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

In the Matter of the Accusation Against: **KEITH B. NISONOFF** 10462 E. Prentice Avenue Englewood, CO 80111 Pharmacist License No. RPH 43877 Respondent.	Case No. 3209

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

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **KEITH B. NISONOFF** **10462 E. Prentice Avenue** **Englewood, Colorado 80111** **Pharmacist License No. RPH 43877** Respondent.	Case No. 3209 OAH No. 2009080217 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Virginia Herold (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 Edmund G. Brown Jr., Attorney General of the State of California, by Elena L. Almanzo, Deputy Attorney General.

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

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

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

JURISDICTION

4. The First Amended Accusation; Case No. 3209 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 December 3, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of the First Amended Accusation; Case No. 3209 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 Accusation No. 3209. 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 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 that as facutal basis exists for the purpose of imposing discipline based on the allegations set forth in the First Amended Accusation; Case No. 3209. He further agrees that in any future disciplinary proceeding before the Board all allegations set forth in the First Amended Accusation shall be deemed admitted.

9. Respondent agrees that his Pharmacist License is subject to discipline 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

10. 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.

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

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:

DISCIPLINARY ORDER

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

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

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

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

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

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

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

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

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

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: KEITH B. NISONOFF 10462 E. Prentice Avenue Englewood, CO 80111 Pharmacist License No. RPH 43877 Respondent.	Case No. 3209 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

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

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JURISDICTION

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

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

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

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

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

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

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

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

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

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

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

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

7. 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, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, 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, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, 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, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

8. Code section 4022 states:

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

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

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

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

9. Section 125.3 of the Code provides, in pertinent part, that 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. "Diazepam", a benzodiazepine derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(8).

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

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

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

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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THIRD CAUSE FOR DISCIPLINE
(Possession)

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

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

FOURTH CAUSE FOR DISCIPLINE
(Administering to oneself)

19. Respondent is subject to disciplinary action for unprofessional conduct pursuant to sections 4301 subds. (h)and (j), in that he diverted Vicodin, a controlled substance, for self-use as more specifically set forth above in paragraph 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 Number RPH 43877, issued to Keith B. Nisonoff Keith B. Nisonoff.

B. Ordering Keith B. Nisonoff 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;

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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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