

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

In the Matter of the Accusation Against:

Case No.3351

BRIAN HIGHSMITH
2808 Garvin Street
Richmond, CA 94801

Pharmacy Technician Registration No. TCH
64644

Respondent.

DECISION AND ORDER

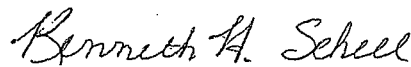
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 23, 2010.

It is so ORDERED on May 24, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **BRIAN D. HIGHSMITH**
12 **2808 Garvin Street**
13 **Richmond, California 94801**

14 **Pharmacy Technician License No. TCH 64644**

15 Respondent.

Case No. 3351

OAH No. 2010010089

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 In the interest of a prompt and speedy settlement of this matter, consistent with the public
17 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
18 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
19 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

20
21 PARTIES

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

25 2. Respondent Brian D. Highsmith (Respondent) is represented in this proceeding by
26 attorney Edgardo Gonzalez, whose address is Law Offices of Edgardo Gonzalez, 1300 Clay
27 Street, Suite 600, Oakland, CA 94612 (telephone (888) 800-9200).

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in First
3 Amended Accusation No. 3351.

4 9. Respondent agrees that his Pharmacy Technician License is subject to discipline and
5 he agrees to be bound by the Board of Pharmacy (Board)'s imposition of discipline as set forth in
6 the Disciplinary Order below.

7
8 RESERVATION

9 10. The admissions made by Respondent are only for the purposes of this proceeding, or
10 any other proceedings in which the Board of Pharmacy or other professional licensing agency is
11 involved, and shall not be admissible in any other criminal or civil proceeding.

12
13 CONTINGENCY

14 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
15 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
16 communicate directly with the Board regarding this stipulation and settlement, without notice to
17 or participation by Respondent or his counsel. By signing the stipulation, Respondent
18 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
19 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
20 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
21 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
22 and the Board shall not be disqualified from further action by having considered this matter.

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

1 **2. 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
4 seventy-two (72) 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 Pharmacy Technician License or which is related to the
13 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
14 or charging for any drug, device or controlled substance.

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

16 **3. 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 **4. 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 its
28 designee. Failure to appear for any scheduled interview without prior notification to board staff,
or failure to appear at two (2) or more scheduled interviews with the board or its designee during
the period of probation, shall be considered a violation of probation.

1 **5. Cooperate with Board Staff**

2 Respondent shall cooperate with the board's inspection program and with the board's
3 monitoring and investigation of respondent's compliance with the terms and conditions of his
4 probation. Failure to cooperate shall be considered a violation of probation.

5 **6. Status of License**

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

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

13 **7. No Ownership of Licensed Premises**

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

21 **8. Notification of a Change in Name, Address(es), or Employment**

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

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

1 **9. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 3351 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 3351 and the terms and conditions
10 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
11 supervisor(s) submit timely acknowledgement(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
14 of the terms and conditions of the decision in case number 3351 in advance of the respondent
15 commencing work at each pharmacy. A record of this notification must be provided to the board
16 upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that he has read the decision in case number 3351
21 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
22 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23 Failure to timely notify present or prospective employer(s) or to cause such employer(s) to
24 submit timely acknowledgments to the board shall be considered a violation of probation.

25 "Employment" within the meaning of this provision shall include any full-time,
26 part-time, temporary or relief service or pharmacy management service as a pharmacy
27 technician or in any position for which a pharmacy technician license is a requirement
28 or criterion for employment, whether the respondent is considered an employee,
independent contractor or volunteer.

1 **10. 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.

13 **11. Random Drug Screening**

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

1 During any such suspension, respondent shall not enter any pharmacy area or any portion of
2 or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any
3 other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs
4 and devices or controlled substances are maintained. Respondent shall not direct, control or
5 perform any aspect of the practice of pharmacy. Respondent shall not do any act involving drug
6 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
7 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
8 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
9 substances. Respondent shall not resume work until notified by the board.

10 Failure to comply with any such suspension shall be considered a violation of probation.

11 **12. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

12 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
13 attendance at a recognized and established substance abuse recovery support group in California,
14 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
15 or its designee. Respondent must attend at least one group meeting per week unless otherwise
16 directed by the board or its designee. Respondent shall continue regular attendance and submit
17 signed and dated documentation confirming attendance with each quarterly report for the duration
18 of probation. Failure to attend or timely submit documentation of attendance shall be considered
19 a violation of probation.

20 **13. Reimbursement of Board Costs**

21 As a condition precedent to successful completion of probation, respondent shall pay to the
22 board its costs of investigation and prosecution in the amount of \$4,800.00, payable in full within
23 the first four (4) years of probation in equal quarterly installments of \$300.00. There shall be no
24 deviation from this schedule absent prior written approval by the board or its designee. Failure to
25 pay costs by the deadline(s) as directed shall be considered a violation of 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.

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1 **14. 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 as
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
5 be considered a violation of probation.

6 **15. Tolling of Probation**

7 Except during periods of suspension, respondent shall, at all times while on probation, be
8 employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar
9 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,
10 the period of probation shall be extended by one month for each month during which this
11 minimum is not met. During any such period of tolling of probation, respondent must
12 nonetheless comply with all terms and conditions of probation.

13 Should respondent, regardless of residency, for any reason (including vacation) cease
14 working as a pharmacy technician for a minimum of forty (40) hours per calendar month in
15 California, respondent must notify the board in writing within ten (10) days of cessation of work
16 and must further notify the board in writing within ten (10) days of the resumption of the work.
17 Any failure to provide such notification(s) shall be considered a violation of probation.

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

21 "Cessation of work" means any calendar month during which respondent is not
22 working for at least forty (40) hours as a pharmacy technician, as defined in Business
23 and Professions Code section 4115. "Resumption of work" means any calendar
24 month during which respondent is working for at least forty (40) hours as a pharmacy
25 technician as defined by Business and Professions Code section 4115.

26 **16. License Surrender While on Probation/Suspension**

27 Following the effective date of this decision, should respondent cease work due to
28 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
respondent may tender her pharmacy technician license to the board for surrender. The board or

1 its designee shall have the discretion whether to grant the request for surrender or take any other
2 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
3 license, respondent will no longer be subject to the terms and conditions of probation. This
4 surrender constitutes a record of discipline and shall become a part of the respondent's license
5 history with the board.

6 Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician
7 license to the board within ten (10) days of notification by the board that surrender is accepted.
8 Respondent may not reapply for any license, permit, or registration from the board for three (3)
9 years from the effective date of the surrender. Respondent shall meet all requirements applicable
10 to the license sought as of the date the application for that license is submitted to the board.

11 **17. Violation of Probation**

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

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

24 **18. Completion of Probation**

25 Upon written notice by the board indicating successful completion of probation,
26 respondent's pharmacy technician license will be fully restored.


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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Edgardo Gonzalez. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3/10/10 
BRIAN D. HIGHSMITH
Respondent

I have read and fully discussed with Respondent Brian D. Highsmith the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/10/10 
EDGARDO GONZALEZ
Attorney for Respondent

ENDORSEMENT

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

Dated: _____ Respectfully Submitted,
EDMLND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 3351

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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8 **BEFORE THE**
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3351

11 **BRIAN D. HIGHSMITH**
12 **2808 Garvin Street**
13 **Richmond, California 94801**

FIRST AMENDED ACCUSATION

14 **Pharmacy Technician License No. TCH 64644**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about August 22, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 64644 to Brian D. Highsmith (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on September 30, 2011, unless renewed.

24 JURISDICTION

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

28 ///

1 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of the license.

4 9. California Code of Regulations, title 16, section 1770, states:

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

11 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
14 controlled substance, except that furnished upon a valid prescription/drug order.

15 12. Health and Safety Code section 11170 provides that no person shall prescribe,
16 administer, or furnish a controlled substance for himself or herself.

17 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
18 a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s)
19 (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

20 14. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
21 for sale or purchase for purposes of sale, a controlled substance in Schedule I, subdivision(s) (b),
22 (c) or (e), or any narcotic drug in Schedules III-V.

23 15. Health and Safety Code section 11351.5, in pertinent part, makes it unlawful to
24 possess for sale, or purchase for purposes of sale, **cocaine** base.

25 16. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any
26 person to possess **marijuana** or concentrated cannabis.

27 17. Health and Safety Code section 11359, in pertinent part, makes it unlawful for any
28 person to possess **marijuana** for sale.

1 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
2 administrative law judge to direct a licensee found to have committed a violation of the licensing
3 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

4 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

5 19. Section 4021 of the Code states:

6 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
7 11053) of Division 10 of the Health and Safety Code.”

8 20. Section 4022 of the Code states, in pertinent part:

9 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
10 except veterinary drugs that are labeled as such, and includes the following:

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

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

15 21. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety
16 Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions
17 Code section 4022. It is a hallucinogenic drug.

18 22. **Cocaine** is a Schedule I (in base form) or Schedule II controlled substance as
19 designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous drug
20 as designated by Business and Professions Code section 4022. It is a narcotic drug.

21 23. **Heroin** is a Schedule I controlled substance as designated by Health and Safety Code
22 section 11054(c)(11) and a dangerous drug as designated by Business and Professions Code
23 section 4022. It is an opiate drug.

24 FACTUAL BACKGROUND

25 24. On or about September 5, 2004, Oakland Police discovered Respondent sitting in the
26 driver’s seat of a parked car with thirty-one (31) small bags of suspected rock (base) **cocaine** in
27 his lap, a plastic bag with approximately ½ ounce of suspected **marijuana** on the floorboard at
28 his feet, and other plastic bags containing smaller amounts of **marijuana** in the driver’s seat.

1 SECOND CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime(s))

3 27. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
4 Code, by reference to California Code of Regulations, title 16, section 1770, for conviction of a
5 substantially related crime, in that on or about October 23, 2009, in *People v. Brian Highsmith*,
6 Case No. 2429122 in San Francisco County Superior Court, Respondent was convicted of
7 violating Vehicle Code section 23103 (Reckless driving), a misdemeanor, as follows:

8 a. On or about July 28, 2009, Respondent was arrested and subsequently charged.
9 in *People v. Brian Highsmith*, Case No. 2429122 in San Francisco County Superior Court, with
10 violating (1) Vehicle Code section 23152, subdivision (a) (Driving under the influence of alcohol
11 or drugs), a misdemeanor, and (2) Vehicle Code section 23152, subdivision (b) (Driving with a
12 blood alcohol of 0.08 percent or higher), a misdemeanor.

13 b. On or about October 23, 2009, a third count was added in Case No. 2429122 of
14 violating Vehicle Code section 23103 (Reckless driving), a misdemeanor. Respondent pleaded
15 no contest to this third count. The first two counts were dismissed. The imposition of sentence
16 was suspended in favor of an unsupervised probation of two (2) years, on terms and conditions
17 including time served, fines and fees, and enrollment in a 12-hour First Offenders Program. After
18 1 year of probation, Respondent may petition for early termination of the probation period.

19
20 THIRD CAUSE FOR DISCIPLINE

21 (Furnishing of Controlled Substance)

22 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
23 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
24 in paragraphs 24 to 26 above, furnished to himself or another without a valid prescription, and/or
25 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11357, in that
5 Respondent, as described in paragraphs 24 to 26 above, possessed, conspired to possess, and/or
6 assisted in or abetted possession of, a controlled substance, without a prescription.

7
8 FIFTH CAUSE FOR DISCIPLINE

9 (Possession or Purchase of Controlled Substance for Sale)

10 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section(s) 11351, 11351.5 and/or 11359, in that Respondent, as
12 described in paragraphs 24 to 26 above, possessed or purchased a controlled substance for sale, or
13 conspired and/or assisted in or abetted such possession or purchase for sale.

14
15 SIXTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

17 31. Respondent is subject to discipline under section 4301 of the Code in that
18 Respondent, as described in paragraphs 24 to 30 above, engaged in unprofessional conduct.

19
20 DISCIPLINE CONSIDERATIONS

21 32. To determine the proper degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges that on or about July 18, 2005, in a case titled *People v. Brian Douglas*
23 *Higsmith*, Case No. HO2831343 in Santa Clara County Superior (Traffic) Court, Respondent
24 was convicted of violating Vehicle Code section 21956 (Pedestrian on roadway), an infraction,
25 and two counts of violating Vehicle Code section 40508, subdivision (a) (Willful failure to appear
26 in court following a written promise to appear), also infractions, as follows:

27 a. On or about June 15, 2003, Respondent was issued Citation / Notice to Appear
28 J2806754 for violating Vehicle Code section 21956 (Pedestrian on roadway), an infraction.

