

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

In the Matter of the Accusation Against:

Case No. 3206

DENNIS STEVEN TONEY

P.O. Box 6400
Eureka, CA 95502

Pharmacist License No. RPH 35784

Respondent.

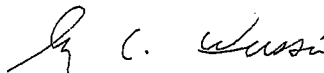
DECISION AND ORDER

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 June 22, 2011.

It is so ORDERED on May 23, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3206

13 **DENNIS STEVEN TONEY**
14 **P.O. Box 6400**
15 **Eureka, CA 95502**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Pharmacist License No. RPH 35784

Respondent.

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

20 PARTIES

21 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
22 this action solely in his official capacity, and is represented in this matter by Kamala D. Harris,
23 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

24 2. Dennis Steven Toney (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about August 25, 1980, the Board of Pharmacy issued Pharmacist License No.
27 RPH 35784 to Dennis Steven Toney (Respondent). The License was in full force and effect at all
28 times relevant to the charges herein and will expire on June 30, 2012, unless renewed.

CONTINGENCY

1
2 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and settlement, 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 Settlement 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 shall
10 not be disqualified from further action by having considered this matter.

11 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
12 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
13 effect as the originals.

14 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
18 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
19 writing executed by an authorized representative of each of the parties.

20 14. In consideration of the foregoing, the parties agree that the Board may, without
21 further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

25
26 IT IS HEREBY ORDERED that Pharmacist License No. RPH 35784, issued to Dennis
27 Steven Toney (Respondent), is revoked. However, the revocation is stayed and Respondent is
28 placed on probation for four (4) years on the following terms and conditions.

1 **1. Suspension**

2 As part of probation, Respondent is suspended from the practice of pharmacy for ninety
3 (90) days beginning the effective date of this decision. Upon timely provision of documentation
4 by Respondent showing to the satisfaction of the board or its designee that at any time since
5 January 1, 2008, Respondent has not worked as a pharmacist because he was (a) resident in an in-
6 patient treatment program for alcohol and/or drug abuse, or (b) suspended or otherwise prohibited
7 from working as a pharmacist at the direction of the Pharmacists Recovery Program, Respondent
8 may receive credit against this suspension period for such documented period(s) of non-work.

9 During suspension, respondent shall not enter any pharmacy area or any portion of the
10 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
11 drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
12 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
13 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
14 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
15 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
16 and controlled substances. Respondent shall not resume practice until notified by the board.

17 During suspension, respondent shall not engage in any activity that requires the
18 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
19 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
20 designated representative for any entity licensed by the board.

21 Failure to comply with this suspension shall be considered a violation of probation.

22 Subject to the above restrictions, respondent may continue to own or hold an interest in any
23 licensed premises in which he holds an interest at the time this decision becomes effective.

24 **2. Tolling of Suspension**

25 During the period of suspension, Respondent shall not leave California for any period
26 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
27 of ten (10) days during suspension shall be considered a violation of probation.

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1 Moreover, any absence from California during the period of suspension exceeding ten (10)
2 days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over
3 ten (10) days Respondent is absent from California. During any such period of tolling of
4 suspension, Respondent must nonetheless comply with all terms and conditions of probation.

5 Respondent must notify the board in writing within ten (10) days of departure, and must
6 further notify the board in writing within ten (10) days of return. The failure to provide such
7 notification(s) shall constitute a violation of probation. Upon such departure and return,
8 Respondent shall not resume the practice of pharmacy until notified by the board that the period
9 of suspension has been satisfactorily completed.

10 **3. Obey All Laws**

11 Respondent shall obey all state and federal laws and regulations.

12 Respondent shall report any of the following occurrences to the board, in writing, within
13 seventy-two (72) hours of such occurrence:

- 14 • an arrest or issuance of a criminal complaint for violation of any provision of the
15 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
16 substances laws
- 17 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
18 criminal complaint, information or indictment
- 19 • a conviction of any crime
- 20 • discipline, citation, or other administrative action filed by any state or federal agency
21 which involves Respondent's Pharmacist License or which is related to the practice of
22 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
23 for any drug, device or controlled substance.

24 Failure to timely report such occurrence shall be considered a violation of probation.

25 **4. Status of License**

26 Respondent shall, at all times while on probation, maintain an active, current license with
27 the board, including any period during which suspension or probation is tolled. Failure to
28 maintain an active, current license shall be considered a violation of probation.

1 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
2 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
3 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
4 probation not previously satisfied.

5 **5. Tolling of Probation**

6 Except during periods of suspension, Respondent shall, at all times while on probation, be
7 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
8 Any month during which this minimum is not met shall toll the period of probation, i.e., the
9 period of probation shall be extended by one month for each month during which this minimum is
10 not met. During any such period of tolling of probation, Respondent must nonetheless comply
11 with all terms and conditions of probation.

12 Should Respondent, regardless of residency, for any reason (including vacation) cease
13 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
14 Respondent must notify the board in writing within ten (10) days of the cessation of practice, and
15 must further notify the board in writing within ten (10) days of the resumption of practice. Any
16 failure to provide such notification(s) shall be considered a violation of probation.

17 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
18 provisions of this condition for a total period, counting consecutive and non-consecutive months,
19 exceeding thirty-six (36) months.

20 "Cessation of practice" means any calendar month during which Respondent is
21 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
22 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
23 month during which Respondent is practicing for at least forty (40) hours as a
24 pharmacist as defined by Business and Professions Code section 4000 et seq.

23 **6. Report to the Board**

24 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
25 designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, Respondent shall state in each report under penalty of perjury whether there has
27 been compliance with all the terms and conditions of probation. Failure to submit timely reports
28 in a form as directed shall be considered a violation of probation.

1 Any period(s) of delinquency in submission of reports as directed may be added to the total
2 period of probation. If the final probation report is not made as directed, probation shall be
3 automatically extended until such time as the final report is made and accepted by the board.

4 **7. Interview with the Board**

5 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
6 with the board or its designee, at such intervals and locations as are determined by the board or its
7 designee. Failure to appear for any scheduled interview without prior notification to board staff,
8 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
9 the period of probation, shall be considered a violation of probation.

10 **8. Cooperate with Board Staff**

11 Respondent shall cooperate with the board's inspection program and with the board's
12 monitoring and investigation of Respondent's compliance with the terms and conditions of his
13 probation. Failure to cooperate shall be considered a violation of probation.

14 **9. Continuing Education**

15 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
16 pharmacist as directed by the board or its designee.

17 **10. Notification of Change in Employment, Name, Address(es), or Phone(s)**

18 Respondent shall notify the board in writing within ten (10) days of any change of
19 employment. Said notification shall include the reasons for leaving, the address of the new
20 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
21 shall further notify the board in writing within ten (10) days of a change in name, residence
22 address, mailing address, or phone number.

23 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
24 phone number(s) shall be considered a violation of probation.

25 **11. Separate File of Records**

26 Respondent shall maintain and make available for inspection a separate file of all records
27 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such
28 file or make it available for inspection shall be considered a violation of probation.

1 **12. Supervised Practice**

2 During the period of probation, Respondent shall practice only under the supervision of a
3 licensed pharmacist not on probation with the board. Upon and after the effective date of this
4 decision, Respondent shall not practice pharmacy and his license shall be automatically
5 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
6 as required by the board or its designee, either:

7 Continuous – At least 75% of a work week

8 Substantial - At least 50% of a work week

9 Partial - At least 25% of a work week

10 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

11 Within thirty (30) days of the effective date of this decision, Respondent shall have his
12 supervisor submit notification to the board in writing stating that the supervisor has read the
13 decision in case number 3206 and is familiar with the required level of supervision as determined
14 by the board or its designee. It shall be the Respondent's responsibility to ensure that his
15 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
16 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
17 acknowledgements to the board shall be considered a violation of probation.

18 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
19 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
20 acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15)
21 days after employment commences, submit notification to the board in writing stating the direct
22 supervisor and pharmacist-in-charge have read the decision in case number 3206 and is/are
23 familiar with the level of supervision as determined by the board. Respondent shall not practice
24 pharmacy and his license shall be automatically suspended until the board or its designee
25 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
26 submit timely acknowledgements to the board shall be considered a violation of probation.

27 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

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1 During any such suspension, respondent shall not enter any pharmacy area or any portion of
2 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
3 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
4 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
5 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
6 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
7 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
8 and controlled substances. Respondent shall not resume practice until notified by the board.

9 During any such suspension, respondent shall not engage in any activity that requires the
10 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
11 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
12 designated representative for any entity licensed by the board.

13 Failure to comply with any such suspension shall be considered a violation of probation.

14 **13. Notice to Employers**

15 During the period of probation, Respondent shall notify all present and prospective
16 employers of the decision in case number 3206 and the terms, conditions and restrictions imposed
17 on Respondent by the decision, as follows:

18 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
19 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
21 tenure of employment) and owner to report to the board in writing acknowledging that the listed
22 individual(s) has/have read the decision in case number 3206, and terms and conditions imposed
23 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
24 supervisor(s) submit timely acknowledgment(s) to the board.

25 If Respondent works for or is employed by or through a pharmacy employment service,
26 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
27 licensed by the board of the terms and conditions in case number 3206 in advance of Respondent
28 starting work there. A record of this notification must be provided to the board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
2 (15) days of Respondent undertaking new employment by or through a pharmacy employment
3 service, Respondent shall cause his direct supervisor with the pharmacy employment service to
4 report to the board in writing acknowledging that he has read the decision in case number 3206
5 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure
6 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

7 Failure to timely notify present or prospective employer(s) or to cause such employer(s) to
8 submit timely acknowledgment(s) to the board shall be considered a violation of probation.

9 "Employment" within the meaning of this provision shall include any full-time,
10 part-time, temporary, relief or pharmacy management service as a pharmacist or any
11 position for which a pharmacist license is a requirement or criterion for employment,
12 whether the Respondent is an employee, independent contractor or volunteer.

13 **14. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
14 **Designated Representative-in-Charge, or Serving as a Consultant**

15 During the period of probation, Respondent shall not supervise any intern pharmacist, be
16 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
17 board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
18 unauthorized supervision responsibilities shall be considered a violation of probation.

19 **15. No New Ownership or Management of Licensed Premises**

20 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
21 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
22 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
23 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
24 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
25 or hereinafter licensed by the board, Respondent may continue to serve in such capacity or hold
26 that interest, but only to the extent of that position or interest as of the effective date of this
27 decision. Violation of this restriction shall be considered a violation of probation.

28 **16. Ethics Course**

Within sixty (60) calendar days of the effective date of this decision, Respondent shall, at
his own expense, enroll in a course in ethics approved in advance by the board or its designee.

1 Failure to initiate the course during the first year of probation, and complete it within the
2 second year of probation, shall be considered a violation of probation.

3 Respondent shall submit a certificate of completion to the board or its designee within five
4 (5) days after completing the course.

5 **17. Reimbursement of Board Costs**

6 As a condition precedent to successful completion of probation, Respondent shall pay to the
7 board its costs of investigation and prosecution in the amount of \$12,120.00, payable in full
8 within the first three (3) years of probation in equal quarterly installments of \$1,010.00. There
9 shall be no deviation from this schedule absent prior written approval by the board or its designee.
10 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

13 **18. Probation Monitoring Costs**

14 Respondent shall pay any costs associated with probation monitoring as determined by the
15 board each and every year of probation. Such costs shall be payable to the board on a schedule as
16 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
17 be considered a violation of probation.

18 **19. Community Services Program**

19 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
20 board or its designee, for prior approval, a community service program in which Respondent shall
21 provide free health-care related services on a regular basis to a community or charitable facility or
22 agency for at least one hundred twenty (120) hours to be completed during the first three (3) years
23 of probation. Within thirty (30) days of board approval thereof, Respondent shall submit
24 documentation to the board demonstrating commencement of the community service program. A
25 record of this notification must be provided to the board upon request. Respondent shall report on
26 progress with the community service program in the quarterly reports. Failure to timely submit,
27 commence, or comply with the program shall be considered a violation of probation.

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1 **20. Pharmacists Recovery Program (PRP)**

2 Within thirty (30) days of the effective date of this decision, Respondent shall contact the
3 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
4 successfully participate in, and complete the treatment contract and any subsequent addendums as
5 recommended and provided by the PRP and as approved by the board or its designee. The costs
6 for PRP participation shall be borne by Respondent.

7 If Respondent is currently enrolled in the PRP, said participation is now mandatory and as
8 of the effective date of this decision is no longer considered a self-referral under Business and
9 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
10 his current contract and any subsequent addendums with the PRP.

11 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
12 the treatment contract and/or any addendums, shall be considered a violation of probation.

13 Probation shall be automatically extended until Respondent successfully completes the
14 PRP. Any termination from the PRP program shall result in suspension by the board.
15 Respondent may not resume the practice of pharmacy until notified by the board in writing.

16 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
17 licensed practitioner as part of a documented medical treatment shall result in the automatic
18 suspension of practice by Respondent and shall be considered a violation of probation.
19 Respondent may not resume the practice of pharmacy until notified by the board in writing.

20 During any such suspension, respondent shall not enter any pharmacy area or any portion of
21 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
22 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
23 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
24 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
25 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
26 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
27 and controlled substances. Respondent shall not resume practice until notified by the board.

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1 During any such suspension, respondent shall not engage in any activity that requires the
2 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
3 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
4 designated representative for any entity licensed by the board.

5 Failure to comply with any such suspension shall be considered a violation of probation.

6 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
7 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid
8 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

9 **21. Abstain from Drug and Alcohol Possession or Use**

10 Respondent shall completely abstain from the possession or use of alcohol, controlled
11 substances, dangerous drugs and their associated paraphernalia except when the drugs are
12 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
13 request of the board or its designee, Respondent shall provide documentation from the licensed
14 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
15 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
16 violation of probation. Respondent shall ensure that he is not in the same physical location as
17 individuals who are using illicit substances even if Respondent is not personally ingesting the
18 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
19 not supported by the documentation timely provided, and/or any physical proximity to persons
20 using illicit substances, shall be considered a violation of probation.

21 **22. Random Drug Screening**

22 Respondent, at his own expense, shall participate in random testing, including but not
23 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
24 screening program for the detection of alcohol, narcotics, hypnotics, dangerous drugs or
25 controlled substances as the board or its designee may direct. Respondent may be required to
26 participate in testing for the entire probation period and frequency of testing will be determined
27 by the board or its designee. At all times, Respondent shall fully cooperate with the board or its
28 designee, and shall, when directed, submit to such tests and samples.

1 Failure to timely submit to testing as directed shall be considered a violation of probation.
2 Upon request of the board or its designee, Respondent shall provide documentation from a
3 licensed practitioner that the prescription for a detected drug was legitimately issued and is a
4 necessary part of the treatment of the Respondent. Failure to timely provide such documentation
5 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
6 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
7 shall be considered a violation of probation and shall result in automatic suspension of practice by
8 Respondent. Respondent may not resume practice until notified by the board in writing.

9 During any such suspension, respondent shall not enter any pharmacy area or any portion of
10 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
11 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
12 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
13 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
14 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
15 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
16 and controlled substances. Respondent shall not resume practice until notified by the board.

17 During any such suspension, respondent shall not engage in any activity that requires the
18 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
19 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
20 designated representative for any entity licensed by the board.

21 Failure to comply with any such suspension shall be considered a violation of probation.

22 **23. Violation of Probation**

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

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1 If Respondent violates probation in any respect, the board, after giving Respondent notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
4 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
5 a petition to revoke probation or an accusation is filed against Respondent during probation, the
6 board shall have continuing jurisdiction and the period of probation shall be automatically
7 extended until the petition to revoke probation or accusation is heard and decided.

8 **24. License Surrender While on Probation/Suspension**

9 Following the effective date of this decision, should Respondent cease practice due to
10 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
11 Respondent may tender his license to the board for surrender. The board or its designee shall
12 have the discretion whether to grant the request for surrender or take any other action it deems
13 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
14 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
15 record of discipline and shall become a part of the Respondent's license history with the board:

16 Upon acceptance of surrender, Respondent shall relinquish his pocket and wall license to
17 the board within ten (10) days of notification by the board the surrender is accepted. Respondent
18 may not reapply for any license from the board for three (3) years from the effective date of the
19 surrender. Respondent shall meet all requirements applicable to the license sought as of the date
20 the application for that license is submitted to the board, including any outstanding costs.

21 **25. Completion of Probation**

22 Upon written notice by the board or its designee indicating successful completion of
23 probation, Respondent's license will be fully restored.

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Exhibit A

Accusation No. 3206

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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11 **DENNIS STEVEN TONEY**
12 **P.O. Box 6400**
13 **Eureka, CA 95502**

A C C U S A T I O N

14 **Pharmacist License No. RPH 35784**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about August 25, 1980, the Board of Pharmacy issued Pharmacist License No.
21 RPH 35784 to Dennis Steven Toney (Respondent). The License was in full force and effect at all
22 times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

23
24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code (Code) unless otherwise indicated.

28 ///

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

5 (q) Engaging in conduct that subverts or attempts to subvert an investigation of the Board.

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

8 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
9 controlled substance, except that furnished upon a valid prescription/drug order.

10 10. Health and Safety Code section 11170 provides that no person shall prescribe,
11 administer, or furnish a controlled substance for himself or herself.

12 11. Health and Safety Code section 11173, subdivision (a), provides that no person shall
13 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
14 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
15 or subterfuge; or (2) by the concealment of a material fact.

16 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
17 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
18 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

19 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
20 person to use or be under the influence of any controlled substance in Schedule II (Health and
21 Safety Code section 11055), subdivision (b) or (c), or any narcotic drug in Schedules III-V,
22 except when administered by or under the direction of an authorized licensee.

23
24 COST RECOVERY

25 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation of the licensing
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

28 ///

1 a. **Cocaine** powder, ordered and/or received on or about March 13, 2007 (two 5
2 gram bottles), June 15, 2007 (two 5 gram bottles), and October 1, 2007 (two 5 gram bottles);

3 b. **Hydromorphone** powder, ordered and/or received on or about June 15, 2007
4 (one 25 gram bottle), and October 1, 2007 (one 25 gram bottle).

5 20. Other employees of the pharmacy or pharmacies noted and questioned the purchases,
6 and were told by Respondent that the purchased drugs were kept in a separate locked safe in each
7 pharmacy, apart from other controlled substances, to which only Respondent had access.

8 21. On or about November 2, 2007, Redwood Henderson was the subject of an inspection
9 by Board Inspector(s). Respondent was not present during the inspection. During the course of
10 the inspection, Respondent caused a key to be delivered to the pharmacy, with a note specifying it
11 would open the separate locked safe. Inside the safe, the Inspector(s) found two 5 gram bottles of
12 **cocaine** powder. The bottles were sealed with "pharmacy tape" rather than the seal that would be
13 used by a manufacturer or distributor. The Inspector(s) removed the two bottles as evidence. The
14 Inspector(s) spoke to Respondent by telephone, and Respondent stated that the two bottles found
15 in the safe were the two ordered and/or received in March 2007. He further stated that there were
16 additional bottles of **cocaine**, and of **hydromorphone**, located in the safe at Redwood Myrtle.

17 22. On or about November 2, 2007, Redwood Myrtle was the subject of an inspection by
18 Board Inspector(s). Respondent was present during the inspection. Respondent made available
19 for inspection: six 5 gram bottles of **cocaine** powder, all sealed with pharmacy tape, two with a
20 note attached by Respondent indicating they expired; one 100 gram bottle of **hydromorphone**
21 powder, with "outdate" note attached by Respondent (later sealed with pharmacy tape by Board
22 Inspector(s)); and one 25 gram bottle of **hydromorphone** powder (sealed with pharmacy tape).
23 When asked about the types and quantities of drugs, Respondent admitted that these quantities
24 were suspicious, but asserted that he used the **cocaine** powder for compounding "eye drops."
25 When the Inspector(s) asked Respondent to produce prescriptions calling for **cocaine** powder to
26 be used in any form (e.g., for a compounded drug), he was not able to do so. At the Inspector(s)'
27 request, Respondent weighed the contents of the two bottles of **hydromorphone**: the 25 gram
28 bottle contained 24.75 grams of powder; the 100 gram bottle contained 104.47 grams of powder.

1 23. Inspector(s) removed from Redwood Myrtle all six bottles of **cocaine** powder, and
2 the (overweight) 100 gram bottle of **hydromorphone** powder, as evidence.

3 24. At all times during and following both inspections, Respondent represented to the
4 Inspector(s) that the bottles removed from the pharmacies had the same contents they had when
5 they were received from the manufacturer(s)/distributor(s), and/or did not dispute that impression.

6 25. During and/or the conclusion of the inspection of Redwood Myrtle conducted on or
7 about November 2, 2007, the Board Inspector(s) prepared an Inspection Report describing the
8 evidence collected and the observations made, and a Receipt for the evidence collected. At the
9 direction of the Inspector(s), Respondent signed both of these documents.

10 26. On or about December 18, 2007, the two bottles of **cocaine** powder removed from
11 Redwood Henderson, and the six bottles of **cocaine** powder and one bottle of **hydromorphone**
12 powder removed from Redwood Myrtle, were submitted by Board Inspector(s) for lab analysis.

13 27. On or about January 12, 2008, lab analysis results demonstrated that the bottles that
14 purportedly contained **cocaine** powder instead contained lidocaine powder, and the bottle that
15 purportedly contained **hydromorphone** powder likewise contained another unknown substance.

16 28. On or about September 29, 2008, Respondent spoke to the Board Inspector(s) by
17 telephone. When pressed by the Inspector(s), Respondent admitted that the bottles removed by
18 the Inspector(s) on or about November 2, 2007 no longer had the same contents they had when
19 they were received from the manufacturer(s)/distributor(s). Respondent further admitted that he
20 had replaced the **cocaine** powder in each of the eight 5 gram bottles with lidocaine, and the
21 **hydromorphone** powder in the 100 gram bottle with boric acid. Respondent further admitted
22 that he had used/self-administered the **cocaine** and **hydromorphone** powders in the bottles, that
23 he had been using **hydromorphone** "for years," that the **cocaine** was more for "recreational" use,
24 and that he sometimes used the **cocaine** and the **hydromorphone** together. He further admitted
25 that he still had some **hydromorphone** powder at his home at the time of the inspection(s) on or
26 about November 2, 2007, which he used/self-administered subsequent to the inspection(s).

27 29. Respondent also admitted that he had previously had a drug problem, and that he had
28 been "eight years clean" before he relapsed with the use in and/or prior to 2007.

1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 30. Respondent is subject to discipline under section 4301(f) of the Code, in that
4 Respondent, as described in paragraphs 18 to 29 above, committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, or corruption.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (Creation/Signature of False Document(s))

9 31. Respondent is subject to discipline under section 4301(g) of the Code in that
10 Respondent, as described in paragraphs 18 to 29 above, created and/or signed documents that
11 falsely represented the existence or nonexistence of a state of facts.

12
13 THIRD CAUSE FOR DISCIPLINE

14 (Self-Administration of Controlled Substance(s)/Dangerous Drug(s))

15 32. Respondent is subject to discipline under section 4301(h) of the Code, in that
16 Respondent, as described in paragraphs 18 to 29 above, administered one or more controlled
17 substances to himself, and/or self-administered and/or used one or more dangerous drugs to the
18 extent or in a manner dangerous or injurious to himself or another, or to the extent that the use
19 impaired his ability to conduct his pharmacy practice safely.

20
21 FOURTH CAUSE FOR DISCIPLINE

22 (Furnishing of Controlled Substance(s)/Dangerous Drug(s))

23 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
24 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
25 in paragraphs 18 to 29 above, furnished to himself or another without a valid prescription, and/or
26 conspired to, assisted or abetted furnishing of, controlled substance(s) and/or dangerous drug(s).

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28 ///

1 NINTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 37. Respondent is subject to discipline under section 4301 of the Code in that
4 Respondent, as described in paragraphs 18 to 36 above, engaged in unprofessional conduct.

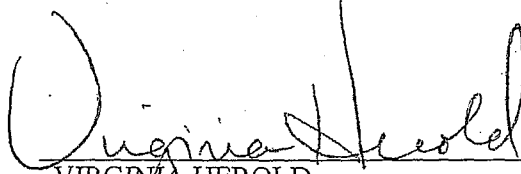
5
6
7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Pharmacy issue a decision:

- 10 1. Revoking or suspending Pharmacist License No. RPH 35784, issued to Dennis
- 11 Steven Toney (Respondent);
- 12 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 13 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 14 3. Taking such other and further action as is deemed necessary and proper.

15
16 DATED: _____

12/2/10



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

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