

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

In the Matter of the Statement of Issues Against:

Case No. 3445

COLLEGE PHARMACY

3505 Austin Bluffs Pkwy., Ste 101
Colorado Springs, CO 80918

Applicant

Respondent.

DECISION AND ORDER

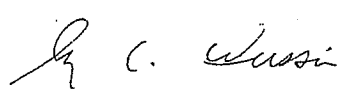
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 1, 2010.

It is so ORDERED on October 20, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Attorneys for Complainant

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

11 In the Matter of the First Amended Statement
12 of Issues Against:

Case No. 3445

13 COLLEGE PHARMACY
14 3505 Austin Bluffs Pkwy., Ste. 101
Colorado Springs, CO 80918

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

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

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 Edmund
25 G. Brown Jr., Attorney General of the State of California, by Ron Espinoza, Deputy Attorney
26 General.

27 ///

28 ///

2. College Pharmacy (Respondent) is represented in this proceeding by attorney Samuel Spital, Esq., whose address is 8880 Rio San Diego Drive, Suite 800, San Diego, CA 92108-1642.

3. On or about December 24, 2008, the Board of Pharmacy, Department of Consumer Affairs, received an application for a Nonresident Pharmacy Permit from Respondent College Pharmacy. On or about December 2, 2008, Rachel Christopher, on behalf of Respondent College Pharmacy, certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 27, 2009. On or about July 1, 2009, Respondent filed a written request for a hearing on the denial.

4. On or about March 19, 2009, the Board of Pharmacy, Department of Consumer Affairs, also received an application for a Nonresident Sterile Injectable Compounding Pharmacy Permit from Respondent College pharmacy. This application was deemed denied pursuant to the First Amended Statement of Issues filed herein.

5. Jerry Gillick, President and Chief Executive Officer (CEO) of Respondent College Pharmacy, has been and is authorized to enter into this stipulated settlement on behalf of said Respondent.

JURISDICTION

6. First Amended Statement of Issues No. 3445 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The initial Statement of Issues and all other statutorily required documents were properly served on Respondent on January 4, 2010. The First Amended Statement of Issues and all other statutorily required documents were properly served on Respondent on June 9, 2010. A copy of First Amended Statement of Issues No. 3445 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Jerry Gillick has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Statement of Issues No. 3445. Jerry Gillick has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Jerry Gillick is fully aware of Respondent's legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Statement of Issues; the right to confront and cross-examine the witnesses against it; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. On behalf of Respondent, Jerry Gillick voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in First Amended Statement of Issues No. 3445.

11. Respondent agrees that its applications for a Nonresident Pharmacy Permit and for a Nonresident Sterile Injectable Compounding Pharmacy Permit are subject to denial, and it agrees to be bound by the Board of Pharmacy's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy is involved, and shall not be admissible in any other civil, administrative or criminal proceeding.

CONTINGENCY

13. This stipulation shall be subject to approval by the Board of Pharmacy. Jerry Gillick understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or its counsel. By signing the stipulation, Jerry Gillick understands and agrees that Respondent may not withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of

no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory requirements for issuance of a license, a Nonresident Pharmacy Permit and a Nonresident Sterile Injectable Compounding Pharmacy Permit shall be issued to Respondent and immediately revoked; the order of revocation is stayed and Respondent is placed on probation for seven (7) years upon the following terms and conditions:

1. Obey All Laws

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

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

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- ☐ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ☐ a conviction of any crime
- ☐ discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's Nonresident Pharmacy Permit or Nonresident Sterile Injectable Compounding Pharmacy Permit or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

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

1 **4. Cooperate with Board Staff**

2 Respondent owner shall cooperate with the board's inspection program and with the board's
3 monitoring and investigation of respondent's compliance with the terms and conditions of their
4 probation. Failure to cooperate shall be considered a violation of probation.

5 **5. Probation Monitoring Costs**

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

10 **6. Status of License(s)**

11 Respondent owner shall, at all times while on probation, maintain current licensure with the
12 board. If respondent owner submits an application to the board, and the application is approved,
13 for a change of location, change of permit or change of ownership, the board shall retain
14 continuing jurisdiction over the license(s), and the respondent shall remain on probation as
15 determined by the board. Failure to maintain current licensure shall be considered a violation of
16 probation.

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

21 **7. License Surrender While on Probation/Suspension**

22 Following the effective date of this decision, should respondent owner discontinue
23 business, respondent owner may tender the premises license(s) to the board for surrender. The
24 board or its designee shall have the discretion whether to grant the request for surrender or take
25 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
26 the license(s), respondent will no longer be subject to the terms and conditions of probation.

27 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
28 renewal license(s) to the board within ten (10) days of notification by the board that the surrender

1 is accepted. Respondent owner shall further submit a completed Discontinuance of Business
2 form according to board guidelines and shall notify the board of the records inventory transfer.

3 Respondent owner shall also, by the effective date of this decision, arrange for the
4 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
5 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
6 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
7 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
8 days of its provision to the pharmacy's ongoing patients, respondent owner shall provide a copy
9 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
10 those patients for whom the pharmacy has on file a prescription with one or more refills
11 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
12 days.

13 Respondent owner may not apply for any new licensure from the board for three (3) years
14 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
15 to the license sought as of the date the application for that license is submitted to the board.

16 **8. Notice to Employees**

17 Respondent owner shall, upon or before the effective date of this decision, ensure that all
18 employees involved in permit operations are made aware of all the terms and conditions of
19 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
20 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
21 remain posted throughout the probation period. Respondent owner shall ensure that any
22 employees hired or used after the effective date of this decision are made aware of the terms and
23 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
24 respondent owner shall submit written notification to the board, within fifteen (15) days of the
25 effective date of this decision, that this term has been satisfied. Failure to submit such
26 notification to the board shall be considered a violation of probation.

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"Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

9. Owners and Officers: Knowledge of the Law

Respondent shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

10. Posted Notice of Probation

Respondent owner shall prominently post a probation notice provided by the board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation.

Respondent owner shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

Failure to post such notice shall be considered a violation of probation.

11. Violation of Probation

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

If respondent owner or respondent violates probation in any respect, the board, after giving respondent owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those

1 provisions stating that a violation thereof may lead to automatic termination of the stay and/or
2 revocation of the license. If a petition to revoke probation or an accusation is filed against
3 respondent during probation, the board shall have continuing jurisdiction and the period of
4 probation shall be automatically extended until the petition to revoke probation or accusation is
5 heard and decided.

6 **12. Completion of Probation**

7 Upon written notice by the board or its designee indicating successful completion of
8 probation, respondent license(s) will be fully restored.


9 **13. Report of Controlled Substances**

10 Respondent owner shall submit quarterly reports to the board detailing the total acquisition
11 and disposition of such controlled substances as the board may direct. Respondent owner shall
12 specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g.,
13 from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent
14 owner shall report on a quarterly basis or as directed by the board. The report shall be delivered
15 or mailed to the board no later than ten (10) days following the end of the reporting period.
16 Failure to timely prepare or submit such reports shall be considered a violation of probation.

17
18 **ACCEPTANCE**

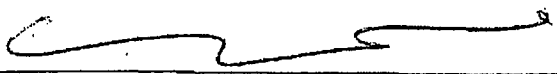
19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
20 discussed it with my attorney, Samuel Spital, Esq. I understand the stipulation and the effect it
21 will have on Respondent's Nonresident Pharmacy Permit and Nonresident Sterile Injectable
22 Compounding Pharmacy Permit and the applications thereto. I enter into this Stipulated
23 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
24 bound by the Decision and Order of the Board of Pharmacy.

25
26 DATED: 8/23/2010

27 
28 JERRY GILLICK, President and CEO of Respondent
College Pharmacy

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

DATE: 8-24-10


SAMUEL SPITAL, ESQ.
Attorney for Respondent

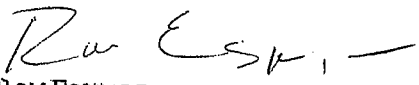
ENDORSEMENT

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: 8-25-10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

SD2009804663

Exhibit A

First Amended Statement of Issues No. 3445

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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the First Amended Statement
12 of Issues Against:

Case No. 3445

13 COLLEGE PHARMACY
3505 Austin Bluffs Pkwy., Ste. 101
14 Colorado Springs, CO 80918

**FIRST AMENDED STATEMENT OF
ISSUES**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about December 24, 2008, the Board of Pharmacy, Department of Consumer
23 Affairs, received an application for a Nonresident Pharmacy Permit from College Pharmacy
24 (Respondent). On or about December 2, 2008, Rachel Christopher, on behalf of College
25 Pharmacy, certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on May 27, 2009.

27 ///

28 ///

3. On or about March 19, 2009, the Board of Pharmacy, Department of Consumer Affairs, also received an application for a Nonresident Sterile Injectable Compounding Pharmacy Permit from Respondent College pharmacy. This application is deemed denied pursuant to the First Amended Statement of Issues filed herein.

JURISDICTION

4. This First Amended Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 4300, subdivision (c), of the Code states:

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following . . .

STATUTORY PROVISIONS

6. Section 4301 of the Code 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:

• • • •

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

• • • •

7. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

• • • •

1 (3)(A) Done any act that if done by a licentiate of the business or
2 profession in question, would be grounds for suspension or revocation of
license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of
the business or profession for which application is made.

5

6
7 8. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to
9 evaluate the rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

13
14 9. Section 4313 of the Code states:

15 In determining whether to grant an application for licensure or whether to
16 discipline or reinstate a license, the board shall give consideration to evidence
of rehabilitation. However, public protection shall take priority over
17 rehabilitation and, where evidence of rehabilitation and public protection are in
conflict, public protection shall take precedence.

18
19 REGULATIONS

20 10. California Code of Regulations, Title 16, Section 1769, states:

21 (a) When considering the denial of a facility or personal license under
22 Section 480 of the Business and Professions Code, the board, in evaluating the
rehabilitation of the applicant and his present eligibility for licensing or
registration, will consider the following criteria:

23 (1) The nature and severity of the act(s) or offense(s) under consideration
24 as grounds for denial.

25 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
26 under consideration as grounds for denial under Section 480 of the Business
and Professions Code.

27 (3) The time that has elapsed since commission of the act(s) or crime(s)
28 referred to in subdivision (1) or (2).

1 (4) Whether the applicant has complied with any terms of parole,
2 probation, restitution or any other sanctions lawfully imposed against the
3 applicant.

4 (5) Evidence, if any, of rehabilitation submitted by the applicant.
5
6

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Discipline By Another State- Colorado)**

9 11. Respondent's applications are subject to denial under Code sections 480, subdivision
10 (a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
11 Respondent was disciplined by another state. The circumstances are as follows:

12 a. On or about April 7, 2004, in Case No. 2004-838, the Colorado State Board of
13 Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
14 Respondent, including assessment of a \$1,000 fine. The discipline arose from Respondent failing
15 to timely notify the state pharmacy board of a change of its pharmacist manager.

16 b. On or about December 21, 2005, in Case No. 2005-0002, the Colorado State Board of
17 Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
18 Respondent, including assessment of a \$50,000 fine. The discipline arose because pharmacists
19 employed by Respondent dispensed prescriptions to a practitioner's office under employee
20 names, rather than under a specific patient's name; because pharmacists employed by Respondent
21 failed to list the patient's address on three prescription orders; and because Respondent did not
22 have specific compounding records for a prescription order.

23 c. On or about December 18, 2007, in Case No. 2008-569, the Colorado State Board of
24 Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
25 Respondent, including assessment of a \$250,000 fine. The discipline arose because in or about
26 2004 through 2007, Respondent allegedly sold or distributed human growth hormone (hGH)
27 imported from China in the United States that had not been approved by the United States Food
28 and Drug Administration (FDA). Although Respondent stipulated to the discipline, it did not
make admissions and denied the charges.

1 d. On or about April 10, 2009, in Case Nos. 2008-569, 2009-639 and 2009-1779, the
2 Colorado State Board of Pharmacy and Respondent entered into a stipulation whereby discipline
3 was imposed upon Respondent, including 7 years probation. The discipline arose because in or
4 about April 2008, Respondent purchased hGH, a controlled substance under Colorado law, from a
5 source that was not a registered prescription drug wholesaler in the State of Colorado; because in
6 or about March 2008, Respondent received a prescription order from and sold hGH to a
7 veterinarian in Illinois where the veterinarian was listed as both the prescribing practitioner and
8 the patient; and because these actions violated the prior stipulation entered into between
9 Respondent and the Colorado State Board of Pharmacy in Case No. 2008-569.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Discipline By Another State- Arizona)**

12 12. Respondent's applications are subject to denial under Code sections 480, subdivision
13 (a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
14 Respondent was disciplined by another state. The circumstances are as follows:

15 a. On or about May 14, 2008, in Case No. 08-0044-PHR, the Arizona State Board of
16 Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
17 Respondent, including 7 years probation, based upon the discipline imposed by the Colorado
18 State Board of Pharmacy in December 2007 in Case No. 2008-569 (see First Cause for Denial
19 above).

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Discipline By Another State- Missouri)**

22 13. Respondent's applications are subject to denial under Code sections 480, subdivision
23 (a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
24 Respondent was disciplined by another state. The circumstances are as follows:

25 a. On or about May 28, 2008, the Missouri State Board of Pharmacy issued Respondent
26 a pharmacy permit whereby discipline was imposed upon Respondent, including 3 years
27 probation, based upon the discipline imposed by the Colorado State Board of Pharmacy in
28 December 2007 in Case No. 2008-569 (see First Cause for Denial above).

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Discipline By Another State- Indiana)

14. Respondent's applications are subject to denial under Code sections 480, subdivision (a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that Respondent was disciplined by another state. The circumstances are as follows:

a. As the result of filing a federal criminal action (Criminal Action No. 07-cr-00338-MSK), the United States indicted Respondent College Pharmacy in 2007. The basis of the criminal indictment was that while under ownership of Thomas Bader, Respondent allegedly sold and distributed human growth hormones illegally in the United States between 2004 and 2007. In August 2008, the United States, in a substantially related case (Civil Action No. 08-cv-01790-MSK), filed a complaint in federal civil court against Respondent for forfeiture *in rem* and for a permanent injunction based upon its alleged distribution of the human growth hormone (hGH).

b. Pursuant to a consent decree, and without contesting the allegations, the federal criminal and civil cases were resolved with Respondent in September 2008, when Respondent agreed to entry of a permanent injunction whereby it would, *inter alia*, refrain from introducing into interstate commerce hGH other than hGH that is contained in a FDA approved drug product, dispensed pursuant to a patient-specific prescription, and for approved uses only as determined by the Secretary of Health and Human Services or the FDA. In addition, Respondent agreed to a forfeiture judgment against it in the amount of 3.5 million to the United States. The federal criminal action was subsequently dismissed without prejudice as to Respondent.

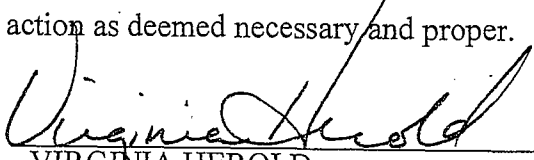
c. In or about 2007, Respondent submitted an application to the Indiana Board of Pharmacy to renew its registration as a nonresident pharmacy. On January 17, 2008, the Indiana Board of Pharmacy sent Respondent a letter denying the application based on "the information regarding the current federal indictment being reviewed by the Colorado federal Grand Jury." Respondent appealed the denial, and an administrative hearing was held. On or about May 7, 2009, in Case No. 2008 IBP 0009, as a result of the administrative hearing, the Indiana Board of Pharmacy issued Respondent a nonresident pharmacy registration, but placed Respondent on probation.

PRAYER

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

1. Denying the applications of College Pharmacy for a Nonresident Pharmacy Permit and for a Nonresident Sterile Injectable Compounding Pharmacy Permit;
2. Taking such other and further action as deemed necessary and proper.

DATED: 6/3/10


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

SD2009804663