

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

In the Matter of the Accusation Against:

Case No. 3291

MARVIN GEORGE GIBSON
116 South Creek Circle
Folsom, CA 95630

Pharmacist License No. RPH 27732

Respondent.

DECISION AND ORDER

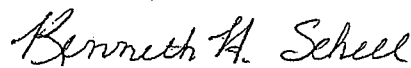
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 21, 2010.

It is so ORDERED on March 22, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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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 Accusation Against:

Case No. 3291

12 **MARVIN GEORGE GIBSON**
116 South Creek Circle
13 Folsom, CA 95630

OAH No. 2009080210

14 **STIPULATED SETTLEMENT AND**
15 **DISCIPLINARY ORDER**

16 ORIGINAL PHARMACIST LICENSE
17 No. RPH 27732

Respondent.

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 Karen R. Denvir, Deputy Attorney
24 General.

25 2. Respondent Marvin George Gibson (Respondent) is represented in this proceeding by
26 attorney Brian McGinity, whose address is 700 University Avenue, Suite 130, Sacramento, CA
27 95825.

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 27732 issued to Respondent Marvin George Gibson (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's original pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if

1 the final probation report is not made as directed, probation shall be automatically extended until
2 such time as the final report is made and accepted by the board.

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

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

13 **5. Continuing Education**

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

16 **6. Notice to Employers**

17 During the period of probation, Respondent shall notify all present and prospective
18 employers of the decision in case number 3291 and the terms, conditions and restrictions imposed
19 on Respondent by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
21 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
22 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
23 tenure of employment) and owner to report to the board in writing acknowledging that the listed
24 individual(s) has/have read the decision in case number 3291, and terms and conditions imposed
25 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
26 supervisor(s) submit timely acknowledgment(s) to the board.

27 If Respondent works for or is employed by or through a pharmacy employment service,
28 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity

1 licensed by the board of the terms and conditions of the decision in case number 3291 in advance
2 of the Respondent commencing work at each licensed entity. A record of this notification must
3 be provided to the board upon request.

4 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
5 (15) days of Respondent undertaking any new employment by or through a pharmacy
6 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
7 service to report to the board in writing acknowledging that he has read the decision in case
8 number 3291 and the terms and conditions imposed thereby. It shall be Respondent's
9 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
10 acknowledgment(s) to the board.

11 Failure to timely notify present or prospective employer(s) or to cause that/those
12 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
13 probation.

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

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

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

24 **8. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, Respondent shall pay to the
26 board its costs of investigation and prosecution in the amount of \$9,255.00. Respondent shall
27 make payments under a payment plan approved by the Board.
28

1 There shall be no deviation from the payment plan approved by the Board absent prior
2 written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed
3 shall be considered a violation of probation.

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

6 **9. Probation Monitoring Costs**

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

11 **10. Status of License**

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

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

19 **11. License Surrender While on Probation/Suspension**

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

27 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
28 to the board within ten (10) days of notification by the board that the surrender is accepted.

1 Respondent may not reapply for any license from the board for three (3) years from the effective
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
3 of the date the application for that license is submitted to the board, including any outstanding
4 costs.

5 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
6 **Employment**

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

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

14 **13. Tolling of Probation**

15 Except during periods of suspension, Respondent shall, at all times while on probation, be
16 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
17 month during which this minimum is not met shall toll the period of probation, i.e., the period of
18 probation shall be extended by one month for each month during which this minimum is not met.
19 During any such period of tolling of probation, Respondent must nonetheless comply with all
20 terms and conditions of probation.

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

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

1 "Cessation of practice" means any calendar month during which Respondent is
2 not practicing as a pharmacist for at least 40 hours, as defined by Business and
3 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
4 month during which Respondent is practicing as a pharmacist for at least 40 hours as
5 a pharmacist as defined by Business and Professions Code section 4000 et seq.

6 **14. Violation of Probation**

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

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

19 **15. Completion of Probation**

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

22 **16. Suspension**

23 As part of probation, Respondent is suspended from the practice of pharmacy for 180 days
24 beginning the effective date of this decision, with credit for time already suspended through the
25 Pharmacists Recovery Program.

26 During suspension, Respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
28 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
3 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
4 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
5 and devices or controlled substances.

6 Respondent shall not engage in any activity that requires the professional judgment of a
7 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
8 Respondent shall not perform the duties of a pharmacy technician or a designated representative
9 for any entity licensed by the board.

10 Subject to the above restrictions, Respondent may continue to own or hold an interest in
11 any licensed premises in which he holds an interest at the time this decision becomes effective
12 unless otherwise specified in this order.

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

14 **17. Pharmacists Recovery Program (PRP)**

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

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

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

26 Probation shall be automatically extended until Respondent successfully completes the
27 PRP. Any person terminated from the PRP program shall be automatically suspended by the
28 board. Respondent may not resume the practice of pharmacy until notified by the board in

1 writing.

2 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
3 licensed practitioner as part of a documented medical treatment shall result in the automatic
4 suspension of practice by Respondent and shall be considered a violation of probation.

5 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

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

18 Subject to the above restrictions, Respondent may continue to own or hold an interest in
19 any licensed premises in which he holds an interest at the time this decision becomes effective
20 unless otherwise specified in this order.

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

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

25 Respondent shall work in a pharmacy setting with access to controlled substances for six
26 (6) consecutive months before successfully completing probation. If Respondent fails to do so,
27 probation shall be automatically extended until this condition has been met. Failure to satisfy this
28 condition within six (6) months beyond the original date of expiration of the term of probation

1 shall be considered a violation of probation.

2 **18. Random Drug Screening**

3 Respondent, at his own expense, shall participate in random testing, including but not
4 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
5 screening program as directed by the board or its designee. Respondent may be required to
6 participate in testing for the entire probation period and the frequency of testing will be
7 determined by the board or its designee. At all times, Respondent shall fully cooperate with the
8 board or its designee, and shall, when directed, submit to such tests and samples for the detection
9 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
10 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
11 of probation. Upon request of the board or its designee, Respondent shall provide documentation
12 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
13 a necessary part of the treatment of the Respondent. Failure to timely provide such
14 documentation shall be considered a violation of probation. Any confirmed positive test for
15 alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented
16 medical treatment shall be considered a violation of probation and shall result in the automatic
17 suspension of practice of pharmacy by Respondent. Respondent may not resume the practice of
18 pharmacy until notified by the board in writing.

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

27 During suspension Respondent shall not engage in any activity that requires the
28 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the

1 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
2 designated representative for any entity licensed by the board.

3 Subject to the above restrictions, Respondent may continue to own or hold an interest in
4 any licensed premises in which he holds an interest at the time this decision becomes effective
5 unless otherwise specified in this order.

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

7 **19. Abstain from Drugs and Alcohol Use**

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

19 **20. Supervised Practice**

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

25 Continuous – At least 75% of a work week

26 Substantial - At least 50% of a work week

27 Partial - At least 25% of a work week

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

1 Within thirty (30) days of the effective date of this decision, Respondent shall have his
2 supervisor submit notification to the board in writing stating that the supervisor has read the
3 decision in case number 3291 and is familiar with the required level of supervision as determined
4 by the board or its designee. It shall be the Respondent's responsibility to ensure that his
5 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
6 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
7 acknowledgements to the board shall be considered a violation of probation.

8 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
9 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
10 acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15)
11 days after employment commences, submit notification to the board in writing stating the direct
12 supervisor and pharmacist-in-charge have read the decision in case number 3291 and is familiar
13 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
14 and his license shall be automatically suspended until the board or its designee approves a new
15 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
16 acknowledgements to the board shall be considered a violation of probation.

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

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

26 During suspension, Respondent shall not engage in any activity that requires the
27 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
28 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a

1 designated representative for any entity licensed by the board.

2 Subject to the above restrictions, Respondent may continue to own or hold an interest in
3 any licensed premises in which he holds an interest at the time this decision becomes effective
4 unless otherwise specified in this order.

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

6 **21. No Ownership of Licensed Premises**

7 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
8 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
9 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
10 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
11 days following the effective date of this decision and shall immediately thereafter provide written
12 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
13 documentation thereof shall be considered a violation of probation.

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

22 **22. Report of Controlled Substances**

23 Respondent shall submit quarterly reports to the board detailing the total acquisition and
24 disposition of such controlled substances as the board may direct. Respondent shall specify the
25 manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a
26 manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report
27 on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the
28 board no later than ten (10) days following the end of the reporting period. Failure to timely

1 prepare or submit such reports shall be considered a violation of probation.

2 23. Ethics Course


3 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
4 enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its
5 designee. Failure to initiate the course during the first year of probation, and complete it within
6 the second year of probation, is a violation of probation.

7 Respondent shall submit a certificate of completion to the board or its designee within five
8 days after completing the course.

9
10 ACCEPTANCE

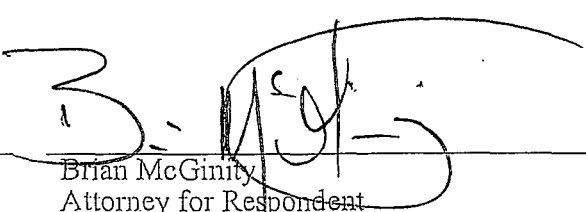
11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Brian McGinity. I understand the stipulation and the effect it will
13 have on my Original Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
14 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
15 of the Board of Pharmacy.

16
17
18 DATED: 12/14/09


MARVIN GEORGE GIBSON
Respondent

19
20
21
22 I have read and fully discussed with Respondent Marvin George Gibson the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
24 I approve its form and content.

25
26 DATED: 12/14/2009


Brian McGinity
Attorney for Respondent

27
28 ENDORSEMENT

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

3 Dated: Dec. 14, 2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

Karen R. Denvir

KAREN R. DENVER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3291

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVER, State Bar No. 197268
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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 Accusation Against:

Case No. 3291

12 **MARVIN GEORGE GIBSON**
116 South Creek Circle
13 Folsom, CA 95630

FIRST AMENDED
ACCUSATION

14 Respondent.

15
16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about May 23, 1972, the Board of Pharmacy issued Original Pharmacist
22 License Number RPH 27732 to Marvin George Gibson (Respondent). The Original Pharmacist
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on May 31, 2009, unless renewed.

25 **JURISDICTION**

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

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

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

8 (4) Revoking his or her license.

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

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

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

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

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

22 (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.

23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of
25 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
26 United States Code regulating controlled substances or of a violation of the
27 statutes of this state regulating controlled substances or dangerous drugs shall be
conclusive evidence of unprofessional conduct. In all other cases, the record of
28 conviction shall be conclusive evidence only of the fact that the conviction
occurred. The board may inquire into the circumstances surrounding the
commission of the crime, in order to fix the degree of discipline or, in the case of
a conviction not involving controlled substances or dangerous drugs, to determine
if the conviction is of an offense substantially related to the qualifications,
functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
a conviction following a plea of nolo contendere is deemed to be a conviction
within the meaning of this provision. The board may take action when the time for

1 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or
2 when an order granting probation is made suspending the imposition of sentence,
3 irrespective of a subsequent order under Section 1203.4 of the Penal Code
4 allowing the person to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation,
6 information, or indictment.

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

12 6. Section 4022 of the Code states:

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

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

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

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

23 7. Section 4060 of the Code states, in pertinent part:

24 No person shall possess any controlled substance, except that furnished to
25 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
26 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
27 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
28 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.

8. Section 4327 of the Code states:

Any person who, while on duty, sells, dispenses or compounds any drug while
under the influence of any dangerous drug or alcoholic beverages shall be guilty of a
misdemeanor.

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

Except as otherwise provided in this division, every person who
possesses (1) any controlled substance specified in subdivision (b) or (c), or
paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),

1 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
2 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
3 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
4 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
5 unless upon the written prescription of a physician, dentist, podiatrist, or
6 veterinarian licensed to practice in this state, shall be punished by imprisonment
7 in the state prison.

8 10. Health and Safety Code section 11170 states no person shall prescribe, administer,
9 or furnish a controlled substance for himself.

10 11. Health and Safety Code section 11173, subdivision (a) states, in pertinent part,
11 that no person "shall obtain or attempt to obtain controlled substances, or procure or attempt to
12 procure the administration of or prescription for controlled substances . . .by fraud, deceit,
13 misrepresentation , or subterfuge"

14 12. Section 118, subdivision (b), of the Code provides that the expiration of a license
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
16 within which the license may be renewed, restored, reissued or reinstated.

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

21 DRUGS

22 14. Hydrocodone is an opiate and a Schedule III controlled substance as designated by
23 Health & Safety Code section 11056, subdivision (e)(4).

24 OTHER MATTERS

25 15. Federal law prohibits a pharmacy from employing any person who has been
26 convicted of a felony offense relating to controlled substances. (21 C.F.R. § 1301.76)

27 FIRST CAUSE FOR DISCIPLINE

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

16. Respondent is subject to disciplinary action under section 4301, subdivision (f) in
that he committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption. The
circumstances are as follows:

1 17. On or about the time period from October 2007 to November 30, 2007, the exact
2 dates which are unknown, Respondent stole approximately 480 tablets of a hydrocodone-
3 containing Schedule III controlled substance medication from Sacramento Primary Care
4 Pharmacy while on duty as a registered pharmacist, in violation of law. Respondent admitted
5 verbally and in a signed declaration that he stole the hydrocodone-containing medication from
6 Sacramento County Primary Care Pharmacy on multiple occasions.

7 SECOND CAUSE FOR DISCIPLINE

8 (Violation of State/Federal Statute Regulating Controlled Substances)

9 18. Respondent is subject to disciplinary action under section 4301, subdivision (j) in
10 that he violated the statutes of this state regulating controlled substances and dangerous drugs.
11 The circumstances are as follows:

12 19. Pursuant to Respondent's admissions, during September of 2007, he was illegally
13 in possession of 400 tablets of hydrocodone-containing tablets which he took from his deceased
14 father's medication supply and used for self-administration. Additionally, from October 2007 to
15 November 30, 2007, all the exact dates which were unknown, and also per Respondent's own
16 admissions, it was estimated that he stole approximately 480 tablets of hydrocodone-containing
17 schedule III controlled substance medication from Sacramento Primary Care Pharmacy and
18 administered the stolen tablets to himself. Accordingly, Respondent was in violation of Health
19 and Safety Code sections 11350(a), 11170, and 11173(a) as well as Business and Professions
20 Code section 4060.

21 THIRD CAUSE FOR DISCIPLINE

22 (Unlawful Self-Administration of a Controlled Substance)

23 20. Respondent is subject to disciplinary action under section 4301, subdivision (h)
24 in that he administered to himself a controlled substance. The circumstances are as follows:

25 21. Between approximately September of 2007 and November 30, 2007, all the exact
26 dates which were unknown, and per Respondent's own admission, he illegally self-administered
27 hydrocodone-containing schedule III controlled substances on multiple occasions.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Violation of Laws Governing Pharmacy)

3 22. Respondent is subject to disciplinary action under section 4301, subdivision (o),
4 in that he violated or attempted to violate directly or indirectly, a provision or term of the
5 Pharmacy Law (Business and Professions Code section 4000 et seq.) or of the applicable federal
6 and state laws governing pharmacy. The circumstances are as set forth above in paragraphs 15
7 through 20 and as follows:

8 23. Between approximately September of 2007 and November 30, 2007, all the exact
9 dates which were unknown, Respondent self-administered hydrocodone-containing schedule III
10 controlled substances. As a result, he was under the influence of hydrocodone numerous times,
11 including when he was involved with the preparation, compounding, dispensing, and sale of
12 prescriptions, as well as providing patient care as a licensed pharmacist while under the influence
13 of that hydrocodone, which is a dangerous drug as defined in Code section 4022; in violation of
14 Code section 4327.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 (Criminal Conviction)

17 24. Respondent is subject to disciplinary action under section 4301, subdivision (l) in
18 that he was convicted of a crime substantially related to the qualifications, functions, and duties
19 of a licensed pharmacist. The circumstances are as follows:

20 25. On or about August 21, 2009, Respondent was convicted on his plea of no lo
21 contendere of one felony count of violating Health and Safety Code section 11350 (possession of
22 a controlled substance) in *People v. Marvin Gibson* (Super. Ct. Sacramento County, 2009, No.
23 09F02057). The circumstances of the crime are set forth in paragraphs 17-23 above.

24 **PRAYER**

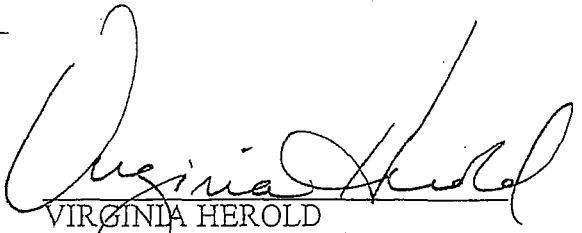
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Revoking or suspending Original Pharmacist License Number RPH 27732, issued
28 to Marvin George Gibson.

1 2. Ordering Marvin George Gibson to pay the Board of Pharmacy the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 10/19/09



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

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