

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

**In the Matter of the Petition for Early Termination of  
Probation of:**

**SHELDON DALE BORSON, JR., Petitioner**

**Agency Case No. 3349**

**OAH No. 2024120332**

**PROPOSED DECISION**

This matter was heard before a quorum of the Disciplinary Petition Committee (Committee) of the Board of Pharmacy (Board), Department of Consumer Affairs, under Business and Professions Code section 4309, subdivision (c), by videoconference on December 18, 2024. Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided, assisted, and advised the Committee in the conduct of the hearing under Government Code section 11517, subdivision (b)(1).

Nicole R. Trama, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Government Code section 11522.

Petitioner Sheldon Dale Borson, Jr., appeared and represented himself.

Evidence was received, the record closed, and the matter submitted for decision on December 18, 2024.

## **FACTUAL FINDINGS**

### **Background**

1. On March 9, 1993, the Board of Pharmacy issued petitioner Pharmacist License No. RPH 45970. The license will expire on February 28, 2025, unless renewed.

### **FIRST AMENDED ACCUSATION**

2. On May 6, 2013, a former Executive Officer of the Board, in her official capacity, signed and thereafter filed a First Amended Accusation against petitioner's license. The First Amended Accusation alleged cause to discipline the license for violating pharmacy laws, including diverting medications and furnishing medications without a valid prescription, as set forth below.

3. In May 2007, the Board received Drug Enforcement Administration (DEA) loss reports from an Albertson's pharmacy, alleging employee pilferage of medications. Surveillance footage showed petitioner, the PIC at the time, diverting controlled substances and dangerous drugs from the pharmacy. Petitioner later admitted he provided medication to his fiancée without a valid prescription.

4. In September 2008, the Board received a complaint from a Costco pharmacy, alleging petitioner was furnishing controlled substances to himself. Petitioner was also the PIC at this pharmacy at the time. The Board's investigation revealed that on two occasions, petitioner furnished to himself and had in his possession controlled substances, the prescriptions for which were issued by a doctor

without a valid DEA registration. The Board's inspections in November 2008 and April 2009 revealed petitioner failed to maintain the pharmacy and its fixtures.

5. In November 2010, the Board received complaints from pharmacy staff that petitioner was refilling prescriptions early for a patient. The Board's investigation revealed petitioner prematurely provided prescription medication to that patient. The Board's investigation also revealed he failed to maintain accurate records of dangerous drugs and failed to maintain effective controls against theft in the pharmacy.

### **STIPULATED SETTLEMENT AND PROBATIONARY LICENSE**

6. Effective October 28, 2013, petitioner entered into a Stipulated Settlement and Disciplinary Order (Stipulated Settlement) with the Board. Petitioner admitted the truth of each and every charge and allegation set forth in the First Amended Accusation and agreed they established cause to discipline his license. Pursuant to the Stipulated Settlement, the Board revoked petitioner's license, immediately stayed that revocation, and placed the license on probation for nine years, scheduled to terminate in October 2022. The terms and conditions of probation include quarterly reports, practice as a pharmacist for at least 40 hours per month, supervised practice, completion of the Pharmacist Recovery Program (PRP), community service hours, an ethics course, random biological fluid testing, payment of probation monitoring costs, and reimbursement of the Board's costs of investigation and enforcement in the amount of \$49,902.

### **PERFORMANCE ON PROBATION**

7. Petitioner has consistently submitted quarterly reports, is supervised in his practice as a pharmacist at 40 hours per month, and has completed the required ethics course. In 2017, petitioner completed six years in PRP through Maximus. He has

stayed current on paying probation monitoring costs and pays \$100 to \$300 per month toward reimbursement of the Board's costs. By October 2022, petitioner had been in compliance with the probation terms and conditions, except for full reimbursement of the Board's costs and completion of community service hours. As a result, petitioner's probationary term was extended until such time he fully reimburses the Board's costs and completes his community service.

8. Petitioner has now completed community service hours. To date, his remaining balance on reimbursement of the Board's costs is \$26,038.60. He continues to submit to random biological fluid testing, with no positive tests.

### **Petition for Early Termination of Probation**

9. On April 30, 2024, petitioner signed and thereafter filed with the Board his Petition for Early Termination of Probation. In support of his Petition, petitioner submitted his written statement, support letters, and continuing education transcripts and certificates. In his Petition and at hearing, petitioner acknowledged his conduct underlying the license discipline and explained his rehabilitation efforts since and the reasons he is seeking early termination of probation.

10. Petitioner described his conduct as "ridiculously unprofessional." He admitted his wrongdoing. He explained he was "careless" in his practice and performing the duties of a PIC due to various stressors at the time, including a spouse who suffered from addiction and raising two children by himself. Additionally, he has codependency issues and tended to accommodate the needs or wants of people he wanted to please. Petitioner was particularly remorseful about his furnishing of medication to his fiancée. Because of his codependency, petitioner wanted to please and take care of her when she needed a refill of her prescription medication. He

acknowledges it was poor judgment for him to take those medications from his employer pharmacy and furnish them to her without a valid refill prescription. He admits he should have instead brought his fiancée to her physician or urgent care.

11. Reflecting on his wrongdoing, petitioner realized his conduct demonstrated an inability to maintain professional and personal boundaries. He failed to uphold the integrity of his profession. He sought treatment to address his behavior.

### **MAXIMUS**

12. In 2011, petitioner entered Maximus. Upon assessment, Maximus determined petitioner suffered from codependency, not substance abuse. Maximus created a treatment program tailored to address petitioner's codependency. The program included participation in a Co-Dependents Anonymous (CoDA), a 12-step program, professional health group (PHG) meetings, and random biological fluid testing. While undergoing intensive treatment, Maximus prohibited petitioner from practicing as a pharmacist to focus on his recovery.

13. Joyce Francis facilitated the PHG meetings which petitioner attended. She wrote letters dated May 2011 and August 2012, detailing petitioner's progress in treatment. Ms. Francis was impressed by petitioner's candor about his codependency, which she observed to inspire other PHG attendees to examine their own codependency. She praised petitioner's diligence in the 12-step program, work with a sponsor, and adaptation of the 12 steps to address his codependency. Ms. Francis believes petitioner's compliance with the Maximus program and his sustained life changes demonstrate he is ready to fully practice as a pharmacist.

14. R. Keith Simpson, D.O., Doctor of Public Health (D.P.H.), an addiction medicine specialist, began seeing petitioner in October 2012. In a letter dated April 29,

2014, Dr. Simpson opined petitioner's prognosis was positive, based on his "strong recovery program," which included CoDA meetings, engaging with a sponsor, working through the 12 steps, attending PHG meetings, and complying with the Board's requirements. In his letter, Dr. Simpson further stated:

[Petitioner] has developed much insight into his disease and diligently works his program. He has gone over and above what has been asked of him..... [He] has no history of addiction[,] and I believe he is safe and competent to work full time in his chosen field with little to no supervision.

15. Petitioner graduated from Maximus in 2017. He estimates he spent a total of approximately \$500,000 to participate in Maximus and comply with its requirements. Petitioner struggled to find gainful employment until 2015. Because of his financial hardships, he filed for bankruptcy in 2016. Throughout his time on probation, petitioner has been able to consistently pay between \$100 to \$300 per month toward the reimbursement of the Board's costs.

### **PRACTICE WHILE ON PROBATION**

16. In 2015, Robert Beeman, Pharm.D., a friend from pharmacy school, offered petitioner a volunteer pharmacist position at his pharmacy, Beeman's Rx Pharmacy (Beeman's). Shortly upon volunteering at Beeman's, Dr. Beeman was able to offer petitioner a part-time position. After a few months, Dr. Beeman was able to offer him a full-time position. Petitioner practices as a pharmacist at Beeman's and the pharmacy at St. Bernardine Medical Center (St. Bernardine), which Dr. Beeman also owns and operates. Dr. Beeman has acted as petitioner's worksite monitor and supervises petitioner's practice. Petitioner thanks Dr. Beeman for giving him a chance

to practice as a pharmacist, which is his passion. Petitioner intends to remain in Dr. Beeman's employ because he is grateful to him and finds the work rewarding.

### **REASONS FOR PETITION**

17. Upon reflection, petitioner is proud of his long journey to personal growth. He is glad to have learned about his codependency and to have received treatment to address it. Petitioner is also proud of his children, both of whom he raised by himself. Despite their mother's addiction and petitioner's recovery journey and time on probation, his children have matured into successful adults. Petitioner's son recently completed medical school and will begin his residency to become an anesthesiologist. Petitioner's daughter is a recreational therapist.

18. Petitioner petitioned for early termination of probation primarily to seek forgiveness of the remaining reimbursement amount of \$26,038.60. He contends his Petition should be granted because he can safely practice without Board supervision, as demonstrated by his sustained recovery from codependency, compliance with probation terms and conditions, and continued random biological fluid testing since 2011 with no positive results.

### **SUPPORT LETTERS**

19. Dr. Beeman wrote a support letter. He and petitioner met at pharmacy school in 1987. Dr. Beeman knows about petitioner's license discipline. He is "grateful to have taken part in [petitioner's] journey" and believes petitioner is ready to practice without Board supervision. Dr. Beeman wrote:

As his employer, [petitioner] has been timely, responsible,  
and patient. He has grown as a pharmacist as his

corresponding responsibilities have changed over the last 10 years. He is a dependable, responsible, and charismatic parent, person, and pharmacist. He has done everything I could expect as an employer and colleague [sic].

20. Jason Vest, Pharm.D., wrote a support letter. He met petitioner in Maximus and knows about his license discipline. Dr. Vest is the Director of Pharmacy at St. Bernardine, and he and petitioner work alongside each other there. Over the years, Dr. Vest has observed petitioner's "remarkable growth and dedication" and believes he is ready to practice without Board supervision. In his letter, Dr. Vest explained:

I have witnessed [petitioner] undergo a transformative journey. Since meeting [him], he has demonstrated an unwavering commitment to self-improvement and the rehabilitation process. . . .

Throughout his time in [Maximus], I have witnessed alterations to his overall attitude toward professionalism in the workplace, prioritizing integrity and healthy boundaries in his workplace activities that he contributes [sic] to his time in the Maximus program. He has demonstrated a remarkable ability to learn from his past mistakes, exemplifying his commitment to personal growth as a pharmacist and an individual. . . .

21. Michael K. Rowland wrote a support letter. Mr. Rowland and petitioner have been friends since they were in the seventh grade. He knows about petitioner's license discipline and is part of his recovery support system. Mr. Rowland is impressed



by petitioner's perseverance, particularly during hardships he faced while on probation. Petitioner has also personally inspired Mr. Rowland's faith. He wrote:

For years now I have often been in awe of [petitioner's] tenacity and resilience. The sacrifices he has made for his family are immeasurable. Through incredible financial hardship and stress, he has survived[] and thrived[,] with all things considered. His faith and belief in God have been so inspiring that he effectively strengthened my faith and helped to restore my relationship with God. . . .

22. Rhonda Beecher wrote a support letter. Ms. Beecher is petitioner's aunt. She and petitioner are close, as they are only six years apart. Ms. Beecher has observed petitioner grow over the last decade. In her letter, she explained:

These past 10 years have been a challenge and at times embarrassing for him. He has handled every single year with grace and humility. I sincerely believe that he has shown every person in our very large family that anyone can overcome adversity. . . .

## **LEGAL CONCLUSIONS**

### **Timeliness of Petition and Review of Decision**

1. A pharmacist whose license has been placed on probation for a period of three years or more may petition the Board for early termination of probation after at least two years have passed since the effective date of such discipline. (Bus. & Prof.

Code, § 4309, subd. (a)(2).) Here, petitioner filed his Petition in August 2024, over 11 years after probation began. His Petition is therefore timely.

2. The Petition may be heard by a committee of the Board sitting with an ALJ. Where the Petition is thus heard, the decision shall be subject to review by the Board under Government Code section 11517. (Bus. & Prof. Code, § 4309, subd. (c).) Here, the decision is subject to review by the Board.

### **Propriety of Early Termination of Probation**

3. Petitioner has the burden to prove by clear and convincing evidence he has rehabilitated himself and is entitled to early termination of probation. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084.) Petitioner must present strong proof of rehabilitation, sufficient to overcome the former adverse determination. (*Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

4. In considering a petition for early termination of probation, the Board may assess the following relevant factors: (1) the offense for which petitioner was disciplined; (2) petitioner's activities since the disciplinary action was taken; (3) petitioner's general reputation for truth and professional responsibility; and (4) petitioner's rehabilitative efforts. (Bus. & Prof. Code, § 4309, subd. (d).)

5. Petitioner's violations of pharmacy laws are serious. His conduct was detrimental to the integrity of the pharmacy practice and the safeguards to protect the public from the "careless" handling of controlled substances and dangerous drugs. However, petitioner's wrongdoing occurred 14 years ago. He has not engaged in misconduct since.

6. To his credit, petitioner took ownership of his personal issues. He participated in Maximus for six years and completed its codependency program in 2017. Petitioner engaged in a 12-step program, worked with a sponsor, and adapted the 12 steps to address his codependency. He also attended PHG meetings where he shared his story and inspired others to reflect on their own codependency. Petitioner has been submitting to random biological fluid testing for over 13 years, and he has never had a positive test. He has complied with all requirements of probation, with the exception of fully reimbursing the Board's costs. Petitioner is respected and admired by his employer and colleagues, and they are part of his support system, along with his family and friends.

7. Petitioner's progress while on probation, his practice as a pharmacist for the last seven years, without any incident, and his sustained recovery are commendable. Clear and convincing evidence demonstrates petitioner is able to practice in a manner consistent with the public health, safety, and welfare. Board monitoring is no longer necessary to protect the public and would be unduly punitive. (See *Fahmy v. Medical Bd. of Cal.* (1995) 38 Cal.App.4th 810, 817 [the purpose of license discipline is public protection, not punishment].) When all the evidence is considered, the Petition should be granted. The remaining reimbursement amount of the Board's costs is reduced to \$0, and petitioner's probation is terminated.

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## ORDER

On February 7, 2025, the Board of Pharmacy, Department of Consumer Affairs, adopted the attached Decision, which reflects the Committee's recommendation, as its own.

The Petition for Early Termination of Probation of Sheldon Dale Borson, Jr., is GRANTED.

This Decision shall become effective at 5:00 p.m. on March 20, 2025.

It is so ORDERED on February 18, 2025.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" being clearly legible.

Seung W. Oh, Pharm.D.  
Board President

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

In the Matter of the Accusation Against:

**SHELDON DALE BORSON, JR.**

44035 Ocotillo Drive  
La Quinta, CA 92253

Pharmacist License No. RPH 45970

Respondent.

Case No. 3349

OAH No. 2010120290

**DECISION AND ORDER**

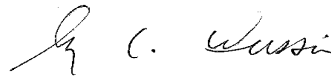
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 28, 2013.

It is so ORDERED on October 21, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STAN C. WEISSER  
Board President

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

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

13 **SHELDON DALE BORSON, JR.**  
14 **44035 Ocotillo Drive**  
**La Quinta, CA 92253**

15 **Pharmacist License No. RPH 45970**

16 Respondent.

Case No. 3349

OAH No. 2010120290

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

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

19 PARTIES

20 1. Complainant Virginia Herold is the Executive Officer of the Board of Pharmacy  
21 (Board). She brought this action solely in her official capacity and is represented in this matter by  
22 Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy  
23 Attorney General.

24 2. Respondent Sheldon Dale Borson, Jr. is represented in this proceeding by attorney  
25 Anthony Robusto, whose address is: 5200 N. Irwindale Avenue, Suite 170, Irwindale, CA 91706  
26 (626) 814-9137.  
27  
28

1           3.     On March 9, 1993, the Board issued Pharmacist License No. RPH 45970 to  
2 Respondent. The Pharmacist License was in full force and effect at all times relevant to the  
3 charges brought in Accusation No. 3349 and will expire on February 28, 2015, unless renewed.

4                                   JURISDICTION

5           4.     Accusation No. 3349 was filed before the Board, Department of Consumer Affairs,  
6 and is currently pending against Respondent. The Accusation and all other statutorily required  
7 documents were properly served on Respondent on November 15, 2010. Respondent timely filed  
8 his Notice of Defense contesting the Accusation. Thereafter, First Amended Accusation No.  
9 3349 was filed before the Board, and Respondent's Notice of Defense previously filed was  
10 deemed to controvert it. A copy of First Amended Accusation No. 3349 is attached as exhibit A.

11                                   ADVISEMENT AND WAIVERS

12           5.     Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in First Amended Accusation No. 3349. Respondent has also carefully  
14 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
15 Disciplinary Order.

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

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

25                                   CULPABILITY

26           8.     Respondent admits the truth of each and every charge and allegation in First  
27 Amended Accusation No. 3349.

9. Respondent agrees that his Pharmacist's license is subject to discipline and he agrees to be bound by the 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. Respondent understands and agrees that counsel for Complainant and the staff of the Board 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 45970 issued to Respondent Sheldon Dale Borson, Jr. is revoked. However, the revocation is stayed and Respondent is placed on probation for nine years on the following terms and conditions.



1           **1. Obey All Laws**

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

3           Respondent shall report any of the following occurrences to the board, in writing, within 72  
4 hours of such occurrence:

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

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

16           **2. Report to the Board**

17          Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its  
18          designee. The report shall be made either in person or in writing, as directed. Among other  
19          requirements, Respondent shall state in each report under penalty of perjury whether there has  
20          been compliance with all the terms and conditions of probation. Failure to submit timely reports  
21          in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
22          in submission of reports as directed may be added to the total period of probation. Moreover, if  
23          the final probation report is not made as directed, probation shall be automatically extended until  
24          such time as the final report is made and accepted by the Board.

25           **3. Interview with the Board**

26          Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews  
27          with the Board or its designee, at such intervals and locations as are determined by the Board or  
28          its designee. Failure to appear for any scheduled interview without prior notification to Board

1 staff, or failure to appear for two or more scheduled interviews with the Board or its designee  
2 during the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

4 Respondent shall cooperate with the Board's inspection program and with the Board's  
5 monitoring and investigation of Respondent's compliance with the terms and conditions of his  
6 probation. Failure to cooperate shall be considered a violation of probation.

7 **5. Continuing Education**

8 Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
9 pharmacist as directed by the Board or its designee.

10 **6. Notice to Employers**

11 During the period of probation, Respondent shall notify all present and prospective  
12 employers of the decision in case number 3349 and the terms, conditions and restrictions imposed  
13 on Respondent by the decision, as follows:

14 Within 30 days of the effective date of this decision, and within 15 days of Respondent's  
15 undertaking any new employment, Respondent shall cause his direct supervisor, pharmacist-in-  
16 charge (including each new pharmacist-in-charge employed during Respondent's tenure of  
17 employment) and owner to report to the Board in writing acknowledging that the listed  
18 individual(s) has/have read the decision in case number 3349, and terms and conditions imposed  
19 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
20 supervisor(s) submit timely acknowledgment(s) to the Board.

21 If Respondent works for or is employed by or through a pharmacy employment service,  
22 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
23 licensed by the Board of the terms and conditions of the decision in case number 3349 in advance  
24 of the Respondent commencing work at each licensed entity. A record of this notification must  
25 be provided to the Board upon request.

26 Furthermore, within 30 days of the effective date of this decision, and within 15 days of  
27 Respondent's undertaking any new employment by or through a pharmacy employment service,  
28 Respondent shall cause his direct supervisor with the pharmacy employment service to report to

1 the Board in writing acknowledging that he has read the decision in case number 3349 and the  
2 terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his  
3 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

4 Failure to timely notify present or prospective employer(s) or to cause that/those  
5 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of  
6 probation.

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

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

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

17 **8. Reimbursement of Board Costs**

18 As a condition precedent to successful completion of probation, Respondent shall pay to the  
19 Board its costs of investigation and prosecution in the amount of \$49,902.00. Respondent shall  
20 make said payments monthly, on a calendar year basis, commencing not later than the close of the  
21 month in which the effective date of this Decision occurs, and ending not later than the fifth year  
22 of the probation period, in 60 equal payments in the amount of \$831.70. There shall be no  
23 deviation from this schedule absent prior written approval by the Board or its designee. Failure to  
24 pay costs by the deadlines as directed shall be considered a violation of probation. Respondent  
25 may fully reimburse the Board at any time while on probation.

26 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to  
27 reimburse the Board its costs of investigation and prosecution.  
28

1           **9. Probation Monitoring Costs**

2           Respondent shall pay any costs associated with probation monitoring as determined by the  
3 Board each and every year of probation. Such costs shall be payable to the Board on a schedule  
4 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed  
5 shall be considered a violation of probation.

6           **10. Status of License**

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

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

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

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

22          Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license  
23 to the Board within ten days of notification by the Board that the surrender is accepted.

24          Respondent may not reapply for any license from the Board for three years from the effective  
25 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
26 of the date the application for that license is submitted to the Board, including any outstanding  
27 costs.  
28

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

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

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

13. **Tolling of Probation**

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

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

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

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

1           **14. Violation of Probation**

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

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

14           **15. Completion of Probation**

15           Upon written notice by the Board or its designee indicating successful completion of  
16 probation, Respondent's license will be fully restored.

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

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

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

27           Failure to enroll in the PRP within 30 days of the effective date of this Decision, or  
28 successfully participate in and complete the treatment contract and/or any addendums, shall be

1 considered a violation of probation.

2 Probation shall be automatically extended until Respondent successfully completes the  
3 PRP. Any person terminated from the PRP program shall be automatically suspended by the  
4 Board. Respondent may not resume the practice of pharmacy until notified by the Board in  
5 writing.

6 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
7 licensed practitioner as part of a documented medical treatment shall result in the automatic  
8 suspension of practice by Respondent for a period of six months and shall be considered a  
9 violation of probation. Respondent may not resume the practice of pharmacy until notified by the  
10 Board in writing.

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

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

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

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

27 **17. Random Drug Screening**

28 Respondent, at his own expense, shall participate in random testing, including but not

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

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

24 During suspension, Respondent shall not engage in any activity that requires the  
25 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
26 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
27 designated representative for any entity licensed by the Board.

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



1           **18. Abstain from Drugs and Alcohol Use**

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

14           **19. Community Services Program**

15           Within 60 days of the effective date of this decision, Respondent shall submit to the Board  
16 or its designee, for prior approval, a community service program in which Respondent shall  
17 provide free health-care related services on a regular basis to a community or charitable facility or  
18 agency for at least 250 hours over the years of probation, 100 hours of which must be completed  
19 during the first year of probation. Within 30 days of Board approval thereof, Respondent shall  
20 submit documentation to the Board demonstrating commencement of the community service  
21 program. A record of this notification must be provided to the Board upon request. Respondent  
22 shall report on progress with the community service program in the quarterly reports. Failure to  
23 timely submit, commence, or comply with the program shall be considered a violation of  
24 probation.

25           **20. Supervised Practice**

26           During the period of probation, Respondent shall practice only under the supervision of a  
27 licensed pharmacist not on probation with the Board. Upon and after the effective date of this  
28 decision, Respondent shall not practice pharmacy and his license shall be automatically

1 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,  
2 as required by the Board or its designee, either:

3 Continuous -- At least 75% of a work week

4 Substantial - At least 50% of a work week

5 Partial - At least 25% of a work week

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

7 Within 30 days of the effective date of this decision, Respondent shall have his supervisor  
8 submit notification to the Board in writing stating that the supervisor has read the decision in case  
9 number 3349 and is familiar with the required level of supervision as determined by the Board or  
10 its designee. It shall be the Respondent's responsibility to ensure that his employer(s),  
11 pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board.  
12 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
13 acknowledgements to the Board shall be considered a violation of probation.

14 If Respondent changes employment, it shall be the Respondent's responsibility to ensure  
15 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
16 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within 15 days  
17 after employment commences, submit notification to the Board in writing stating the direct  
18 supervisor and pharmacist-in-charge have read the decision in case number 3349 and are familiar  
19 with the level of supervision as determined by the Board. Respondent shall not practice  
20 pharmacy and his license shall be automatically suspended until the Board or its designee  
21 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to  
22 submit timely acknowledgements to the Board shall be considered a violation of probation.

23 Within ten days of leaving employment, Respondent shall notify the Board in writing.

24 During suspension, Respondent shall not enter any pharmacy area or any portion of the  
25 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
26 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices  
27 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
28 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient

consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the Board.

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

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

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

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

#### **22. Prescription Coordination and Monitoring of Prescription Use**

Within 30 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the Respondent's history with the use of controlled substances, and/or dangerous drugs, and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the Board's accusation and decision. A record of this notification must be provided to the Board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the Board about respondent's treatments. The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of probation regarding Respondent's compliance with this condition. If any substances considered addictive have been

1 prescribed, the report shall identify a program for the time limited use of any such substances.  
2 The Board may require that the single coordinating physician, nurse practitioner, physician  
3 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive  
4 medicine. Should Respondent, for any reason, cease supervision by the approved practitioner,  
5 Respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit  
6 the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of  
7 Respondent's choice to the Board or its designee for its prior approval. Failure to timely submit  
8 the selected practitioner or replacement practitioner to the Board for approval, or to ensure the  
9 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

10 If at any time an approved practitioner determines that Respondent is unable to practice  
11 safely or independently as a pharmacist, the practitioner shall notify the Board immediately by  
12 telephone and follow up by written letter within three working days. Upon notification from the  
13 Board or its designee of this determination, Respondent shall be automatically suspended and  
14 shall not resume practice until notified by the Board that practice may be resumed.

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

23 During suspension, Respondent shall not engage in any activity that requires the  
24 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
25 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
26 designated representative for any entity licensed by the Board.

27 Failure to comply with this suspension shall be considered a violation of probation.  
28

1           23.   **Ethics Course**


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

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

8                               ACCEPTANCE

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

14  
15   DATED:   9-6-13

16                                 
SHELDON DALE BORSON, JR.  
Respondent

17           I have read and fully discussed with Respondent Sheldon Dale Borson, Jr. the terms and  
18   conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
19   I approve its form and content.

20  
21   DATED:   9-6-13


22                                 
ANTHONY ROBUSTO  
Attorney for Respondent

1 ENDORSEMENT

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

4 DATED: September 6, 2013

5 KAMALA D. HARRIS  
6 Attorney General of California  
7 LINDA K. SCHNEIDER  
8 Supervising Deputy Attorney General

9   
10 G. MICHAEL GERMAN  
11 Deputy Attorney General  
12 *Attorneys for Complainant*

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14  
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25 SD2009803990

**Exhibit A**

**First Amended Accusation No. 3349**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
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5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061  
*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. 3349

12 **SHELDON DALE BORSON, JR.**  
44035 Ocotillo Drive  
13 La Quinta, CA 92253

**FIRST AMENDED**  
**ACCUSATION**

14 **Pharmacist License No. RPH 45970**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

22 2. On March 9, 1993, the Board issued Pharmacist License Number RPH 45970 to  
23 Respondent Sheldon Dale Borson, Jr. The license was in full force and effect at all times relevant  
24 to the charges brought herein and will expire on February 28, 2015, unless renewed.

25 **JURISDICTION**

26 3. This First Amended Accusation is brought before the 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, subdivision (a) states, in pertinent part, that every license issued may be  
2 suspended or revoked.

3       5.    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                                   STATUTORY PROVISIONS

8       6.    Section 4301 states:

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

12           .....

13           (d) The clearly excessive furnishing of controlled substances in violation of  
subdivision (a) of Section 11153 of the Health and Safety Code.

14           .....

15           (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.

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

17           (h) The administering to oneself, of any controlled substance, or the use of any  
18 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  
19 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.

20           .....

21           (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.

22           .....

23           (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
24 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,  
25 including regulations established by the board or by any other state or federal-  
regulatory agency.

26           .....

1           7.    Section 4022 states

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

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

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

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

12           8.    Section 4059, subsection (a), states:

13               A person may not furnish any dangerous drug except upon the prescription of a  
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
15 pursuant to Section 3640.7. A person may not furnish any dangerous device, except  
16 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
17 naturopathic doctor pursuant to Section 3640.7.

18           9.    Section 4060 states:

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

10.   Section 4081, subdivision (b), states:

              (b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary  
food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge  
or designated representative-in-charge, for maintaining the records and inventory  
described in this section.

11. Section 11153, subdivision (a), of the Health and Safety Code (H&S Code) states:

(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

12. Section 11158, subdivision (a), of the H&S Code states:

(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

(b) A practitioner specified in Section 11150 may dispense directly to an ultimate user a controlled substance classified in Schedule II in an amount not to exceed a 72-hour supply for the patient in accordance with directions for use given by the dispensing practitioner only where the patient is not expected to require any additional amount of the controlled substance beyond the 72 hours. Practitioners dispensing drugs pursuant to this subdivision shall meet the requirements of subdivision (f) of Section 11164.

13. Section 11170 of the H&S Code states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

14. Section 11175 of the H&S Code states: "No person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with this division or possess a controlled substance obtained by such a prescription."

15. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

....

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; ....

## REGULATORY PROVISIONS

16. California Code of Regulations, title 16 (Regulations), section 1714 states, in pertinent part:

....  
(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water for pharmaceutical purposes.

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

....  
17. Regulations, section 1716, states:

Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

18. Regulations, section 1718, states:

"Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

19. Regulations, title 16, section 1770 states:

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

## COST RECOVERY

20. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
2 case -

### 3 FACTS - 2007 INCIDENTS

4 21. On or about May 27, 2007, the Board received two Drug Enforcement Administration  
5 (DEA) DEA-106 Loss Reports from a Rancho Mirage Sav-On Pharmacy (located inside an  
6 Albertson's grocery store) alleging employee pilferage resulting in the significant loss of 137  
7 different dangerous drugs and controlled substances with an estimated value of over \$150,000.  
8 An Albertson's Loss Prevention Manager contacted the pharmacy and was told that Respondent,  
9 who was the pharmacist-in-charge (PIC) at the time, had been behaving suspiciously: he was  
10 gone from the pharmacy numerous times during working hours without being punched-out on the  
11 time clock, he spent a lot of time talking on his cell phone outside of the store, he removed items  
12 from the pharmacy, and he met various people in their cars in the store's parking lot.

13 22. Once the pilferage was discovered, covert cameras were installed in the pharmacy  
14 and live surveillance was conducted as follows:

15 a. On March 2, 2007, Respondent was gone from the pharmacy for over 67  
16 minutes while not punched out.

17 b. On March 15, 2007, Respondent was observed handing something from a bag  
18 to an unknown female who then put the item in her purse. Respondent was observed leaving the  
19 pharmacy with a box and a bag and placing them in his vehicle. Respondent was gone from the  
20 pharmacy for over 85 minutes without punching out.

21 c. On March 20, 2007, Respondent was gone from the pharmacy for over 105  
22 minutes without punching out.

23 d. On March 22, 2007, Respondent left the property in a grey Hummer with a  
24 blonde female and was gone for over 70 minutes without punching out.

25 e. On March 23, 2007, Respondent was gone from the pharmacy for over 90  
26 minutes without punching out. Additionally, a female with reddish hair approached Respondent  
27 in the pharmacy, hugged him and handed him a gift bag. Respondent handed the female what  
28 appeared to be medications.

1           f.     On March 28, 2007, Respondent exited the pharmacy/store carrying a box. The  
2 store director inquired about the contents of the box. Respondent appeared startled and stated that  
3 he was delivering empty pill bottles to another pharmacy. After placing the box in his vehicle, a  
4 white car pulled alongside. Respondent removed something from his vehicle and gave it to the  
5 driver of the white car. Later in the day, Respondent was seen outside the store talking on his cell  
6 phone when a black SUV pulled up. Respondent got into the SUV and spent approximately 20  
7 minutes in the SUV while it was parked.

8           g.     On March 30, 2007, Respondent met with an unknown male in the parking lot.  
9 Later in the day, a black SUV circled the parking lot then parked next to Respondent's vehicle.  
10 Respondent was observed getting into the SUV and talking to the driver.

11           h.     On April 2, 2007, Respondent was observed exiting the store carrying two  
12 small white envelopes and getting into a grey Hummer being driven by a blonde female (later  
13 identified as Respondent's fiancée). Respondent talked on his cell phone. An unknown male  
14 walked across the parking lot and got into the back seat of the Hummer. All three talked for a  
15 while then exited the vehicle. Respondent handed a small white envelope to the female and  
16 hugged her. Respondent handed the unknown male a small white envelope, which the male  
17 immediately cupped in his hand. The male gave Respondent a folded piece of white paper and  
18 walked out of the parking lot. Later in the day, Respondent was observed exiting the pharmacy  
19 carrying a white prescription bag containing items that were not rung up. Respondent got into his  
20 vehicle and left the property for over 90 minutes without being punched out.

21           i.     On April 4, 2007, Respondent was gone from the pharmacy for over 90 minutes  
22 without being punched out.

23           j.     On April 10, 2007, Respondent exited the pharmacy with a white prescription  
24 bag containing items that were not paid for and got into a white car. Approximately 20 minutes  
25 later, Respondent returned to the pharmacy without the white bag.

26           k.     On April 12, 2007, Respondent was gone from the pharmacy for over 90  
27 minutes without being punched out.  
28

1 l. On April 16, 2007, Respondent left the pharmacy holding a brown bag and met  
2 with a man sitting inside a black SUV:

3 m. On April 17, 2007, Respondent was gone from the pharmacy for over 60  
4 minutes without being punched out. He was observed leaving the store with a white prescription  
5 bag without paying for the items in it, and returned without the bag.

6 n. On April 23, 2007, Respondent was observed removing two pills from a pill  
7 bottle, consuming the pills with water, and then placing the bottle on the front counter. Later,  
8 Respondent was observed obtaining a pill bottle from behind the computer monitor, pouring some  
9 pills into his right hand, and then returning the pill bottle to its original location. Respondent then  
10 concealed the pills in his pocket and left the pharmacy without paying for them.

11 o. On April 25, 2007, Respondent was videotaped coming back to the pharmacy  
12 after he had left for the day, taking a pill bottle and removing tablets from it, hiding the pill bottle  
13 in a bottom drawer, and putting the tablets in his pocket. Respondent then left the pharmacy  
14 without paying for the pills.

15 p. On April 26, 2007, Respondent was videotaped removing the pill bottle from  
16 the bottom drawer where he had concealed it the day before, taking the bottle to the pill counting  
17 machine and pouring the contents into the machine. Respondent then put the tablets back into the  
18 pill bottle, made an adjustment in the pharmacy computer, and placed the pill bottle back on the  
19 shelf.

20 23. On May 1, 2007, Respondent was interviewed by Albertson's/Sav-On loss prevention  
21 officers. Respondent admitted in a written statement that he took medications for himself without  
22 a prescription and without paying for them. Respondent stated the medication he was observed  
23 consuming on April 23, 2007, was an anti-inflammatory. Respondent also admitted that he  
24 provided his then-fiancée with approximately 20 tablets of Subutex (without a prescription and  
25 without her paying for them) because she had an addiction to Vicodin and was seeing a doctor.  
26 Respondent claimed his unaccounted time away from the store was the result of running errands.  
27 Respondent had no explanation for the loss of 137 different dangerous drugs and controlled  
28

1 substances with an estimated value of over \$150,000. Respondent's employment with Sav-On  
2 was terminated on May 9, 2007.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Committing Acts Involving**  
5 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

6 24. Respondent is subject to disciplinary action under section 4301, subdivision (f), and  
7 section 11173, subdivision (a) of the H&S Code, in that from March 2, 2007, to April 26, 2007,  
8 Respondent was observed, and he admitted to, diverting controlled substances and dangerous  
9 drugs from his employer using fraud, deceit, and dishonesty, as detailed in paragraphs 21-23,  
10 above. Such conduct is substantially related to the qualifications, duties, and functions of a  
11 pharmacist.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Furnishing Prescription Medication Without Valid Prescription)**

14 25. Respondent is subject to disciplinary action under sections 4059, subdivision (a), and  
15 4301, subdivisions (j) and (o) in that Respondent provided prescription medications for the use of  
16 another without a prescription, as was captured on videotapes and to which he admitted in a  
17 written statement dated May 1, 2007, as detailed in paragraphs 21-23, above. As such,  
18 Respondent's providing medications that were not prescribed by a medical doctor to another  
19 person was dangerous and injurious to the public.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Furnishing Controlled Substance Without Valid Prescription)**

22 26. Respondent is subject to disciplinary action under sections 4059, subdivision (a), and  
23 section 4301, subdivision (h), and section 11158, subdivision (a) of the H&S Code, in that from  
24 March 2, 2007, to April 26, 2007, Respondent knowingly provided controlled substances to his  
25 fiancée without valid prescriptions therefor, as detailed in paragraphs 21-23, above. Such  
26 conduct is substantially related to the qualifications, duties, and functions of a pharmacist.  
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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Violating Federal & State Pharmacy Laws & Regulations)**

3 27. Respondent is subject to disciplinary action under section 4301, subdivision (o) in  
4 that from March 2, 2007, to April 26, 2007, Respondent's diversion of controlled substances  
5 violated Title 21 U.S.C. section 843, subdivision (a)(3); Regulations, section 1700, et seq.; and  
6 H&S Code, section 11000, et seq., as detailed in paragraphs 21-23, above.

7 **FACTS - 2007 THROUGH 2008 INCIDENTS**

8 28. On September 2, 2008, the Board received a complaint from Pharmacy Technician  
9 A.B. alleging that Respondent, who was then PIC of Costco Pharmacy #441 (Costco), located at  
10 72-800 Dinah Shore Drive, Palm Desert, CA 92211, was filling prescriptions for himself for  
11 Provigil, written by J.R., M.D., a physician with a retired DEA number, and in some cases failed  
12 to contact the doctor who had written the prescription.

13 29. Review of Respondent's patient profile at Costco provided by A.B. revealed that  
14 between September 10, 2007, and August 7, 2008, Respondent filled twelve prescriptions for  
15 Provigil 200 mg, allegedly from Doctor R., containing 360 doses of Provigil in that amount.  
16 Review of Respondent's patient profile obtained by the Board's Inspector from Costco on  
17 November 6, 2008, revealed that between September 3, 2008, and October 31, 2008, Respondent  
18 obtained three additional prescriptions for Provigil 200 mg, allegedly from Dr. R., containing 90  
19 does of Provigil in that amount. While at Costco on November 6, 2008, the Inspector also noted  
20 that the pharmacy shelves were dusty and the pharmacy sink did not have hot water available. He  
21 also interviewed Respondent, who informed him that Dr. R. was retired, a family friend, and had  
22 approved all the Provogil prescriptions for him.

23 30. On December 3, 2008, Dr. R. faxed the Inspector the following statement:

24 Sheldon Borson has been a patient of mine for many years. Recently he has  
25 been under a lot of stress according to some of the stories he has told me. I am  
26 certain I did prescribe Provigil 200 mg with 3 refills on Sept. 7, 2007. I may have  
27 later refilled his Rx on Jan. 24, 2008 & Feb. 22, 2008. Under normal circumstances I  
28 would not prescribe just one refill for a medication that was going to be taken for a  
prolonged time. I would write for 3 refills then then [sic] the person should be  
evaluated by his attending [illegible -physician?]. Although I may have prescribed  
Provigil 200 mg on March 20, 2008 & April 17, 2008, I can't actually positively say  
that I did. Call me tonite if you want further clarification or [illegible].

1        31. On April 1, 2009, the Inspector returned to Costco. While there, she noted that the  
2 pharmacy shelves remained thick with dust. Respondent advised the Inspector that he had  
3 worked at Costco since June 2007, and became PIC there on December 18, 2007. When asked  
4 about the September 10, 2007 prescription, Respondent confirmed that he had received,  
5 transcribed, and filled it for himself. Respondent stated he did not violate Costco pharmacy  
6 policy in doing so, and claimed he was unaware of the provisions of H&S Code section 11170  
7 prohibiting this practice. Respondent also advised the Inspector that Dr. R. had died sometime in  
8 February 2009.

9        32. The Inspector subsequently determined from the Riverside County District Office of  
10 the DEA that the last renewal date for Dr. R.'s DEA Registration was April 9, 1999, and it  
11 expired on April 30, 2002. The DEA had mailed Dr. R. a delinquency form on July 12, 2002, but  
12 retired his DEA Registration on December 14, 2002, after receiving no response to its July 12,  
13 2002 mailing. The Investigator later determined that Dr. R. died on February 20, 2009, though  
14 when interviewed on May 1, 2009, Respondent claimed that he did not learn of his death until  
15 "mid-March" 2009, and that his refilling Dr. R.'s prescriptions after his death was authorized as  
16 "a valid refill."

17        33. On April 30, 2009, the Investigator requested and received "Prescription Status  
18 Trails" for certain of Respondent's prescriptions. That information, and all other data collected to  
19 that point by the Investigator, was entered into a database and analyzed as follows:

20            a. From September 10, 2007, to March 27, 2009, Respondent received and  
21 possessed 600 tablets from 20 prescriptions of Provigil 200 mg from Dr. R., prescribed without a  
22 valid DEA Registration since April 30, 2002; and

23            b. On September 10, and October 9, 2007, Respondent furnished Provigil 200 mg  
24 #30, a Schedule IV controlled substance under H&S Code section 11057, subdivision (f)(3) to  
25 himself, by verifying and dispensing his own controlled substance prescriptions.  
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**FIFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Clearly Excessive Furnishing of Controlled Substances)**

34. Respondent is subject to disciplinary action under section 4301, subdivision (d) in that from September 10, 2007, to March 27, 2009, Respondent furnished clearly excessive amounts of controlled substances to himself without valid prescriptions therefor, in violation of subdivision (a) of section 11153 of the H&S Code, as detailed in paragraphs 28-33, above. Such conduct is substantially related to the qualifications, duties, and functions of a pharmacist.

**SIXTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violation of State and Federal Pharmacy Laws and Regulations)**

35. Respondent is subject to disciplinary action under sections 4059, subdivision (a), 4060, and 4301, subdivisions (j) and (o), and section 11175 of the H&S Code, in that from September 10, 2007, to March 27, 2009, Respondent possessed controlled substances and dangerous drugs without a legitimate prescription therefor, as detailed in paragraphs 28-33, above. Such conduct is substantially related to the qualifications, duties, and functions of a pharmacist.

**SEVENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Self-Administration of  
Illegally Obtained Controlled Substances and/or Dangerous Drugs)**

36. Respondent is subject to disciplinary action under section 4301, subdivision (h), and section 11170 of the H&S Code, in that Respondent furnished dangerous drugs and/or controlled substances to himself for his personal use without a valid prescription, as detailed in paragraphs 28-33, above. As such, Respondent's use of medications that were not prescribed by a medical doctor was in a manner dangerous and injurious to himself and to the public because it had the potential to impair his ability to conduct with safety the practice of pharmacy.

**EIGHTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violation of California Statutes Regulating  
Controlled Substances & Dangerous Drugs)**

37. Respondent is subject to disciplinary action under section 4301, subdivision (j) in that from March 2, 2007, to April 26, 2007, Respondent knowingly violated sections 4022 and 4059 regulating controlled substances and dangerous drugs, as detailed in paragraphs 28-33, above. Such conduct is substantially related to the qualifications, duties, and functions of a pharmacist.

**NINTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violating Federal & State Laws  
& Regulations Governing Pharmacy)**

38. Respondent is subject to disciplinary action under section 4301, subdivision (o) in that from March 2, 2007, to April 26, 2007, Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3); Regulations, section 1700, et seq.); and H&S Code, section 11000, et seq.), by fraudulently obtaining Provigil, a controlled substance, for his own use, as detailed in paragraphs 28-33, above.

**TENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violating State Regulations Governing Pharmacy)**

39. Respondent is subject to disciplinary action under section 4301, subdivision (o) in that on November 6, 2008, and April 1, 2009, Respondent violated Regulations, section 1714, subsection (c) by failing to maintain the pharmacy, and its fixtures, of which he was PIC, in a clean condition, as detailed in paragraphs 28-33, above.

**FACTS - 2010 THROUGH 2011 INCIDENTS**

40. Commencing on November 30, 2010, the Board received information from several pharmacy technicians (TCHs) employed in the pharmacy at Costco, where Respondent was PIC from December 18, 2007, to September 19, 2011, that Respondent was refilling controlled substance prescriptions early for a specific patient, Kim B., who had "followed" Respondent from his previous employment as PIC at Sav-On, and whom Respondent personally waited on when she visited Costco's pharmacy. In subsequent conversations with the TCHs, the Board's

1 Inspector learned that when one of the TCHs questioned Respondent's early filling of Kim B.'s  
2 prescriptions, Respondent told her "the doctor does not need to be called." The TCHs also told  
3 the Inspector that Kim B. frequently gets prescriptions refilled early and they are not allowed to  
4 question it.

5 41. Another TCH told the Inspector that she had seen Respondent take Return to Stock  
6 (RTS) medications into his office at least three times, and never saw the medications again.  
7 Several TCHs told the Inspector that they observed another TCH, V.R., who had come to  
8 Costco's pharmacy with Respondent from Sav-On, canceling "owed" prescriptions for patients.  
9 When questioned, V.R. confirmed that she did not call the patients (to see why they hadn't picked  
10 up the drugs) and kept canceling them anyway. Respondent later confronted the TCH who was  
11 asking V.R. questions about the cancelled prescriptions. The TCHs told the Inspector that if a  
12 new prescription is canceled in Costco's computer system, the prescription number no longer  
13 exists; but, if a refilled prescription is canceled, only that refill is cancelled.

14 42. At the beginning of August 2011, one of the TCHs told the Inspector that there was a  
15 significant amount of "shrinkage," defined as "material or goods lost through deterioration,  
16 obsolescence, pilferage, theft and/or waste," at Costco's pharmacy. On September 13, 2011, the  
17 Inspector visited Costco's pharmacy, but Respondent was not present. The Inspector collected  
18 business records from Costco's pharmacy, and one of the pharmacists then present told the  
19 Inspector that the records indicated there was approximately \$25,000 "shrinkage" at the  
20 pharmacy.

21 43. On September 16, 2011, the Inspector returned to Costco's pharmacy, where  
22 Respondent was present, and collected additional pharmacy records. All Kim B. prescriptions  
23 were entered into a database and sorted by date. Included with each prescription, the Inspector  
24 noted the scanning technician, filling technician and verifying pharmacist, who is the pharmacist  
25 checking the filled prescription. Prescriptions were then sorted by drug, noting days supply and  
26 days between prescriptions for hydrocodone products and alprazolam. Of the 24 alprazolam  
27 product prescriptions filled for Kim B. from January 13, 2010 to August 27, 2011, only one was  
28 verified by another Costco pharmacist five days earlier than the directions indicated (4%).

Respondent filled only one of these 24 prescriptions himself (4%), and verified 11 Kim B. prescriptions himself (45%). Of the 28 hydrocodone product prescriptions filled for Kim B. from April 27, 2009 to August 26, 2011, three were filled more than 5 days earlier than the directions indicated (11 %). These three prescriptions were filled by two other Costco pharmacists and Respondent, who filled only four of these 24 prescriptions himself (14%), and verified 14 himself (50%). On July 10, 2012, the Inspector faxed a letter to Dr. Khalid Ahmed, requesting he confirm his authorization of the prescriptions under his name for Kim B., but Dr. Ahmed never responded to the Inspector's request.

44. On July 12, 2012, the Inspector sent an email to Costco Compliance Officer Michelle Taylor, requesting an audit, from the May 2010 DEA Inventory to the May 2011 Inventory, of the following drugs: Alprazolam 1mg, Alprazolam 2mg, Hydrocodone/APAP 10-325, Hydrocodone/APAP 10-660, and Hydrocodone/APAP 7.5-325. On August 3, 2012, the Inspector received the results of this audit, completed by Costco's Regional Supervisor, together with additional Costco pharmacy records, including the May 3, 2010, and May 2, 2011 Controlled Substance Inventories signed by Respondent, charted as follows:

Drug	AMT ON 05-03-10 INV (A)	AMT PURCH 05-03-10 to 05-02-11 (C)	TOTAL (A+C=T)	AMT DISP TO PTS/LOST OR TRANSFERRED	AMT DRUG PHY ACC'T FOR (T-D-E)	AMT ON 05-02-11 INV (F)	TOTAL AMT UNACCT'D FOR (E-F-V)	% OF PURCHASES UNACCT'D FOR (V/C)
Xanax 1mg	95	130	225	105	120	120	0	
Alprazolam 1 mg	567	17,500	18,067	20,004	(-) 1,216	1,160	(-) 2,376	
Xanax 2 mg	0	0	0	0	0	0	0	
Alprazolam 2 mg	188	12,970	13,158	12,640	518	1090	(-) 572	
Norco 7.5-325	40	100	140	90	50	50	0	
Hyd/APAP 7.5-325	602	7,020	7,622	6,846	776	303	473	6.74%
Norco 10-325	200	100	300	180	120	65	55	55.0%
Hyd/APAP 10-325	1,188	91,180	92,368	82,815	9,552	1,880	7,672	8.41%
Hyd/APA 10-660	93	2,800	2,893	2,740	153	153	0	

**ELEVENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Committing Acts Involving  
Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

45. Respondent is subject to disciplinary action under section 4301, subdivision (f), and section 11173, subdivision (a) of the H&S Code, in that from April 27, 2009, through August 27, 2011, Respondent prematurely refilled prescriptions for Kim B. for Alprazolam 1mg, Alprazolam 2mg, Hydrocodone/APAP 7.5-325, Norco 10-325, and Hydrocodone/APAP 10-325, Schedule IV controlled substances under H&S Code section 11057, subdivision (f)(3), and dangerous drugs, using fraud, deceit, and dishonesty, as detailed in paragraphs 40-44, above. Such conduct is substantially related to the qualifications, duties, and functions of a pharmacist.

**TWELFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Furnishing Prescription Medication Without Valid Prescription)**

46. Respondent is subject to disciplinary action under sections 4059, subdivision (a), and 4301, subdivisions (j) and (o) in that from April 27, 2009, through August 27, 2011, Respondent provided prescription medications for the use of another without a prescription, as detailed in paragraphs 40-45, above.

**THIRTEENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Furnishing Controlled Substance Without Valid Prescription)**

47. Respondent is subject to disciplinary action under sections 4059, subdivision (a), and section 4301, subdivision (h), and section 11158, subdivision (a) of the H&S Code, in that from April 27, 2009, through August 27, 2011, Respondent knowingly prematurely provided controlled substances and dangerous drugs to Kim B. without valid prescriptions therefor, as detailed in paragraphs 40-45, above.

**FOURTEENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Clearly Excessive Furnishing of Controlled Substances)**

48. Respondent is subject to disciplinary action under section 4301, subdivision (d) in that from April 27, 2009, through August 27, 2011, Respondent furnished clearly excessive amounts of controlled substances and dangerous drugs to Kim B. without valid prescriptions

therefor, in violation of subdivision (a) of section 11153 of the H&S Code, as detailed in paragraphs 40-45, above.

**FIFTEENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violation of California Statutes Regulating Controlled Substances & Dangerous Drugs)**

49. Respondent is subject to disciplinary action under section 4301, subdivision (j) in that from April 27, 2009, through August 27, 2011, Respondent knowingly violated sections 4022, 4059, and 4081, subdivision (b), regulating controlled substances and dangerous drugs, by failing to maintain accurate records of dangerous drugs, as well as a current inventory to include complete accountability of all dangerous drugs, from at least May 2010 through May 2011, while PIC at Costco pharmacy, as detailed in paragraphs 40-45, above.

**SIXTEENTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violating State Regulations Governing Pharmacy)**

50. Respondent is subject to disciplinary action under section 4301, subdivision (o) in that from on April 27, 2009, through August 27, 2011, Respondent violated the following sections of the Regulations:

a. Section 1714, subsection (d), by failing to maintain effective controls against theft in the pharmacy of which he was PIC, as detailed in paragraphs 40-45, above. Specifically, from at least the May 2010 DEA Inventory to the May 2011 DEA Inventory of Costco pharmacy, Respondent failed to prevent theft of three different controlled substances, Hyd/APAP 7.5-325, Norco 10-325, and Hyd/APAP 10-325, in the respective amounts of 473, 55 and 7,672 tablets, a violation of pharmacy law.

b. Section 1716, by deviating from the requirements of a prescription without the prior consent of the prescriber, as detailed in paragraphs 40-45, above. Specifically, on March 31, 2010, Respondent furnished Kim B., a refill for Rx # 696843 for Hyd/APAP 7.5-750 #120, five days earlier than directed for the use indicated, without contacting the prescriber, a violation of pharmacy law.



1 c. Section 1718, by failing to maintain accurate records of dangerous drugs, as  
2 well as a current inventory to include complete accountability of all dangerous drugs while PIC at  
3 Costco pharmacy as detailed in paragraphs 40-45, above. Specifically, on or about August 3,  
4 2012, it was discovered that Respondent failed to maintain accurate records and complete  
5 accountability from at least May 2010 to May 2011 of three different controlled substances,  
6 Hyd/APAP 7.5-325, Norco 10-325, and Hyd/APAP 10-325, in the respective amounts of 473, 55  
7 and 7,672 tablets, a violation of pharmacy law.

8 **DISCIPLINARY CONSIDERATIONS**

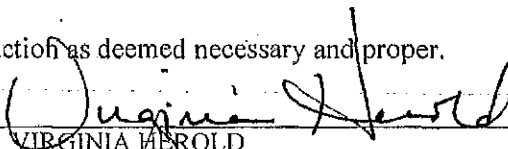
9 51. To determine the degree of discipline, if any, to be imposed on Respondent,  
10 Complainant alleges that on or about July 16, 2004, in a prior proceeding by on Citation No. CI  
11 2004 27818, the Board found Respondent guilty of furnishing dangerous drugs or devices  
12 prohibited without prescription (in violation of section 4059, subdivision (a)) in that on or about  
13 November 15, 2003, Respondent furnished a controlled substance to a patient without first  
14 obtaining a valid prescription by an authorized prescriber. Respondent was fined in the amount  
15 of \$ 500.00, which he paid.

16 **PRAYER**

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

- 19 1. Revoking or suspending Pharmacist License Number RPH 45970, issued to Sheldon  
20 Dale Borson, Jr.;
- 21 2. Ordering Sheldon Dale Borson, Jr. to pay the Board of Pharmacy the reasonable costs  
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
23 section 125.3; and
- 24 3. Taking such other and further action as deemed necessary and proper.

25 DATED: 5/6/13

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