

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

In the Matter of the Accusation Against:

Case No. 3271

JOSEPH J. SHERMAN, JR.

8920 Ortega Road
Atascadero, CA 93422

Designated Representative License No.
EXC 16823

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 January 28, 2010.

It is so ORDERED on December 29, 2009.

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 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
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Attorneys for Complainant
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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. 3271

13 **JOSEPH J. SHERMAN, JR.**
14 **8920 Ortega Road**
15 **Atascadero, CA 93422**
16 **Designated Representative License No. EXC**
17 **16823**

STIPULATED SURRENDER OF
LICENSE AND ORDER

Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia K. 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 Christina Thomas, Deputy Attorney
24 General.

25 2. Joseph J. Sherman, Jr. (Respondent) is represented in this proceeding by attorney
26 Doug Hayes, Esq., whose address is 125 E. Victoria St. Ste. H Santa Barbara, CA, 93101.

27 3. On or about January 6, 2003, the Board of Pharmacy issued Designated
28 Representative License No. EXC 16823 to Joseph J. Sherman, Jr. The license was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 3271 and will expire on
2 January 1, 2010, unless renewed.

3 JURISDICTION

4 3. Accusation No. 3271 was filed before the Board and is currently pending against
5 Respondent. The Accusation and all other statutorily required documents were properly served
6 on Respondent on July 20, 2009. Respondent timely filed his Notice of Defense contesting the
7 Accusation. A copy of Accusation No. 3271 is attached as exhibit A and incorporated herein by
8 reference.

9 ADVISEMENT AND WAIVERS

10 4. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 3271. Respondent also has carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
13 Order.

14 5. 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 6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 7. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 3271, agrees that cause exists for discipline and hereby surrenders his Designated
26 Representative License No. EXC 16823 for the Board's formal acceptance.

27 8. Respondent understands that by signing this stipulation he enables the Board Order
28 accepting the surrender of his Designated Representative License without further process.

1 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
2 proceeding seeking to deny or restrict licensure.

3 16. Respondent shall pay the Board its costs of investigation and enforcement in the
4 amount of \$2,081.00 prior to issuance of a new or reinstated license.

5 ACCEPTANCE

6 I have carefully read the above Stipulated Surrender of License and Order and have fully
7 discussed it with my attorney, Douglas Hayes, Esq.. I understand the stipulation and the effect it
8 will have on my Designated Representative License. I enter into this Stipulated Surrender of
9 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
10 Decision and Order of the Board.

11
12 DATED:

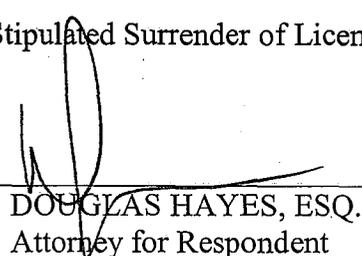
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JOSEPH J. SHERMAN, JR. Respondent

14 I have read and fully discussed with Respondent Joseph J. Sherman, Jr. the terms and
15 conditions and other matters contained in this Stipulated Surrender of License and Order. I
16 approve its form and content.

17 DATED:

9-9-9


DOUGLAS HAYES, ESQ.
Attorney for Respondent

19
20 ENDORSEMENT

21 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
22 for consideration by the Board.

Dated: August 21, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



CHRISTINA THOMAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3271

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
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8 **BEFORE THE**
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11 In the Matter of the Accusation Against:

Case No. 3271

12 **JOSEPH J. SHERMAN, JR.**
13 8920 Ortega Road
14 Atascadero, CA 93422

A C C U S A T I O N

15 Designated Representative License No. EXC 16823

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 6, 2003, the Board of Pharmacy (Board) issued Designated
23 Representative License No. EXC 16823 to Joseph J. Sherman, Jr. (Respondent). The Designated
24 Representative License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 1, 2010, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
28 the authority of the following laws. All section references are to the Business and Professions

1 Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender, or
4 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
5 action during the period within which the license may be renewed, restored, reissued or
6 reinstated.

7 5. Section 475 states, in pertinent part:

8 "(a) Notwithstanding any other provisions of this code, the provisions of this division
9 shall govern the denial of licenses on the grounds of:

10

11 "(2) Conviction of a crime. . . ."

12 6. Section 480 states, in pertinent part:

13 "(a) A board may deny a license regulated by this code on the grounds that the applicant
14 has one of the following:

15 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
16 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
17 board is permitted to take following the establishment of a conviction may be taken when the
18 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
19 an order granting probation is made suspending the imposition of sentence, irrespective of a
20 subsequent order under the provisions of Section 1203.4 of the Penal Code.

21

22 "(3)

23 "(A) Done any act that if done by a licentiate of the business or profession in question,
24 would be grounds for suspension or revocation of license. . . .

25 7. Section 490, subdivision (a), states:

26 "In addition to any other action that a board is permitted to take against a licensee, a board
27 may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if
28 the crime is substantially related to the qualifications, functions, or duties of the business or

1 profession for which the license was issued."

2 8. Section 4060 states, in pertinent part, that "[n]o person shall possess any controlled
3 substance, except that furnished to a person upon the prescription of a physician, dentist,
4 podiatrist, optometrist, veterinarian, or naturopathic doctor . . . or furnished pursuant to a drug
5 order issued by a certified nurse-midwife . . . a nurse practitioner . . . or a physician assistant . . .
6 or a pharmacist"

7 9. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
8 revoked."

9 10. Section 4301 states, in pertinent part:

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

13

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

17

18 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
21 to the extent that the use impairs the ability of the person to conduct with safety to the public the
22 practice authorized by the license.

23

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

26

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. . . . A plea or verdict of guilty or a conviction following a

1 plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The
2 board may take action when the time for appeal has elapsed, or the judgment of conviction has
3 been affirmed on appeal or when an order granting probation is made suspending the imposition
4 of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
5 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
6 the verdict of guilty, or dismissing the accusation, information, or indictment.

7

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

12 "(p) Actions or conduct that would have warranted denial of a license. . . ."

13 11. Health and Safety Code section 11350, subdivision (a), states:

14 "Except as otherwise provided in this division, every person who possesses (1) any
15 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
16 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
17 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
18 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
19 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
20 licensed to practice in this state, shall be punished by imprisonment in the state prison."

21 12. Health and Safety Code section 11377, subdivision (a), states:

22 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
23 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
24 Business and Professions Code, every person who possesses any controlled substance which is
25 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
26 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
27 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
28 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section

1 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
2 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
3 than one year or in the state prison."

4 REGULATORY PROVISIONS

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

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

12 COST RECOVERY

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

17 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18 15. 11. Cocaine, and any cocaine base, is a narcotic drug according to Health and
19 Safety Code section 11019(e). It is a Schedule I controlled substance, as designated in Health and
20 Safety Code section 11054(f)(1), and a Schedule II controlled substance, as designated in Health
21 and Safety Code section 11055(b)(6). It is categorized as a dangerous drug according to Business
22 and Professions Code section 4022.

23 FIRST CAUSE FOR DISCIPLINE

24 (Conviction of Substantially Related Crime)

25 16. Respondent is subject to disciplinary action under sections 490, 4300, subdivision (a),
26 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section
27 1770, in that Respondent was convicted of a crime substantially related to the qualifications,
28 duties and functions of a licensee which to a substantial degree evidence his present or potential

1 5, 2006, he possessed cocaine, a controlled substance and dangerous drug, without a valid
2 prescription. Complainant refers to and by this reference incorporates the allegations set forth
3 above in paragraph 16, subdivisions (a) and (b), inclusive, as though set forth fully.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Violating Laws Governing Pharmacy)**

6 19. Respondent is subject to disciplinary action under sections 4300, subdivision (a), and
7 4301, subdivision (o), on the grounds of unprofessional conduct, for violating section 4060, in
8 that on or about September 5, 2006, he possessed cocaine, a controlled substance and dangerous
9 drug, without a valid prescription. Complainant refers to and by this reference incorporates the
10 allegations set forth above in paragraph 16, subdivisions (a) and (b), inclusive, as though set forth
11 fully.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Conduct Warranting Denial of Licensure)**

14 20. Respondent is subject to disciplinary action under sections 4300, subdivision (a), and
15 4301, subdivision (p), on the grounds of unprofessional conduct, in that on or about September 5,
16 2006, and November 28, 2006, Respondent's committed acts or conduct would have warranted
17 denial of a licensure by violating sections, as follows:

18 a. Sections 475, subdivision (a)(2), and 480, subdivision (a)(1). On or about November
19 28, 2006, Respondent was convicted of a crime. Complainant refers to and by this reference
20 incorporates the allegations set forth above in paragraph 16, subdivisions (a) and (b), inclusive, as
21 though set forth fully.

22 b. Section 480, subdivision (a)(3)(A). On or about September 5, 2006, and on or about
23 November 28, 2006, Respondent committed acts that are grounds for suspension or revocation of
24 his license. Complainant refers to and by this reference incorporates the allegations set forth
25 above in paragraphs 16 – 20, inclusive, as though set forth fully.

26 ///

27 ///

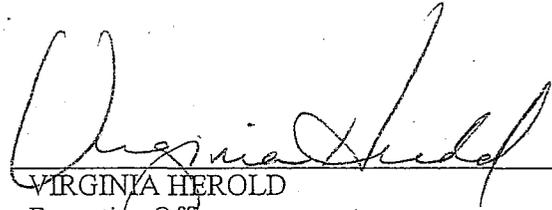
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PRAYER

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

1. Revoking or suspending Designated Representative License No. EXC 16823, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/09



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

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