3134 in advance of the Respondent commencing work at each pharmacy.

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

- 7. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within ten (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.
- 8. **No Ownership of Premises.** Respondent 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. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.
- 9. 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 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.
- 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.
- 11. **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.

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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.

12. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, Respondent must notify the Board in writing within ten (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 reduction of the probation period. It is a violation of probation for probation to remain tolled pursuant to the provisions of this condition for more than three (3) 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 for the requisite number of hours.

- 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 ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three (3) 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.
- 14. **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.

1	If Respondent has not complied with any term or condition of probation, the
2	Board shall have continuing jurisdiction over Respondent, and probation shall automatically
3	be extended until all terms and conditions have been satisfied or the Board has taken other
4	action as deemed appropriate to treat the failure to comply as a violation of probation, to
5	terminate probation, and to impose the penalty which was stayed.
6	15. Completion of Probation. Upon successful completion of probation,
7	Respondent's license will be fully restored.
8	
9	<u>ACCEPTANCE</u>
10	I have carefully read the Stipulated Settlement and Disciplinary Order. I
11	understand the stipulation and the effect it will have on my Registered Pharmacist License. I
12	enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
13	intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.
14	DATED: 5/19/2008.
15	GREGORY HAAS
16	Respondent
17	<u>ENDORSEMENT</u>
18	The foregoing Stipulated Settlement and Disciplinary Order is hereby
19	respectfully submitted for consideration by the Board of Pharmacy of the Department of
20	Consumer Affairs.
21	DATED: 5/21/2008
22	EDMUND G. BROWN JR., Attorney General of the State of California
23	FRANK H. PACOE
24	Supervising Deputy Attorney General
25	(/1/- 2-
26	JOSHUA A. ROOM Deputy Attorney General
27	Attorneys for Complainant
28	DOJ Matter ID: SF2007403554; 40247159.wpd

Exhibit A
Statement of Issues No. 3134

J			
1	EDMUND G. BROWN JR., Attorney General		
2	of the State of California FRANK H. PACOE Supervising Deputy Attempty General		
3	Supervising Deputy Attorney General JOSHUA A. ROOM, State Bar No. 214663		
4	Deputy Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
5	Telephone: (415) 703-1299 Facsimile: (415) 703-5480		
6	Attorneys for Complainant		
7	BEFORE THE		
8	BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	T. 41 - Matter of the Otation and of James Assistant Comp. No. 2124		
11	In the Matter of the Statement of Issues Against: Case No. 3134		
12	GREGORY HAAS 2111 Saint Augustine Circle STATEMENT OF ISSUES		
13	Petaluma, CA 94954		
14	Applicant for Pharmacist License		
15	Respondent.		
16	Complainant alleges:		
17	<u>PARTIES</u>		
18	1. Virginia Herold (Complainant) brings this Statement of Issues solely in		
19	her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.		
20	2. On or about August 13, 2007, the Board of Pharmacy, Department of		
21	Consumer Affairs received an application for a Registered Pharmacist License from Gregory		
22	Haas (Respondent). On or about August 8, 2007, Respondent certified under penalty of perjury		
23	the truthfulness of all statements, answers, and representations in the application. The Board		
24	denied the application on or about November 1, 2007.		
25	<u>JURISDICTION</u>		
26	3. This Statement of Issues is brought 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 Code unless otherwise indicated.

STATUTORY PROVISIONS

- 4. Section 4300, subdivision (c), of the Code states:
- "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:
 - "(1) Medical or psychiatric evaluation.
 - "(2) Continuing medical or psychiatric treatment.
 - "(3) Restriction of type or circumstances of practice.
 - "(4) Continuing participation in a board-approved rehabilitation program.
 - "(5) Abstention from the use of alcohol or drugs.
 - "(6) Random fluid testing for alcohol or drugs.
 - "(7) Compliance with laws and regulations governing the practice of pharmacy."
- 5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:

"(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.

"(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee . . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . . The board may take action . . . irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the [charges].

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"(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.

- 6. Section 480 of the Code states, in pertinent part:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- "(1) Been convicted of a crime. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- "(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
- "(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

7. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

self-use, except veterinary drugs that are labeled as such, and includes the following:

sale, furnishing, administering, offering to sell controlled substance, Vicodin).

8.

- b. In the course of a contemporaneous or subsequent interview, Respondent admitted that for a period of approximately two (2) years, he had been using the access to drugs afforded to him by his position as a Pharmacist at the Wal-Mart Pharmacy to steal/divert drugs from the stock of his employer and sell those drugs to individuals who came to him in or around the premises of the Pharmacy for cash or other consideration(s), without prescription. According to Respondent, the drugs stolen and sold without prescription included the controlled substances **Vicodin** and **Acetaminophen with codeine**, and the dangerous drug **Soma**. A total cash value of the thefts and resale was not determined, but Respondent received at least \$5,100.00 in cash.
- c. On or about April 26, 2000, Respondent was charged by Felony Complaint with three counts of violating Health and Safety Code section 11352(a) (illegal transport, sale, furnishing, administering, offering to sell controlled substance, **Vicodin**), all felonies, for three instances of illegal sales or offers to sell on March 31, March 24, and March 23, 2000.
- d. On or about June 16, 2000, Respondent pleaded nolo contendere to Count I of the Felony Complaint (pertaining to March 31, 2000), and Counts II and III were dismissed.
- e. On or about August 15, 2000, a judgment was entered ordering imposition of sentence suspended in favor of a period of formal probation of three (3) years, on terms and conditions including: 180 days in county jail, with credit for 1 day served; \$1,000.00 restitution; fines and fees of at least \$200.00; registration pursuant to Health and Safety Code section 11590; attendance of counseling and therapy as directed by probation; and full-time employment.
- 23. On or about July 22, 2000, in a case titled *In the Matter of the Accusation Against Gregory Steven Haas*, Board Case No. 2318, Complainant Patricia F. Harris filed an Accusation before the Board charging Respondent with cause for discipline against his license. The Accusation relied on Respondent's June 16, 2000 plea and conviction for felony violation of Health and Safety Code section 11352, and on related violations of state and federal law.
- 24. On or about March 22 and March 26, 2001, Respondent and his attorney executed a Stipulated Surrender of License and Order in Case No. 2318, by which Respondent admitted to the allegations in the Accusation and agreed to surrender his Pharmacist License.

 That Surrender was accepted by the Board in a Decision and Order effective November 3, 2001.

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25. On or about June 6, 2003, it having been determined that Respondent had satisfactorily completed the term of his criminal probation, including service of incarceration and payment of restitution, Respondent's petition for relief pursuant to Penal Code section 1203.4 was granted. Respondent was able to withdraw his plea of nolo contendere to the felony count of violating Health and Safety Code section 11352(a) and to enter a plea of not guilty, the charge was reduced from a felony to a misdemeanor, and the criminal case was dismissed.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

26. Respondent's application is subject to denial under sections 4300(c) and 480(a)(3) of the Code in that, as described in paragraphs 21-24, above, Respondent is guilty of unprofessional conduct and/or acts which if done by a licentiate would be (and were) grounds for suspension or revocation of a license, i.e., unprofessional conduct per section(s) 4301(j), (l), (o), 4059, and/or 4060 of the Code, Health and Safety Code section(s) 11158, 11173, 11350, 11351, and/or 11352, and/or United States Code, title 21, section 829, based on his conduct in and/or his conviction for stealing/selling controlled substances and dangerous drugs without prescription.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

27. Respondent's application is subject to denial under section 480(a)(1) of the Code in that, as described in paragraph 22, above, Respondent was convicted of a crime.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dishonest Acts)

28. Respondent's application is subject to denial under section 480(a)(2) of the Code in that, as described in paragraph 22, above, Respondent did acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another.

17.

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. Denying the application of Gregory Haas for a Pharmacist License;
- B. Taking such other and further action as is deemed necessary and proper.

dated: <u>3/11/08</u>

VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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