

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

In the Matter of the Accusation Against:

Case No. 3404

**JERRY B. KLEIN, a.k.a.,  
JERRY BRADLEY KLEIN, a.k.a.,  
BRAD KLEIN**  
P.O. Box 568  
Story, WY 82842

Pharmacist License No. RPH 33188

Respondent.

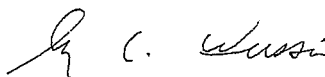
**DECISION AND ORDER**

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 November 18, 2010.

It is so ORDERED on October 19, 2010.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
4 State Bar No. 186131  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-7384  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3404

12 **JERRY B. KLEIN, a.k.a.,**  
13 **JERRY BRADLEY KLEIN, a.k.a.,**  
14 **BRAD KLEIN**  
15 **P.O. Box 568**  
16 **Story, WY 82842**

OAH No. 2010010051

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 **Pharmacist License No. RPH 33188**

16 Respondent.

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

20 PARTIES

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

25 2. Respondent Jerry B. Klein (Respondent) is represented in this proceeding by attorney  
26 Ann C. Schneider, whose address is Green & Associates, 801 S. Figueroa Street, Suite 1200, Los  
27 Angeles, California 90017.  
28







1 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
2 in submission of reports as directed may be added to the total period of probation. Moreover, if  
3 the final probation report is not made as directed, probation shall be automatically extended until  
4 such time as the final report is made and accepted by the board.

5 **3. Interview with the Board**

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

11 **4. Cooperate with Board Staff**

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

15 **5. Continuing Education**

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

18 **6. Notice to Employers**

19 During the period of probation, respondent shall notify all present and prospective  
20 employers of the decision in case number 3404 and the terms, conditions and restrictions imposed  
21 on respondent by the decision, as follows:

22 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
23 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
24 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
25 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
26 individual(s) has/have read the decision in case number 3404, and terms and conditions imposed  
27 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
28 submit timely acknowledgment(s) to the board.

1 If respondent works for or is employed by or through a pharmacy employment service,  
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
3 licensed by the board of the terms and conditions of the decision in case number 3404 in advance  
4 of the respondent commencing work at each licensed entity. A record of this notification must be  
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
9 report to the board in writing acknowledging that he has read the decision in case number 3404  
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

19 **7. No Supervision of Interns, Serving as Designated Representative-in-Charge, or**  
20 **Serving as a Consultant**

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

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the  
27 board its costs of investigation and prosecution in the amount of \$3,995.00. Respondent shall  
28 make said payments as follows: monthly payments of \$153.65 for 26 months until paid in full.

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

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

6           **9. Probation Monitoring Costs**

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

11           **10. Status of License**

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

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

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

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

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



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

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

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

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

14 **13. Tolling of Probation**

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

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

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

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

6 **14. Violation of Probation**

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

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

19 **15. Completion of Probation**

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

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

23 Within thirty (30) days of the effective date of this decision, respondent shall contact the  
24 Pharmacists Recovery Program (PRP) for evaluation, and following the evaluation, if deemed  
25 appropriate, shall immediately thereafter enroll, successfully participate in, and complete the  
26 treatment contract and any subsequent addendums as recommended and provided by the PRP and  
27 as approved by the board or its designee. The costs for PRP participation shall be borne by the  
28 respondent.

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

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

7 Probation shall be automatically extended until respondent successfully completes the PRP.

8 Any person terminated from the PRP program shall be automatically suspended by the board.

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

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

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

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

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

26 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
27 licensed premises in which he holds an interest at the time this decision becomes effective unless  
28 otherwise specified in this order.

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

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

5 **17. Random Drug Screening**

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

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

1 and controlled substances. Respondent shall not resume practice until notified by the board.

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

6 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
7 licensed premises in which he holds an interest at the time this decision becomes effective unless  
8 otherwise specified in this order.

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

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

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

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

23 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
24 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
25 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
26 history with the use of alcohol, and who will coordinate and monitor any prescriptions for  
27 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved  
28 practitioner shall be provided with a copy of the board's Accusation and decision. A record of

1 this notification must be provided to the board upon request. Respondent shall sign a release  
2 authorizing the practitioner to communicate with the board about respondent's treatment(s). The  
3 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the  
4 board on a quarterly basis for the duration of probation regarding respondent's compliance with  
5 this condition. If any substances considered addictive have been prescribed, the report shall  
6 identify a program for the time limited use of any such substances. The board may require that  
7 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a  
8 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,  
9 for any reason, cease supervision by the approved practitioner, respondent shall notify the board  
10 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement  
11 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the  
12 board or its designee for its prior approval. Failure to timely submit the selected practitioner or  
13 replacement practitioner to the board for approval, or to ensure the required reporting thereby on  
14 the quarterly reports, shall be considered a violation of probation.

15 If at any time an approved practitioner determines that respondent is unable to practice  
16 safely or independently as a pharmacist, the practitioner shall notify the board immediately by  
17 telephone and follow up by written letter within three (3) working days. Upon notification from  
18 the board or its designee of this determination, respondent shall be automatically suspended and  
19 shall not resume practice until notified by the board that practice may be resumed.

20 During suspension, respondent shall not enter any pharmacy area or any portion of the  
21 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
22 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
23 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
24 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
25 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
26 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
27 and controlled substances. Respondent shall not resume practice until notified by the board.  
28

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

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

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

9 **20. Community Services Program**

10 Respondent shall complete 250 hours of community probation prior to the termination of  
11 probation. Within sixty (60) days of the effective date of this decision, respondent shall submit to  
12 the board or its designee, for prior approval, a community service program in which respondent  
13 shall provide free health-care related services on a regular basis to a community or charitable  
14 facility or agency. Within thirty (30) days of board approval thereof, respondent shall submit  
15 documentation to the board demonstrating commencement of the community service program. A  
16 record of this notification must be provided to the board upon request. Respondent shall report on  
17 progress with the community service program in the quarterly reports. Failure to timely submit,  
18 commence, or comply with the program shall be considered a violation of probation.

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

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

27 ///

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

22. Consultant for Owner or Pharmacist-In-Charge

During the period of probation, respondent shall not supervise any intern pharmacist, or serve as a consultant to any entity licensed by the board. In the event that the respondent is currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent consultant at its own expense who shall be responsible for reviewing pharmacy operations on a monthly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board or its designee, for prior approval. Within thirty (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is not the current PIC. The board may, in case of an employment change by respondent or for other reasons as deemed appropriate by the board or its designee, preclude the respondent from acting as a pharmacist-in-charge. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

ACCEPTANCE

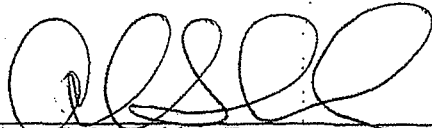
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ann C. Schneider, I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,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

DATED: 7/13/10   
\_\_\_\_\_  
JERRY B. KLEIN  
Respondent



1 I have read and fully discussed with Respondent Jerry B. Klein the terms and conditions  
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
3 its form and content.

4 DATED: 7-13-10


  
Ann C. Schneider, Esq.  
Green & Associates  
Attorney for Respondent

5  
6  
7  
8 ENDORSEMENT

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

11  
12 Dated: 7-13-10

Respectfully Submitted,  
EDMUND G. BROWN JR.  
Attorney General of California  
JANICE K. LACHMAN  
Supervising Deputy Attorney General

  
JANICE K. LACHMAN  
Supervising Deputy Attorney General  
*Attorneys for Complainant*

13  
14  
15  
16  
17  
18  
19  
20 SA2009101698  
Stipulation.rtf

**Exhibit A**

**Accusation No. 3404**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 JOHN PADRICK  
Deputy Attorney General  
4 State Bar No. 155123  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 323-6708  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3404

12 **JERRY B. KLEIN, a.k.a.,**  
13 **JERRY BRADLEY KLEIN, a.k.a.,**  
14 **BRAD KLEIN**  
P.O. Box 568  
Story, WY 82842

**A C C U S A T I O N**

15 **Pharmacist License No. RPH 40966**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold, ("Complainant") brings this Accusation solely in her official  
21 capacity as the Executive Officer of the California State Board of Pharmacy, ("the Board").

22 2. On or about August 16, 1979, the Board issued Pharmacist License No. RPH 40966  
23 to Jerry B. Klein, ("Respondent"). Respondent's license was in full force and effect at all times  
24 relevant to the charges brought herein and will expire on February 28, 2011.

25 **STATUTORY PROVISIONS**

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

28 ///

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

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

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

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

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

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

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

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

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Criminal Conviction for DUI)**

9 6. Respondent is subject to disciplinary action under Section 4301 of the Code and  
10 California Code of Regulations, title 16, section 1770, and, in that on or about September 11,  
11 2007, in the Superior Court of California, County of Mendocino, in *People of the State of*  
12 *California v. Jerry Bradley Klein*, (Case No. MCTM-MCTR-07-77890-01), Respondent was  
13 convicted on his plea of *nolo contendere* of violating Vehicle Code section 23152(a), (Driving  
14 while intoxicated), a misdemeanor. Such crime is substantially related to the qualifications,  
15 functions and duties of a licensed pharmacist.

16 7. The crime occurred on or about May 21, 2007 when Respondent was unable to  
17 maintain control over his pickup truck while driving south on SR-1 near Fort Bragg, left the  
18 roadway and traveled onto a grassy shoulder. For unknown reasons, a fire started in the engine  
19 compartment and Respondent was removed from the truck by a passerby. Respondent was then  
20 transported to Mendocino Coast Hospital where he was evaluated by a C.H.P. officer, admitted to  
21 intoxication, but refused a blood draw.

22 **COST RECOVERY**

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

27 ///

28 ///

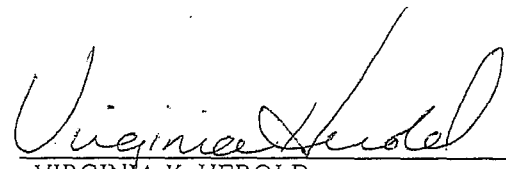
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PRAYER

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

1. Revoking or suspending Pharmacist Number RPH 40966, issued to Jerry B. Klein.
2. Ordering Jerry B. Klein to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/7/09

  
VIRGINIA K. HEROLD  
Executive Officer  
Board of Pharmacy  
State of California  
Complainant

SA2009101698  
10481309.doc