

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

In the Matter of the Accusation Against:

Case No. 3733

MYLES Y. SAWAI
8105 E. Woodwind Ave.
Orange, CA 92869

Pharmacist License No. RPH 41279

Respondent.

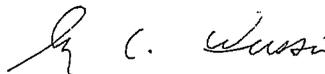
DECISION AND ORDER

The attached Stipulated Surrender of License and 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 May 11, 2011.

It is so ORDERED April 11, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Attorneys for Complainant

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

13 **MYLES Y. SAWAI**
14 **8105 E. Woodwind Avenue**
Orange, CA 92869

15 **Pharmacist License No. RPH 41279**

16 Respondent.

Case No. 3733

OAH No. 2010080515

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding 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 Kamala
23 D. Harris, Attorney General of the State of California, by Nicole R. Cook, Deputy Attorney
24 General.

25 2. Myles Y. Sawai (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

27 3. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License
28 No. RPH 41279 to Myles Y. Sawai (Respondent). The Pharmacist License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 3733 and will expire on July
2 31, 2011, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 3733 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on July 19, 2010.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3733 is attached as Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3733. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 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 admits the truth of each and every charge and allegation in Accusation
24 No. 3733, agrees that cause exists for discipline and hereby surrenders his Pharmacist License
25 No. RPH 41279 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Pharmacist License without further process.
28

CONTINGENCY

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

11 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
12 License and Order, including facsimile signatures thereto, shall have the same force and effect as
13 the originals.

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

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

22
23 IT IS HEREBY ORDERED that Pharmacist License No. RPH 41279, issued to Respondent
24 Myles Y. Sawai, is surrendered and accepted by the Board of Pharmacy.

25 14. The surrender of Respondent's Pharmacist License and the acceptance of the
26 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
27 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
28 license history with the Board.

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ENDORSEMENT

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

Dated: 2/11/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



NICOLE R. COOK
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3733

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 NICOLE R. COOK
Deputy Attorney General
4 State Bar No. 263607
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14 Orange, CA 92869

15 Pharmacist License No. RPH 41279

16 Respondent.

Case No. 3733

ACCUSATION

17
18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about September 26, 1987, the Board of Pharmacy issued Pharmacist License
24 Number RPH 41279 to Myles Y. Sawai (Respondent). The Pharmacist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on July 31, 2011,
26 unless renewed.
- 27
28

1 8. Section 4301 of the Code states:

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

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

7

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

12

13 (j) The violation of any of the statutes of this state, or any other state, or of
14 the United States regulating controlled substances and dangerous drugs.

15

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

20

21 9. Health and Safety Code section 11170 provides that no person shall prescribe,
22 administer, or furnish a controlled substance for himself.

23 10. Health and Safety Code section 11173(a) provides that no person shall obtain or
24 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
25 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
26 (2) by the concealment of a material fact.

1 COST RECOVERY

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 DRUG

7 12. Fioricet, the brand name for butalbital with acetaminophen and caffeine, is a
8 Schedule III controlled substance as designated by Health and Safety Code section 11056(c)(3),
9 and is a dangerous drug pursuant to Business and Professions Code section 4022. Fioricet is used
10 in the treatment of headaches and migraines.

11 FACTUAL ALLEGATIONS

12 13. Respondent was employed as a pharmacist at Kaiser Permanente Pharmacy in
13 Riverside, California from August 14, 1989 through May 8, 2009. On or around January 30,
14 2009, the Kaiser Internal Audit Team notified the Pharmacist-in-Charge ("PIC") of possible thefts
15 of the drug, Fioricet, in the pharmacy. As a result, covert cameras were installed and an internal
16 investigation ensued. The internal investigation revealed the following:

17 14. On February 2, 2009, the pharmacy inventory count reflected a count of 683
18 tablets of Fioricet in the morning. No tablets of Fioricet were dispensed throughout that day. The
19 inventory count that afternoon reflected a count of 683 tablets of Fioricet; therefore, there were no
20 loss of tablets for that day.

21 15. On February 3, 2009, at 08:02:10/11, Respondent was captured on the surveillance
22 cameras accessing the Fioricet inventory box. Respondent was the only person to access the
23 tablet inventory box that day. According to the pharmacy report, no tablets of Fioricet were
24 dispensed that day, however, the pharmacy inventory count reported 583 tablets of Fioricet, with
25 a loss of 100 tablets that day.

26 16. From February 4, 2009 through April 5, 2009, Respondent took a leave-of-absence
27 from work. Pharmacy reports indicate that there were no discrepancies for Fioricet during the
28 time that Respondent was on leave.

1 17. On April 6, 2009, the pharmacy inventory count reflected a count of 388 tablets of
2 Fioricet in the morning. No tablets were dispensed throughout the day. The inventory count
3 reflected no loss of tablets for that day.

4 18. On April 7, 2009, at 20:22:40/41, Respondent was captured on the surveillance
5 cameras removing a container (which appeared to be a patient container) from the Fioricet
6 inventory box. At 20:23:22, Respondent returned that container to the Fioricet inventory box. At
7 20:23:44, Respondent rearranged bottles in the inventory box and then removed another bottle
8 from the inventory box. That second bottle was never returned to the inventory box. According
9 to the pharmacy report, no tablets were dispensed that day, however, the pharmacy inventory
10 count reported 328 tablets of Fioricet in the evening, with a loss of 50 tablets that day.

11 19. On April 19, 2009, the pharmacy inventory count reflected a count of 673 tablets of
12 Fioricet in the evening, with no tablets dispensed throughout the day.

13 20. On April 20, 2009, at 06:24:27, Respondent was captured on the surveillance cameras
14 accessing the Fioricet inventory box before the pharmacy opened at 0900 hours. Later that
15 morning at 10:30 a.m., an order for 30 tablets of Fioricet was placed. The pharmacy inventory
16 count reported 542 tablets in the evening; therefore, there was a loss of 100 tablets of Fioricet.

17 21. On or about May 5, 2009, Respondent met with the Kaiser Permanente investigators
18 regarding the discrepancies in Fioricet, and was presented with the visual evidence and inventory
19 data that illustrated the theft on the 3 separate occasions. Respondent was suspended that day and
20 then later resigned on May 8, 2009, in lieu of termination.

21 22. On June 4, 2009, a Department of Consumer Affairs investigator sent Respondent a
22 letter requesting a written statement from him. On June 22, 2009 the investigator received a letter
23 from Respondent dated June 15, 2009, wherein Respondent admitted to the theft of the Fioricet
24 on the three separate occasions at Kaiser Permanente. Respondent stated, "although I abused
25 Fioricet and obtained them illegally, I want to state that I used it for personal use only."
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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Dishonesty and Deceit)

23. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(f) of the Code in that Respondent’s theft constitutes dishonesty and deceit, as is detailed in paragraphs 13-22, incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Self-Administration of a Controlled Substance)

24. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(h) of the Code in that he illegally administered a controlled substance to himself in violation of Health and Safety Code section 11170, as set forth in paragraphs 13-22, incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Chapter)

25. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(o) of the Code in that he violated the Pharmacy Act by furnishing a dangerous drug to himself in violation of Code section 4059, and illegally possessing a controlled substance in violation of Code section 4060, and by violating Health and Safety Code section 11173, as evidenced by his admissions as set forth in paragraphs 13-22 above, incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violating Laws Regulating Controlled Substances)

26. Respondent is subject to disciplinary action for unprofessional conduct under section 4301(j) of the Code in that he violated the California Uniform Controlled Substances Act (Health and Safety Code Sections 11000, et. seq.), as evidenced by his admissions as set forth in paragraphs 13-22 above, incorporated herein by reference.

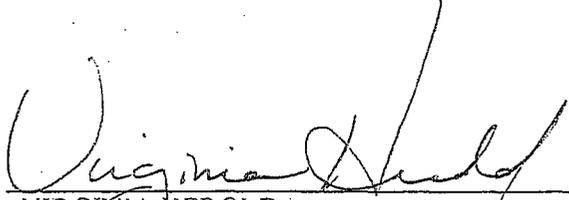
PRAYER

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

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1. Revoking or suspending Pharmacist License Number RPH 41279, issued to Myles Y. Sawai
2. Ordering Myles Y. Sawai to pay the Board of Pharmacy 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: 7/19/10



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

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