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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3751

11 **BRIAN THOMAS ROZEMA**
12 **17615 Winding Creek Road**
13 **Salinas, CA 93908**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Pharmacist License No. RPH 43402**

15 Respondent.

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

20
21 PARTIES

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

25 2. Respondent Brian Thomas Rozema (Respondent) is represented in this proceeding by
26 attorney Christopher Lavorato, whose address is: The Law Offices of Lavorato House Chilton &
27 Lavorato, 310 Capitol Street, P.O. Box 2112, Salinas, CA 93902.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 3751. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to
4 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

5
6 RESERVATION

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

10
11 CONTINGENCY

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

21 11. The parties understand and agree that facsimile copies of this stipulation, including
22 facsimile signatures thereto, shall have the same force and effect as the originals.

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

1 **2. Tolling of Suspension**

2 During the period of suspension, Respondent shall not leave California for any period
3 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
4 of ten (10) days during suspension shall be considered a violation of probation.

5 Moreover, any absence from California during the period of suspension exceeding ten (10)
6 days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over
7 ten (10) days Respondent is absent from California. During any such period of tolling of
8 suspension, Respondent must nonetheless comply with all terms and conditions of probation.

9 Respondent must notify the board in writing within ten (10) days of departure, and must
10 further notify the board in writing within ten (10) days of return. The failure to provide such
11 notification(s) shall constitute a violation of probation. Upon such departure and return,
12 Respondent shall not resume the practice of pharmacy until notified by the board that the period
13 of suspension has been satisfactorily completed.

14 **3. Obey All Laws**

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

16 Respondent shall report any of the following occurrences to the board, in writing, within
17 seventy-two (72) hours of such occurrence:

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

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

1 **4. Status of License**

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

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

9 **5. Report to the Board**

10 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
11 designee. The report shall be made either in person or in writing, as directed. Among other
12 requirements, Respondent shall state in each report under penalty of perjury whether there has
13 been compliance with all the terms and conditions of probation. Failure to submit timely reports
14 in a form as directed shall be considered a violation of probation.

15 Any period(s) of delinquency in submission of reports as directed may be added to the total
16 period of probation. If the final probation report is not made as directed, probation shall be
17 automatically extended until such time as the final report is made and accepted by the board.

18 **6. Interview with the Board**

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

24 **7. Cooperate with Board Staff**

25 Respondent shall cooperate with the board's inspection program and with the board's
26 monitoring and investigation of Respondent's compliance with the terms and conditions of his
27 probation. Failure to cooperate shall be considered a violation of probation.

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1 **8. Continuing Education**

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

4 **9. Notification of Change in Employment, Name, Address(es), or Phone(s)**

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

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

12 **10. Supervised Practice**

13 During the period of probation, Respondent shall practice only under the supervision of a
14 licensed pharmacist not on probation with the board. Upon and after the effective date of this
15 decision, Respondent shall not practice pharmacy and his license shall be automatically
16 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
17 as required by the board or its designee, either:

18 Continuous – At least 75% of a work week

19 Substantial - At least 50% of a work week

20 Partial - At least 25% of a work week

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

22 Within thirty (30) days of the effective date of this decision, Respondent shall have his
23 supervisor submit notification to the board in writing stating that the supervisor has read the
24 decision in case number 3751 and is familiar with the required level of supervision as determined
25 by the board or its designee. It shall be the Respondent's responsibility to ensure that his
26 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
27 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
28 acknowledgements to the board shall be considered a violation of probation.

1 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
2 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
3 acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15)
4 days after employment commences, submit notification to the board in writing stating the direct
5 supervisor and pharmacist-in-charge have read the decision in case number 3751 and is/are
6 familiar with the level of supervision as determined by the board. Respondent shall not practice
7 pharmacy and his license shall be automatically suspended until the board or its designee
8 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
9 submit timely acknowledgements to the board shall be considered a violation of probation.

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

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

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

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

24 **11. Notice to Employers**

25 During the period of probation, Respondent shall notify all present and prospective
26 employers of the decision in case number 3751 and the terms, conditions and restrictions imposed
27 on Respondent by the decision, as follows:

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1 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
2 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed
5 individual(s) has/have read the decision in case number 3751, and terms and conditions imposed
6 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
7 supervisor(s) submit timely acknowledgment(s) to the board.

8 If Respondent works for or is employed by or through a pharmacy employment service,
9 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
10 licensed by the board of the terms and conditions in case number 3751 in advance of Respondent
11 starting work there. A record of this notification must be provided to the board upon request.

12 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
13 (15) days of Respondent undertaking new employment by or through a pharmacy employment
14 service, Respondent shall cause his direct supervisor with the pharmacy employment service to
15 report to the board in writing acknowledging that he has read the decision in case number 3751
16 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure
17 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

1 **13. Tolling of Probation**

2 Except during periods of suspension, Respondent shall, at all times while on probation, be
3 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
4 Any month during which this minimum is not met shall toll the period of probation, i.e., the
5 period of probation shall be extended by one month for each month during which this minimum is
6 not met. During any such period of tolling of probation, Respondent must nonetheless comply
7 with all terms and conditions of probation.

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

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

16 "Cessation of practice" means any calendar month during which Respondent is
17 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
18 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
19 month during which Respondent is practicing for at least forty (40) hours as a
20 pharmacist as defined by Business and Professions Code section 4000 et seq.

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

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

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1 **15. Ethics Course**

2 Within sixty (60) calendar days of the effective date of this decision, Respondent shall, at
3 his own expense, enroll in a course in ethics approved in advance by the board or its designee.

4 Failure to initiate the course during the first year of probation, and complete it within the
5 second year of probation, shall be considered a violation of probation.

6 Respondent shall submit a certificate of completion to the board or its designee within five
7 (5) days after completing the course.

8 **16. Community Services Program**

9 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
10 board or its designee, for prior approval, a community service program in which Respondent shall
11 provide free health-care related services on a regular basis to a community or charitable facility or
12 agency for at least one hundred (100) hours per year for each year of probation. Within thirty
13 (30) days of board approval thereof, Respondent shall submit documentation to the board
14 demonstrating commencement of the community service program. A record of this notification
15 must be provided to the board upon request. Respondent shall report on progress with the
16 community service program in the quarterly reports. Failure to timely submit, commence, or
17 comply with the program shall be considered a violation of probation.

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

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

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

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

3 Probation shall be automatically extended until Respondent successfully completes the
4 PRP. Any termination from the PRP program shall result in suspension by the board.

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

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

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

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

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

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

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

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1 **18. Abstain from Drug and Alcohol Possession or Use**

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

13 **19. Random Drug Screening**

14 Respondent, at his own expense, shall participate in random testing, including but not
15 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
16 screening program for the detection of alcohol, narcotics, hypnotics, dangerous drugs or
17 controlled substances as the board or its designee may direct. Respondent may be required to
18 participate in testing for the entire probation period and frequency of testing will be determined
19 by the board or its designee. At all times, Respondent shall fully cooperate with the board or its
20 designee, and shall, when directed, submit to such tests and samples.

21 Failure to timely submit to testing as directed shall be considered a violation of probation.
22 Upon request of the board or its designee, Respondent shall provide documentation from a
23 licensed practitioner that the prescription for a detected drug was legitimately issued and is a
24 necessary part of the treatment of the Respondent. Failure to timely provide such documentation
25 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
26 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
27 shall be considered a violation of probation and shall result in automatic suspension of practice by
28 Respondent. Respondent may not resume practice until notified by the board in writing.

1 During any such suspension, respondent shall not enter any pharmacy area or any portion of
2 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
3 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
4 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 any such 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 Failure to comply with any such suspension shall be considered a violation of probation.

14 **20. Separate File of Records**

15 Respondent shall maintain and make available for inspection a separate file of all records
16 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such
17 file or make it available for inspection shall be considered a violation of probation.

18 **21. 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 \$4,401.50. Respondent shall be
21 permitted to pay these costs in a payment plan approved by the Board or its designee, so long as
22 full payment is made within fifty-four (54) months of the effective date of this decision. There is
23 to be no deviation from this schedule absent prior written approval by the Board or its designee.
24 Failure to pay costs by the deadline(s) as directed shall be considered a violation of 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.

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1 **22. Probation Monitoring Costs**

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

6 **23. Violation of Probation**

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

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

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

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

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

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

5 **25. Completion of Probation**

6 Upon written notice by the board or its designee indicating successful completion of
7 probation, Respondent's license will be fully restored.

8
9 ACCEPTANCE

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

15
16 DATED: 7/13/11



BRIAN THOMAS ROZEMA
Respondent

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18
19 I have read and fully discussed with Respondent Brian Thomas Rozema the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

22
23 DATED: 7-13-11



CHRISTOPHER LAHORATO
Attorney for Respondent

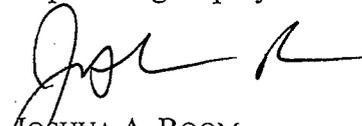
ENDORSEMENT

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

Dated: 8/2/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3751

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2 FRANK H. PACOE
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10 In the Matter of the Accusation Against:

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11 **BRIAN THOMAS ROZEMA**
12 **17615 Winding Creek Road**
13 **Salinas, CA 93908**

ACCUSATION

14 **Pharmacist License No. RPH 43402**

15 Respondent.

16 Complainant alleges:

17
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 23, 1990, the Board of Pharmacy issued Pharmacist License No.
22 RPH 43402 to Brian Thomas Rozema (Respondent). The License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

24 JURISDICTION

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

28 ///

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

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

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

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

11 10. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
12 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
13 to have in his or her possession a drug secured by a forged prescription.

14 11. Health and Safety Code section 11150 provides, in pertinent part, that no person other
15 than an authorized prescriber shall write or issue a prescription.

16 12. Health and Safety Code section 11157 provides that no person shall issue a
17 prescription that is false or fictitious in any respect.

18 13. Health and Safety Code section 11170 provides that no person shall prescribe,
19 administer, or furnish a controlled substance for himself or herself.

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

24 15. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
25 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
26 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
27 prescription, or to possess a controlled substance obtained by such a prescription.

28 ///

1 16. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

4 17. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
5 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
6 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
7 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

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

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 19. Section 4021 of the Code states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
14 11053) of Division 10 of the Health and Safety Code.”

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

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

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

20 ...

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

23 21. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
24 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
25 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
26 drug as designated by Business and Professions Code section 4022. The varying compounds are
27 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

28 ///

1 FACTUAL BACKGROUND

2 22. From an unknown start date in or prior to 2006 until on or about January 7, 2010,
3 Respondent worked as a pharmacist for a Walgreens Pharmacy (PHY 45761) in Monterey, CA.
4 For at least part of that time period, and until on or about January 7, 2010, Respondent served as
5 the Pharmacist in Charge (PIC) at his workplace pharmacy. As such, Respondent had access to
6 patient profile information, and the stock of controlled substances and dangerous drugs.

7 23. During his employment, Respondent took advantage of his access to patient profile
8 information and controlled substance/dangerous drug stocks to steal/divert controlled substances
9 and dangerous drugs, including **Norco** and/or other **Hydrocodone with APAP** controlled drug
10 products, for his own use. The exact number of instances of diversion/theft by Respondent, and
11 the full quantity of controlled substances or dangerous drugs diverted/stolen by Respondent, are
12 not known, but in the course of investigations conducted by the pharmacy and by police, the
13 following were among the observations, admissions, and revelations reported:

14 a. Acting on an inquiry from the Naval Corporal Investigation Service (NCIS),
15 Walgreens investigators identified several (9) suspicious prescriptions for **Norco/Hydrocodone**
16 filled by Respondent in the name of a patient (C.B.¹) who was a U.S. Navy employee or officer.

17 b. On or about January 7, 2010, Respondent admitted to Walgreens investigators
18 that he had been falsely writing/creating/entering prescriptions for **Norco/Hydrocodone** using the
19 names of relatives of pharmacy customers that he was able to identify from pharmacy/insurance
20 records. He admitted that he had been doing so for years, since sometime in 2006, that he did so
21 to procure the drugs for his own use, that he was addicted to **Norco/Hydrocodone**, and that since
22 sometime in 2006 he had by this method acquired approximately 5,000 to 6,000 tablets.

23 c. On or about January 7, 2010, Respondent confirmed these admissions during an
24 interview with police, and further admitted that he had used at least 20-30 different names on the
25 fraudulent prescriptions for **Norco/Hydrocodone**, that some of the names were fictitious while
26 others were real, and that at least some of the prescriptions had been billed to insurance.

27
28 ¹ The full name will be provided to Respondent during discovery.

1 d. On or about January 18, 2010, Respondent sent a letter to the Board in which he
2 admitted to being an addict and acknowledged his inability to safely practice as a pharmacist.

3 Respondent described his history of addiction, and his recent entry into treatment and recovery.

4 24. On or about January 7, 2010, Respondent was arrested by Monterey Police. On or
5 about April 1, 2010, Respondent was charged by criminal Complaint, in *People v. Brian Rozema*,
6 Case No. SS101035A in Monterey County Superior Court, with one count of violating Penal
7 Code section 508 (Embezzlement by Employee – Over \$400.00), a felony, and ten counts of
8 violating Health and Safety Code section 11368 (Forging and Issuing a Prescription), all felonies.

9 On or about August 30, 2010, Respondent entered pleas to the first two counts and was granted a
10 deferred entry of judgment (DEJ) pursuant to Penal Code section 1000 et seq., requiring that he,
11 *inter alia*, enroll in and successfully complete the Pharmacists Recovery Program (PRP), abstain
12 from possession or use, submit to drug testing, and submit to search conditions.

13
14 FIRST CAUSE FOR DISCIPLINE

15 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

16 25. Respondent is subject to discipline under section 4301(f) of the Code in that
17 Respondent, as described in paragraphs 22 to 24 above, committed numerous acts involving
18 moral turpitude, dishonesty, fraud, deceit, or corruption.

19 SECOND CAUSE FOR DISCIPLINE

20 (Creation/Signature of False Documents)

21 26. Respondent is subject to discipline under section 4301(g) of the Code in that
22 Respondent, as described in paragraphs 22 to 24 above, created and/or signed documents that
23 falsely represented the existence or nonexistence of a state of facts.

24 THIRD CAUSE FOR DISCIPLINE

25 (Self-Administration of Controlled Substance and/or Alcohol)

26 27. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
27 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
28 described in paragraphs 22 to 24 above, administered a controlled substance to himself.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Furnishing of Controlled Substance)

3 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
5 in paragraphs 22 to 24 above, furnished to himself or another without a valid prescription, and/or
6 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Possession of Controlled Substance)

9 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
11 in paragraphs 22 to 24 above, possessed, conspired to possess, and/or assisted in or abetted
12 possession of, a controlled substance, without a prescription.

13 SIXTH CAUSE FOR DISCIPLINE

14 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

15 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
16 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
17 22 to 24 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
18 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

19 SEVENTH CAUSE FOR DISCIPLINE

20 (Making, Uttering and/or Using False or Forged Prescriptions)

21 31. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
22 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
23 Respondent, as described in paragraphs 22 to 24 above, falsely made, altered, forged, uttered,
24 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a
25 (narcotic) drug, had in his possession a (narcotic) drug secured by a false, forged, fictitious or
26 altered prescription, or conspired and/or assisted in or abetted any of these acts.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Issuance and/or Use of Invalid Prescription(s))

3 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in
5 paragraphs 22 to 24 above, issued prescriptions without authority to do so, obtained or possessed
6 an invalid prescription, obtained or possessed a controlled substance by means of such invalid
7 prescription, or conspired and/or assisted in or abetted any of these acts.

8 NINTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

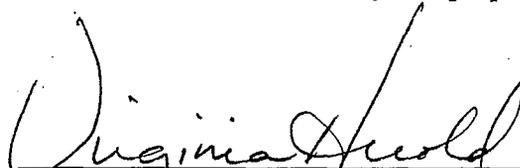
10 33. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 25 to 32 above, engaged in unprofessional conduct.

12 PRAYER

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

- 15 1. Revoking or suspending Pharmacist License Number RPH 43402, issued to Brian
- 16 Thomas Rozema (Respondent);
- 17 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 18 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 19 3. Taking such other and further action as is deemed necessary and proper.
- 20

21 DATED: 4/5/11

22 

23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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