

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

In the Matter of the Accusation Against:

Case No. 3411

MICHAEL EDWARD BROWN
1038 Abeto Court
Chula Vista, CA 91910

Pharmacist License No. RPH 37708

Respondent.

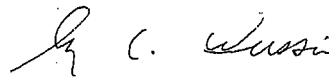
DECISION AND ORDER

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 September 29, 2010.

It is so ORDERED on August 30, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 Case No. 3411

12 In the Matter of the Accusation Against:

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14 Pharmacist License No. RPH 37708

15 Respondent.

16
17 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

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

19 PARTIES

20 1. Virginia Herold (Complainant) 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 Edmund G. Brown Jr., Attorney General of the State of California, by Antoinette B. Cincotta,
23 Deputy Attorney General.

24 2. Respondent Michael Edward Brown (Respondent) is represented in this proceeding
25 by attorney Tara M. Jacobson, whose address is 600 B Street, Ste. 150, San Diego, CA 92101.

26 3. On or about April 13, 1983, the Board of Pharmacy issued Pharmacist License No.
27 RPH 37708 to Michael Edward Brown (Respondent). The Pharmacist License was in full force
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1 and effect at all times relevant to the charges brought in Accusation No. 3411 and will expire on
2 February 28, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3411 was filed before the Board, and is currently pending against
5 Respondent. The Accusation and all other statutorily required documents were properly served
6 on Respondent on January 29, 2010. Respondent timely filed his Notice of Defense contesting
7 the Accusation. A copy of Accusation No. 3411 is attached as Exhibit A and incorporated herein
8 by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 3411. Respondent has also carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
13 Order.

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

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

22 CULPABILITY

23 8. Respondent understands and agrees that the charges and allegations in Accusation
24 No. 3411, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist
25 License.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
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1 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
2 those charges.

3 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
4 to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

5 CONTINGENCY

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

15 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
16 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
17 effect as the originals.

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

24 14. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Board may, without further notice or formal proceeding, issue and enter the following
26 Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 37708 issued to Respondent
3 Michael Edward Brown is revoked. However, the revocation is stayed and Respondent is placed
4 on probation for five (5) years on the following terms and conditions.

5 **1. Suspension**

6 As part of probation, Respondent is suspended from the practice of pharmacy for thirty (30)
7 days. Respondent shall be given thirty (30) days credit for the suspension already served

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

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

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

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

24 **2. Tolling of Suspension**

25 During the period of suspension, Respondent shall not leave California for any period
26 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
27 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
28 absence from California during the period of suspension exceeding ten (10) days shall toll the

1 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
2 Respondent is absent from California. During any such period of tolling of suspension,
3 Respondent must nonetheless comply with all terms and conditions of probation.

4 Respondent must notify the Board in writing within ten (10) days of departure, and must
5 further notify the Board in writing within ten (10) days of return. The failure to provide such
6 notification(s) shall constitute a violation of probation. Upon such departure and return,
7 respondent shall not resume the practice of pharmacy until notified by the Board that the period
8 of suspension has been satisfactorily completed.

9 **3. Obey All Laws**

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

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

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

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

24 **4. Report to the Board**

25 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
26 designee. The report shall be made either in person or in writing, as directed. Among other
27 requirements, Respondent shall state in each report under penalty of perjury whether there has
28 been compliance with all the terms and conditions of probation. Failure to submit timely reports

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 **5. 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
8 its designee. Failure to appear for any scheduled interview without prior notification to Board
9 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
10 during the period of probation, shall be considered a violation of probation.

11 **6. 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 **7. 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 **8. Notice to Employers**

19 During the period of probation, Respondent shall notify all present and prospective
20 employers of the decision in Case Number 3411 and the terms, conditions and restrictions
21 imposed 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 3411, and terms and conditions imposed
27 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
28 supervisor(s) 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 3411 in
4 advance of the Respondent commencing work at each licensed entity. A record of this
5 notification must be 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
8 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
9 service to report to the Board in writing acknowledging that he has read the Decision in Case
10 Number 3411 and the terms and conditions imposed thereby. It shall be Respondent's
11 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
12 acknowledgment(s) to the Board.

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

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

20 **9. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
21 **Designated Representative-in-Charge, or Serving as a Consultant**

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

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1 **10. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent shall pay to the
3 Board its costs of investigation and prosecution in the amount of \$5,687.00. Respondent shall
4 make said payments on a payment plan approved by the Board or its designee. There shall be no
5 deviation from this schedule absent prior written approval by the Board or its designee. Failure to
6 pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

9 **11. Probation Monitoring Costs**

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

14 **12. Status of License**

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

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

22 **13. License Surrender While on Probation/Suspension**

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

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

5 Respondent may not reapply for any license from the Board for three (3) years from the effective
6 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
7 of the date the application for that license is submitted to the Board, including any outstanding
8 costs.

9 **14. Notification of a Change in Name, Residence Address, Mailing Address or**
10 **Employment**

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

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

18 **15. Tolling of Probation**

19 Except during periods of suspension, Respondent shall, at all times while on probation, be
20 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
21 month during which this minimum is not met shall toll the period of probation, i.e., the period of
22 probation shall be extended by one month for each month during which this minimum is not met.

23 During any such period of tolling of probation, Respondent must nonetheless comply with all
24 terms and conditions of probation.

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

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

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

11 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that
12 dispenses medication for a minimum of one year prior to the completion of probation. After the
13 first year of probation, the Board or its designee may consider a modification of this requirement.
14 If Respondent fails to comply with this requirement or a subsequent modification thereto, such
15 failure shall be considered a violation of probation.

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

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

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

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

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

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

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

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

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

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

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

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1 **17. Random Drug Screening**

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

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

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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
6 any licensed premises in which he holds an interest at the time this decision becomes effective
7 unless otherwise specified in this order.

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

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

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

21 **19. Supervised Practice**

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

27 Continuous – At least 75% of a work week

28 Substantial - At least 50% of a work week

1 Partial - At least 25% of a work week

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

3 Within thirty (30) days of the effective date of this decision, Respondent shall have his
4 supervisor submit notification to the Board in writing stating that the supervisor has read the
5 Decision in Case Number 3411 and is familiar with the required level of supervision as
6 determined by the Board or its designee. It shall be the Respondent's responsibility to ensure that
7 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
8 the Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
9 acknowledgements to the Board shall be considered a violation of probation.

10 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
11 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
12 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)
13 days after employment commences, submit notification to the Board in writing stating the direct
14 supervisor and pharmacist-in-charge have read the Decision in Case Number 3411 and is familiar
15 with the level of supervision as determined by the Board. Respondent shall not practice
16 pharmacy and his license shall be automatically suspended until the Board or its designee
17 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
18 submit timely acknowledgements to the Board shall be considered a violation of probation.

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

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.

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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
6 any licensed premises in which he holds an interest at the time this decision becomes effective
7 unless otherwise specified in this Order.

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

9 **20. No Ownership of Licensed Premises**

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

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

25 **21. Ethics Course**

26 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
27 enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its

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1 designee. Failure to initiate the course during the first year of probation, and complete it within
2 the second year of probation, is a violation of probation.

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

5 **22. Violation of Probation**

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

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

18 **23. Completion of Probation**

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

21 **ACCEPTANCE**

22 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
23 discussed it with my attorney, Tara M. Jacobson. I understand the stipulation and the effect it
24 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
25 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
26 of the Board of Pharmacy.

27 DATED: 7-23-2010


28 
MICHAEL EDWARD BROWN
Respondent

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I have read and fully discussed with Respondent Michael Edward Brown the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 7/29/10



TARA M. JACOBSON
Attorney for Respondent

ENDORSEMENT

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

Dated: _____

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

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

DATED: 7/28/10



TARA M. JACOBSON
Attorney for Respondent

ENDORSEMENT

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

Dated: 7/29/2010

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 3411

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 Case No. 3411

12 In the Matter of the Accusation Against:

13 MICHAEL EDWARD BROWN
1038 Abeto Court
Chula Vista, CA 91910

14 Pharmacist License No. RPH 37708

15 Respondent.

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

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 13, 1983, the Board issued Pharmacist License Number RPH
22 37708 to Michael Edward Brown (Respondent). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on February 28, 2011,
24 unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the

28 ~~Business and Professions Code (Code) unless otherwise indicated.~~

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

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct - Performing Duties While Under the Influence of Alcohol)

5 9. Respondent is subject to disciplinary action under section 4301, subdivision (o), for
6 violation of section 4327 in that Respondent Michael Edward Brown used alcoholic beverages
7 while performing duties as a pharmacist at CVS Pharmacy #9113 located at 645 E. Palomar
8 Street, Chula Vista, California. The circumstances are as follows:

9 10. In June 2008, an employee of the CVS Pharmacy #9113 arrived to work at 8:00 a.m.
10 and found Respondent, while on duty as the pharmacist, holding onto the pharmacy counter with
11 both hands holding himself up, and leaning backwards. When the CVS Pharmacy employee
12 talked to Respondent and asked him a question, Respondent did not respond to her. The CVS
13 Pharmacy employee came up next to Respondent, touched his shoulder, and repeated the
14 question, and Respondent finally responded. The employee noted that Respondent smelled
15 strongly of alcohol on both his breath as well as his clothing. Shortly thereafter, Respondent
16 "disappeared" into the bathroom for at least 30 minutes. When Respondent finally come out of
17 the bathroom, he had difficulty standing, and the CVS Pharmacy employee had to help him sit
18 down. The CVS Pharmacy employee called the CVS store manager for assistance. By the time
19 the CVS store manager arrived, Respondent had pulled himself to his feet and was "checking
20 prescriptions." The CVS store manager also smelled alcohol on Respondent.

21 11. On or about August 5, 2008, an employee of CVS Pharmacy #9113 found Respondent
22 "passed out" in the back storage room of the pharmacy at about 2:00 p.m. while Respondent was
23 still on duty as the pharmacist. The CVS employee and CVS store manager woke Respondent up
24 and he returned to his work at the CVS pharmacy. On or about August 6, 2008, Respondent was
25 terminated by CVS Pharmacies for working while intoxicated.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Using Alcoholic Beverages to Extent Dangerous
3 to Self and Others)

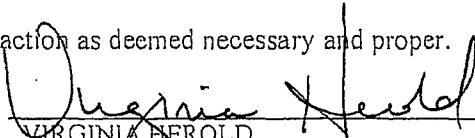
4 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
5 that between February 20, 2008 and August 5, 2008 Respondent Michael Edward Brown used
6 alcoholic beverages to an extent dangerous to himself and others while performing duties as a
7 pharmacist at CVS Pharmacy # 9113 located at 645 E. Palomar Street, in Chula Vista, California
8 as set forth in paragraphs 9 through 11, above, which are incorporated here by this reference.

9 PRAYER

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

- 12 1. Revoking or suspending Pharmacist License Number RPH 37708 issued to
13 Respondent Michael Edward Brown.
- 14 2. Ordering Respondent Michael Edward Brown to pay the Board of Pharmacy the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 1/25/10


19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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