

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

In the Matter of the Accusation Against:

**Arthur Howard Berger  
11220 Cashmere Street  
Los Angeles, CA 90049**

**And**

**14 Judith Drive  
Greenlawn, New York 11740**

**Pharmacist License No. RPH 30997**

Respondent.

Case No. 3747

OAH No. L-2011060315

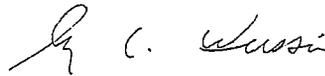
**DECISION AND ORDER**

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 March 28, 2012.

It is so ORDERED on February 27, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

STANLEY C. WEISSER  
Board President

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**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
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14 **and**  
15 **14 Judith Drive**  
**Greenlawn, New York 11740**  
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17 **Pharmacist License No. RPH 30997**  
18 Respondent.

Case No. 3747  
OAH No. L-2011060315

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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

22 PARTIES

- 23 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
24 She brought this action solely in her official capacity and is represented in this matter by Kamala  
25 D. Harris, Attorney General of the State of California, by Heather Hua, Deputy Attorney General.  
26 2. Respondent Arthur Howard Berger (Respondent) is representing himself in this  
27 proceeding and has chosen not to exercise his right to be represented by counsel.  
28





1           **1. Obey All Laws**

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

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

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

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

16           **2. Report to the Board**

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

25           **3. Interview with the Board**

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

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

3 **4. Cooperate with Board Staff**

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

7 **5. Continuing Education**

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

10 **6. Notice to Employers**

11 During the period of probation, Respondent shall notify all present and prospective  
12 employers of the decision in Accusation Case number 3747 and the terms, conditions and  
13 restrictions imposed on Respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
15 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
17 tenure of employment) and owner to report to the Board in writing acknowledging that the listed  
18 individual(s) has/have read the decision in case number 3747, and terms and conditions imposed  
19 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
20 supervisor(s) submit timely acknowledgment(s) to the Board.

21 If Respondent works for or is employed by or through a pharmacy employment service,  
22 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
23 licensed by the Board of the terms and conditions of the decision in Accusation case number 3747  
24 in advance of the Respondent commencing work at each licensed entity. A record of this  
25 notification must be provided to the Board upon request.

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

1 service to report to the Board in writing acknowledging that he has read the decision in case  
2 number 3747 and the terms and conditions imposed thereby. It shall be Respondent's  
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
4 acknowledgment(s) to the Board.

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

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

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

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

18 **8. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, Respondent shall pay to the  
20 Board its costs of investigation and prosecution in the amount of five thousand five hundred  
21 seventy-two dollars (\$5,572). Respondent shall coordinate a payment schedule with the Board.

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

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

27 **9. Probation Monitoring Costs**

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

5 **10. Status of License**

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

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

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

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

21 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license  
22 to the Board within ten (10) days of notification by the Board that the surrender is accepted.  
23 Respondent may not reapply for any license from the Board for three (3) years from the effective  
24 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
25 of the date the application for that license is submitted to the Board, including any outstanding  
26 costs.

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

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

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

### 8 13. Tolling of Probation

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

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

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

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

28

1           **14. Violation of Probation**

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

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

14           **15. Completion of Probation**

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

17           **16. Medical Evaluation**

18           Within thirty (30) days of the effective date of this decision, and on a periodic basis  
19 thereafter as may be required by the Board or its designee, Respondent shall undergo a medical  
20 evaluation, at Respondent's own expense, by a Board-appointed or Board-approved physician  
21 who shall furnish a medical report to the Board. The approved physician shall be provided with a  
22 copy of the Board's Accusation and decision. A record of this notification must be provided to the  
23 Board upon request. Respondent shall sign a release authorizing the physician to furnish the  
24 Board with a current diagnosis and a written report regarding the Respondent's ability to function  
25 independently as a pharmacist with safety to the public. Respondent shall comply with all the  
26 recommendations of the physician if directed by the Board or its designee.

27           If the physician recommends, and the Board or its designee directs, that Respondent  
28 undergo medical treatment, Respondent shall, within thirty (30) days of written notice from the

1 Board, submit to the Board or its designee, for prior approval, the name and qualifications of a  
2 licensed physician of Respondent's choice. Within thirty (30) days of approval thereof,  
3 Respondent shall submit documentation to the Board demonstrating the commencement of  
4 treatment with the approved physician. Should Respondent, for any reason, cease treatment with  
5 the approved physician, Respondent shall notify the Board immediately and, within thirty (30)  
6 days of ceasing treatment, submit the name of a replacement physician of Respondent's choice to  
7 the Board or its designee for prior approval. Within thirty (30) days of approval thereof,  
8 Respondent shall submit documentation to the Board demonstrating the commencement of  
9 treatment with the approved replacement. Failure to comply with any deadline stated by this  
10 paragraph shall be considered a violation of probation.

11 Upon approval of the initial or any subsequent physician, Respondent shall undergo and  
12 continue treatment with that physician, at Respondent's own expense, until the treating physician  
13 recommends in writing to the Board, and the Board or its designee agrees by way of a written  
14 notification to Respondent, that no further treatment is necessary. Upon receipt of such  
15 recommendation from the treating physician, and before determining whether to accept or reject  
16 said recommendation, the Board or its designee may require Respondent to undergo, at  
17 Respondent's own expense, a medical evaluation by a separate Board-appointed or Board-  
18 approved physician. If the approved evaluating physician recommends that Respondent continue  
19 treatment, the Board or its designee may require Respondent to continue treatment.

20 Respondent shall take all necessary steps to ensure that any treating physician submits  
21 written quarterly reports to the Board concerning Respondent's fitness to practice, progress in  
22 treatment, and other such information as may be required by the Board or its designee.

23 If at any time an approved evaluating physician or Respondent's approved treating  
24 physician determines that Respondent is unable to practice safely or independently as a  
25 pharmacist, the evaluating or treating physician shall notify the Board immediately by telephone  
26 and follow up by written letter within three (3) working days. Upon notification from the Board  
27 or its designee of this determination, Respondent shall be automatically suspended and shall not  
28 resume practice until notified by the Board that practice may be resumed.

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

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

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

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

17           Commencing on the effective date of this decision, Respondent shall not engage in the  
18 practice of pharmacy until notified in writing by the Board that Respondent has been deemed  
19 medically fit to practice safely and independently, and the Board or its designee approves said  
20 recommendation.

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

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 If recommended by the evaluating physician and approved by the Board, Respondent shall  
10 be suspended from practicing pharmacy until the treating physician recommends, in writing,  
11 stating the basis therefore, that Respondent can safely and independently resume the practice of a  
12 pharmacist, and the Board or its designee approves said recommendation. Respondent shall not  
13 resume practice until notified by the Board that practice may be resumed.

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

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

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

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

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

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

14 Probation shall be automatically extended until Respondent successfully completes the  
15 PRP. Any person terminated from the PRP program shall be automatically suspended by the  
16 Board. Respondent may not resume the practice of pharmacy until notified by the Board in  
17 writing.

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

21 Respondent may not resume the practice of pharmacy until 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  
7 any licensed premises in which he holds an interest at the time this decision becomes effective  
8 unless otherwise specified in this order.

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

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

13 Respondent shall work in a pharmacy setting with access to controlled substances for six  
14 (6) consecutive months before successfully completing probation. If Respondent fails to do so,  
15 probation shall be automatically extended until this condition has been met. Failure to satisfy this  
16 condition within six (6) months beyond the original date of expiration of the term of probation  
17 shall be considered a violation of probation.

18 **18. Random Drug Screening**

19 Respondent, at his own expense, shall participate in random testing, including but not  
20 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
21 screening program as directed by the Board or its designee. Respondent may be required to  
22 participate in testing for the entire probation period and the frequency of testing will be  
23 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the  
24 Board or its designee, and shall, when directed, submit to such tests and samples for the detection  
25 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or  
26 its designee may direct. Failure to timely submit to testing as directed shall be considered a  
27 violation of probation. Upon request of the Board or its designee, Respondent shall provide  
28 documentation from a licensed practitioner that the prescription for a detected drug was

1 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely  
2 provide such documentation shall be considered a violation of probation. Any confirmed positive  
3 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a  
4 documented medical treatment shall be considered a violation of probation and shall result in the  
5 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the  
6 practice of pharmacy until notified by the Board in writing.

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

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

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

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

23       **19. Abstain from Drugs and Alcohol Use**

24       Respondent shall completely abstain from the possession or use of alcohol, controlled  
25 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
26 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
27 request of the Board or its designee, Respondent shall provide documentation from the licensed  
28 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the

1 treatment of the Respondent. Failure to timely provide such documentation shall be considered a  
2 violation of probation. Respondent shall ensure that he is not in the same physical location as  
3 individuals who are using illicit substances even if Respondent is not personally ingesting the  
4 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
5 not supported by the documentation timely provided, and/or any physical proximity to persons  
6 using illicit substances, shall be considered a violation of probation.

7 **20. Prescription Coordination and Monitoring of Prescription Use**

8 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
9 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
10 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the  
11 Respondent's history with the use of controlled substances, and/or dangerous drugs and who will  
12 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled  
13 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of  
14 the Board's Accusation and Decision. A record of this notification must be provided to the Board  
15 upon request. Respondent shall sign a release authorizing the practitioner to communicate with  
16 the Board about Respondent's treatment(s). The coordinating physician, nurse practitioner,  
17 physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of  
18 probation regarding Respondent's compliance with this condition. If any substances considered  
19 addictive have been prescribed, the report shall identify a program for the time limited use of any  
20 such substances. The Board may require that the single coordinating physician, nurse  
21 practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a  
22 specialist in addictive medicine. Should Respondent, for any reason, cease supervision by the  
23 approved practitioner, Respondent shall notify the Board immediately and, within thirty (30) days  
24 of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician  
25 assistant, or psychiatrist of Respondent's choice to the Board or its designee for its prior approval.  
26 Failure to timely submit the selected practitioner or replacement practitioner to the Board for  
27 approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered  
28 a violation of probation.

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

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

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

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

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

22 **21. Community Services Program**

23 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
24 Board or its designee, for prior approval, a community service program in which Respondent  
25 shall provide free health-care related services on a regular basis to a community or charitable  
26 facility or agency for at least 100 hours within the first 3 years of probation. Within thirty (30)  
27 days of Board approval thereof, Respondent shall submit documentation to the Board  
28 demonstrating commencement of the community service program. A record of this notification

1 must be provided to the Board upon request. Respondent shall report on progress with the  
2 community service program in the quarterly reports. Failure to timely submit, commence, or  
3 comply with the program shall be considered a violation of probation.

4 **22. No Ownership of Licensed Premises**

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

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

20 **23. Ethics Course**

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

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

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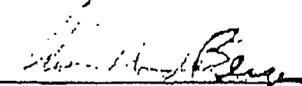


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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. 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: 11/29/2011

  
**ARTHUR HOWARD BERGER**  
Respondent

ENDORSEMENT

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

Dated: November 30, 2011

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
GREGORY J. SALUTE  
Supervising Deputy Attorney General

  
HEATHER HUA  
Deputy Attorney General  
*Attorneys for Complainant*

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Exhibit A

Accusation No. 3747

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HEATHER HUA  
Deputy Attorney General  
4 State Bar No. 223418  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2574  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3747

13 **ARTHUR HOWARD BERGER**  
11220 Cashmere Street  
Los Angeles, CA 90049

**ACCUSATION**

14 **Pharmacist License No. RPH 30997**

15 Respondent.

16  
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, Department of Consumer Affairs.  
21 2. On or about July 29, 1977, the Board of Pharmacy (Board) issued Pharmacist License  
22 No. RPH 30997 to Arthur Howard Berger (Respondent). The Pharmacist License was in full  
23 force and effect at all times relevant to the charges brought herein and will expire on April 30,  
24 2012, unless renewed.

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7. Section 4301 states:

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

....

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or 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.

....

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

"(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 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 . . . .

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

11 8. Section 11055(d)(1) of the Health and Safety Code states, in pertinent part,

12 "Unless specifically excepted or unless listed in another schedule, any material, compound,  
13 mixture, or preparation which contains any quantity of the following substances having a  
14 stimulant effect on the central nervous system:

15 (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers"

16 9. Section 11057 (d)(32) of the Health and Safety Code states, in pertinent part,

17 (a) The controlled substances listed in this section are included in Schedule IV:

18 (32) Zolpidem

19 **REGULATORY PROVISIONS**

20 10. California Code of Regulations, title 16, section 1770, states:

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

27 ///

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1 COST RECOVERY

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

6 12. CONTROLLED SUBSTANCES/DANGEROUS DRUGS

7 a. Amphetamine is a Scheduled II controlled substance as defined in Health and Safety  
8 Code section 11055(d)(1) and is categorized as a dangerous drug pursuant to Business and  
9 Professions Code section 4022.

10 b. Ambien is a generic name for zolpidem tartrate, a nonbarbiturate hypnotic, is a  
11 Scheduled IV controlled substance as designated by Health and Safety Code section 11057,  
12 subdivision (d)(32), and is categorized as a dangerous drug pursuant to Business and Professions  
13 Code section 4022.

14 FIRST CAUSE FOR DISCIPLINE

15 (Criminal Conviction)

16 13. Respondent is subject to disciplinary action under sections 4301, subdivision (k) and  
17 (l), and 490 of the Code, as defined in California Code of Regulations, title 16, section 1770, in  
18 that Respondent was convicted of crimes, which are substantially related to the qualifications,  
19 functions, or duties of a pharmacist, as follows:

20 a. On or about February 25, 2010, after pleading nolo contendere, Respondent was  
21 convicted of one misdemeanor count of violating Vehicle Code section 23152(a) [driving under  
22 the influence of an alcoholic beverage or drug], in the criminal proceeding entitled *The People of*  
23 *the State of California v. Arthur Howard Berger* (Super. Ct. County of Los Angeles, 2010,  
24 No. 8NW03668). Respondent was ordered by the court to enroll and complete a 3-Month First  
25 Offender Alcohol Counseling Program, perform thirteen days of community service and was  
26 sentenced to three years probation with certain terms and conditions, and ordered to pay  
27 restitution. The circumstances surrounding the conviction are that on or about August 9, 2008,  
28 California Highway Patrol officers responded to a traffic collision. After speaking with

1 Respondent, officers noticed signs and symptoms of intoxication. Respondent performed several  
2 field sobriety tests (FSTs) unsuccessfully. Consequently, he was arrested for driving a motor  
3 vehicle while under the influence of an alcoholic beverage and/or controlled substance resulting  
4 in a traffic collision. Respondent submitted a urine sample that tested positive for  
5 Amphetamines.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Use of Alcohol Beverages/Controlled Substance to the Extent to be Dangerous to Oneself)**

8 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), of  
9 the Code, on the grounds of unprofessional conduct, in that on or about August 9, 2008,  
10 Respondent used and consumed alcoholic beverages and or controlled substances to the extent or  
11 in a manner as to be dangerous or injurious to himself or to others. Complainant refers to, and by  
12 this reference incorporates, the allegations set forth above in paragraph 13, subparagraph (a),  
13 inclusive, as though set fully.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct)**

16 15. Respondent is subject to disciplinary action under section 4301 of the Code, on the  
17 grounds of unprofessional conduct, in that on or about August 9, 2008, when he was arrested for  
18 causing a traffic collision while driving a motor vehicle under the influence of an alcoholic  
19 beverage and or controlled substance. Complainant refers to, and by this reference incorporates,  
20 the allegations set forth in paragraph 13, subparagraph (a), inclusive, as though set forth fully.

21 **DISCIPLINE CONSIDERATIONS**

22 16. To determine the degree of discipline, if any, to be imposed on Respondent Arthur  
23 Howard Berger, Complainant alleges that on or about May 14, 2005, in a prior disciplinary action  
24 entitled, "In the Matter of the Accusation Against R&W Pharmacy Services, Inc., Patti Jo Reed  
25 and Arthur Howard Berger," before the Board of Pharmacy, Case No. 2279, Respondent's  
26 Pharmacist license was suspended for a period of 60 days and placed on probation for a period of  
27 three (3) years with certain terms and conditions.

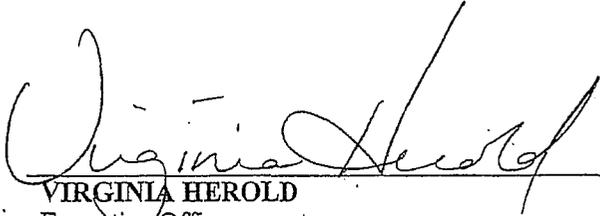
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PRAYER

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 License No. RPH 30997, issued to Respondent Arthur Howard Berger;
2. Ordering Arthur Howard Berger to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/9/11



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

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