

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

In the Matter of the Accusation Against:

Case No. 3209

KEITH B. NISONOFF
10462 E. Prentice Avenue
Englewood, CO 80111

Pharmacist License No. RPH 43877

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 April 29, 2010.

It is so ORDERED on March 30, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By *Kenneth H. Schell*

KENNETH H. SCHELL
Board President

1 *EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR TAGGART
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7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
Against:

12 **KEITH B. NISONOFF**
13 **10462 E. Prentice Avenue**
14 **Englewood, Colorado 80111**
Pharmacist License No. RPH 43877

15 Respondent.

Case No. 3209

OAH No. 2009080217

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Edmund
23 G. Brown Jr., Attorney General of the State of California, by Elena L. Almanzo, Deputy Attorney
24 General.

25 2. Respondent Keith B. Nisonoff (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel

27 3. On or about September 7, 1990, the Board of Pharmacy issued Pharmacist License
28 No. RPH 43877 to Keith B. Nisonoff (Respondent). The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 3209 and expired on
2 November 30, 2009.

3 JURISDICTION

4 4. The First Amended Accusation; Case No. 3209 was filed before the Board of
5 Pharmacy (Board), Department of Consumer Affairs, and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on December 3, 2009. Respondent timely filed his Notice of Defense contesting
8 the Accusation. A copy of the First Amended Accusation; Case No. 3209 is attached as exhibit A
9 and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 3209. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent admits that as facutal basis exists for the purpose of imposing discipline
25 based on the allegations set forth in the First Amended Accusation; Case No. 3209. He further
26 agrees that in any future disciplinary proceeding before the Board all allegations set forth in the
27 First Amended Accusation shall be deemed admitted.

DISCIPLINARY ORDER

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2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 43877 issued to Respondent
3 Keith B. Nisonoff (Respondent) is revoked.

4 The revocation of Respondent's Pharmacy license shall constitute the imposition of
5 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
6 become a part of Respondent's license history with the Board.

7 Respondent shall lose all rights and privileges as a Pharmacist in California as of the
8 effective date of the Board's Decision and Order.

9 Respondent shall cause to be delivered to the Board his license certificate(s), on or before
10 the effective date of the Decision and Order.

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

13 Respondent understands and agrees that if he ever applies for licensure or petitions for
14 reinstatement in the State of California, the Board shall treat it as a petition for reinstatement.
15 Respondent must comply with all laws, regulations and procedures for licensure in effect at the
16 time an application or petition is filed, and all the charges and allegations contained in First
17 Amended Accusation; Case No. 3209 shall be deemed to be true, correct and admitted by
18 Respondent when the Board determines whether to grant or deny the application or petition.


19 Should Respondent ever apply or reapply for a new license or certification, or petition for
20 reinstatement of a license, by any other health care licensing agency in the State of California, all
21 of the charges and allegations contained in First Amended Accusation; Case No. 3209 shall be
22 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
23 Issues or any other proceeding seeking to deny or restrict licensure.

24 Respondent shall pay the Board its costs of investigation and enforcement in the amount of
25 \$2,821.00 prior to issuance of a new or reinstated license.

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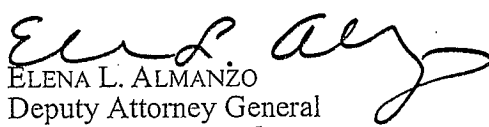
ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacist License. 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: 12/23/2009 
KEITH B. NISONOFF
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 1/4/2010 Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
ARTHUR TAGGART
Supervising Deputy Attorney General

ELENA L. ALMANZO
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation; Case No. 3209

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 ELENA L. ALMANZO, State Bar No. 131058
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 3209

12 KEITH B. NISONOFF
13 10462 E. Prentice Avenue
14 Englewood, CO 80111

**FIRST AMENDED
ACCUSATION**

14 Pharmacist License No. RPH 43877

15 Respondent.

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17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about September 7, 1990, the Board of Pharmacy issued Pharmacist
24 License Number RPH 43877 to Keith B. Nisonoff (Respondent). The Pharmacist License was in
25 full force and effect at all times relevant to the charges brought herein and will expire on
26 November 30, 2009, unless renewed.

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JURISDICTION

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

5 4. Section 4300 of the Code states in pertinent part:

6 “(a) Every license issued may be suspended or revoked.

7 “(b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found guilty, by
9 any of the following methods:

10 “(1) Suspending judgment.

11 “(2) Placing him or her upon probation.

12 “(3) Suspending his or her right to practice for a period not exceeding one year.

13 “(4) Revoking his or her license.

14 “(5) Taking any other action in relation to disciplining him or her as the board in
15 its discretion may deem proper.

16 5. Section 4301 of the Code states in pertinent part:

17 "The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
19 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
20 following:

21 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
22 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
23 otherwise, and whether the act is a felony or misdemeanor or not.

24 “(g) Knowingly making or signing any certificate or other document that falsely
25 represents the existence or nonexistence of a state of facts.

26 “(h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
28 injurious to oneself, to a person holding a license under this chapter, or to any other person or to

1 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
2 the public the practice authorized by the license.

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

5 "(n) The revocation, suspension, or other discipline by another state of a license to
6 practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this
7 chapter.

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

12 6. Section 4059 of the Code states, in pertinent part, that a person may not
13 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
14 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not
15 furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist,
16 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17 7. Section 4060 of the Code states:

18 "No person shall possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
20 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a
21 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
22 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to
23 Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
24 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall
25 not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
26 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
27 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
28 labeled with the name and address of the supplier or producer.

1 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
2 a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
3 and devices."

4 8. Code section 4022 states:

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe
6 for self-use in humans or animals, and includes the following:

7 (a) Any drug that bears the legend: "Caution: federal law prohibits
8 dispensing without prescription," "Rx only," or words of similar import.

9 (b) Any device that bears the statement: "Caution: federal law restricts this
10 device to sale by or on the order of a -----," "Rx only," or words of similar
11 import, the blank to be filled in with the designation of the practitioner licensed to
12 use or order use of the device.

13 (c) Any other drug or device that by federal or state law can be lawfully
14 dispensed only on prescription or furnished pursuant to Section 4006.

15 9. Section 125.3 of the Code provides, in pertinent part, that the Board may
16 request the administrative law judge to direct a licentiate found to have committed a violation or
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
18 and enforcement of the case.

19 DRUGS

20 10. "Diazepam", a benzodiazepine derivative, is a Schedule IV controlled
21 substance as designated by Health and Safety Code section 11057(d)(8).

22 11. "Vicodin" is a compound consisting of 5 mg. hydrocodone bitartrate also
23 known as dihydrocodeinone, a Schedule III controlled substance as designated by Health and
24 Safety Code section 11056(e)(4), and 500 mg. acetaminophen per tablet.

25 12. "Procardia XL" is a dangerous drug within the meaning of Business and
26 Professions Code section 4022 in that it requires a prescription under federal law.

27 13. "Carisoprodol" is a dangerous drug within the meaning of Business and
28 Professions Code section 4022 in that it requires a prescription under federal law.

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FIRST CAUSE FOR DISCIPLINE
(Out of State Discipline)

14. Respondent is subject to disciplinary action under section 4301 (n) for unprofessional conduct in that he was disciplined by the Colorado State Board of Pharmacy. The circumstances are as follows:

A. On or about July 17, 2001, the Colorado State Board of Pharmacy in In the Matter of Disciplinary Proceedings regarding the license to Practice Pharmacy in the State of Colorado of Keith Nisonoff, P. Ph. License No. 13628; P-99-029, issued an order suspending respondent's license for three months and imposed a three year probation.

B. On or about August 3, 2004, the Colorado State Board of Pharmacy in In the Matter of Disciplinary Proceedings regarding the license to Practice Pharmacy in the State of Colorado of Keith Nisonoff, P. Ph. License No. 13628, Case No. P-030129, issued an order suspending respondent's license for six months and imposed a five year probation.

C. On or about June 12, 2009, in Colorado Board of Pharmacy v. Keith B. Nisonoff, License No. 13628, before the Board of Pharmacy State of Colorado, the Board summarily suspended respondent's license to practice as a pharmacist pending further proceedings.

SECOND CAUSE FOR DISCIPLINE
(Furnishing)

15. Respondent is subject to disciplinary action under for unprofessional conduct pursuant to section 4301 (g) and section 4059 in that he in that he furnished controlled substances without legal authorization. The circumstances are as follows:

16. In the Stipulation for the decision by the Colorado State Board of Pharmacy set forth in 9 A above, Respondent admitted that he dispensed three prescriptions after the pharmacy's regular business hours without contacting the physicians listed on the prescription. The prescriptions were for a 5 day supply of 15 tablets for diazepam 5 mg. tablets, a 15 day supply of 30 tablets of Soma, and a 30 day supply of 30 tablets of Procardia XL 30 mg. tablets.

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2 THIRD CAUSE FOR DISCIPLINE
(Possession)

3 17. Respondent is subject to disciplinary action for unprofessional conduct
4 pursuant to sections 4301 subds. (f) , (g), and section 4060 in that he possessed a controlled
5 substance, Vicodin, without legal authorization therefor. The circumstances follow:

6 18. In the Stipulation for the decision by the Colorado State Board of
7 Pharmacy in 9 B above, Respondent admitted that on and between December 13, 2002 and May
8 7, 2003, he was employed at Walgreens Pharmacy #1769, 2000 E. Colfax, Denver, CO 80026
9 (PDO 243). During that time, the Respondent diverted approximately 250 tablets of hydrocodone
10 10 mg./acetaminophen 500 mg (a schedule III controlled substance) and approximately 250 tablets
11 of carisoprodol (a prescription drug) by forging a prescription order for each of the drugs.

12 FOURTH CAUSE FOR DISCIPLINE
13 (Administering to oneself)

14 19. Respondent is subject to disciplinary action for unprofessional conduct
15 pursuant to sections 4301 subds. (h)and (j), in that he diverted Vicodin, a controlled substance,
16 for self-use as more specifically set forth above in paragraph 18.

17 PRAAYER

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

20 A. Revoking or suspending Original Pharmacist License Number RPH 43877,
21 issued to Keith B. Nisonoff Keith B. Nisonoff.

22 B. Ordering Keith B. Nisonoff to pay the Board of Pharmacy the reasonable
23 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
24 section 125.3;

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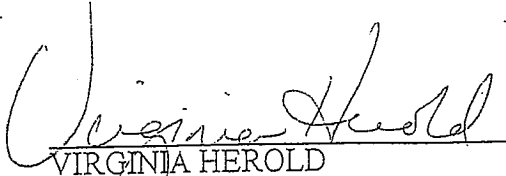
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C. Taking such other and further action as deemed necessary and proper.

DATED: 11/24/09



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

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