

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

In the Matter of the Accusation Against:

**CHRISTOPHER JOHN SMITH
203 Via Fiesta
Newbury, CA 91320**

Pharmacist License No. RPH 44647

Respondent.

Case No. 3779

OAH No. L-2011030514

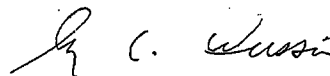
DECISION AND ORDER

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 April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3779

13 **CHRISTOPHER JOHN SMITH**
203 Via Fiesta
14 Newbury, CA 91320

OAH No. L-2011030514

15 **Pharmacist License No. RPH 44647**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.

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

22 PARTIES

23 1. Virginia K. 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 Nancy A. Kaiser, Deputy Attorney
26 General.

27 ///

28 ///

1 2. Respondent Christopher John Smith (Respondent) is represented in this proceeding
2 by attorney Robert F. Hahn, whose address is: 5801 Christie Avenue, Suite 385, Emeryville, CA
3 94608-1964

4 3. On or about August 14, 1991, the Board of Pharmacy issued Pharmacist License No.
5 RPH 44647 to Christopher John Smith (Respondent). The Pharmacist License was in full force
6 and effect at all times relevant to the charges brought in Accusation No. 3779 and will expire on
7 May 31, 2013, unless renewed.

8 JURISDICTION

9 4. Accusation No. 3779 was filed before the Board of Pharmacy (Board), and is
10 currently pending against Respondent. The Accusation and all other statutorily required
11 documents were properly served on Respondent on February 9, 2011. Respondent timely filed
12 his Notice of Defense contesting the Accusation. A copy of Accusation No. 3779 is attached as
13 exhibit A and incorporated herein by reference.

14 ADVISEMENT AND WAIVERS

15 5. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 3779. Respondent has also carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
18 Order.

19 6. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
21 his own expense; the right to confront and cross-examine the witnesses against him; the right to
22 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
23 the attendance of witnesses and the production of documents; the right to reconsideration and
24 court review of an adverse decision; and all other rights accorded by the California
25 Administrative Procedure Act and other applicable laws.

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

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3779.

9. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. It is understood by Respondent that, in deciding whether to adopt this stipulation, the Board may receive oral and written communication from its staff and the Office of the Attorney General. Communications pursuant to this paragraph shall not disqualify the Board or other persons from future participation in this or any other matter affecting Respondent. In the event this settlement is not adopted by the Board, the stipulation will not become effective and may not be used for any purpose, except this paragraph, which shall remain in effect.

OTHER

11. 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.

12. 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.

13. 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:

1 **DISCIPLINARY ORDER**

2 It is hereby ordered that Pharmacist License No. RPH 44647, issued to Respondent is
3 revoked; however, the revocation is stayed and Respondent is placed on probation for **five (5)**
4 **years** upon the following terms and conditions:

5 1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations.
6 Respondent shall report any of the following occurrences to the Board, in writing, within seventy-
7 two (72) hours of such occurrence: an arrest or issuance of a criminal complaint for violation of
8 any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal
9 controlled substances laws, or a plea of guilty or nolo contendere in any state or federal criminal
10 proceeding to any criminal complaint, information or indictment, a conviction of any crime,
11 discipline, citation, or other administrative action filed by any state or federal agency which
12 involves Respondent's pharmacist license or which is related to the practice of pharmacy or the
13 manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or
14 controlled substance. Failure to timely report such occurrence shall be considered a violation of
15 probation.

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

24 3. **Interview with the Board.** Upon receipt of reasonable prior notice, Respondent shall
25 appear in person for interviews with the Board or its designee, at such intervals and locations as
26 are determined by the Board or its designee. Failure to appear for any scheduled interview
27 without prior notification to Board staff, or failure to appear for two (2) or more scheduled
28

1 interviews with the Board or its designee during the period of probation, shall be considered a
2 violation of probation.

3 4. **Cooperate with Board Staff.** Respondent shall cooperate with the Board's inspection
4 program and with the Board's monitoring and investigation of Respondent's compliance with the
5 terms and conditions of his or her probation. Failure to cooperate shall be considered a violation
6 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.** During the period of probation, Respondent shall notify all
11 present and prospective employers of the decision in case number 3779 and the terms, conditions
12 and restrictions imposed on Respondent by the decision, as follows:

13 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
14 Respondent undertaking any new employment, Respondent shall cause his or her direct
15 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
16 Respondent's tenure of employment) and owner to report to the Board in writing acknowledging
17 that the listed individual(s) has/have read the decision in case number 3779, and terms and
18 conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her
19 employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

20 If Respondent works for or is employed by or through a pharmacy employment service,
21 Respondent must notify his or her direct supervisor, pharmacist-in-charge, and owner at every
22 entity licensed by the Board of the terms and conditions of the decision in case number 3779 in
23 advance of the Respondent commencing work at each licensed entity. A record of this
24 notification must be provided to the Board upon request.

25 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
26 (15) days of Respondent undertaking any new employment by or through a pharmacy
27 employment service, Respondent shall cause his or her direct supervisor with the pharmacy
28 employment service to report to the Board in writing acknowledging that he or she has read the

1 decision in case number 3779 and the terms and conditions imposed thereby. It shall be
2 Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit
3 timely acknowledgment(s) to the Board.

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

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

11 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
12 **Designated Representative-in-Charge, or Serving as a Consultant.** During the period of
13 probation, Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or
14 designated representative-in-charge of any entity licensed by the Board nor serve as a consultant
15 unless otherwise specified in this order. Assumption of any such unauthorized supervision
16 responsibilities shall be considered a violation of probation.

17 **8. Reimbursement of Board Costs.** As a condition precedent to successful completion
18 of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the
19 amount of **\$5,937.50**. Respondent may make said payments pursuant to a Board-approved
20 payment schedule. There shall be no deviation from this schedule absent prior written approval by
21 the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
22 violation of probation. The filing of bankruptcy by Respondent shall not relieve Respondent of
23 his or her responsibility to reimburse the Board its costs of investigation and prosecution.

24 **9. Probation Monitoring Costs.** Respondent shall pay any costs associated with
25 probation monitoring as determined by the Board each and every year of probation. Such costs
26 shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to
27 pay such costs by the deadline(s) as directed shall be considered a violation of probation.
28

1 10. **Status of License.** Respondent shall, at all times while on probation, maintain an
2 active, current license with the Board, including any period during which suspension or probation
3 is tolled. Failure to maintain an active, current license shall be considered a violation of
4 probation. If Respondent's license expires or is cancelled by operation of law or otherwise at any
5 time during the period of probation, including any extensions thereof due to tolling or otherwise,
6 upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of
7 this probation not previously satisfied.

8 11. **License Surrender While on Probation/Suspension.** Following the effective date of
9 this decision, should Respondent cease practice due to retirement or health, or be otherwise
10 unable to satisfy the terms and conditions of probation, Respondent may tender his or her license
11 to the Board for surrender. The Board or its designee shall have the discretion whether to grant
12 the request for surrender or take any other action it deems appropriate and reasonable. Upon
13 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
14 terms and conditions of probation. This surrender constitutes a record of discipline and shall
15 become a part of the Respondent's license history with the Board.

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

22 12. **Notification of a Change in Name, Residence Address, Mailing Address or**
23 **Employment.** Respondent shall notify the Board in writing within ten (10) days of any change of
24 employment. Said notification shall include the reasons for leaving, the address of the new
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
26 shall further notify the Board in writing within ten (10) days of a change in name, residence
27 address, mailing address, or phone number. Failure to timely notify the Board of any change in
28

1 employer(s), name(s), address(es), or phone number(s) shall be considered a violation of
2 probation.

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

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

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

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

22 **14. Violation of Probation.** If a Respondent has not complied with any term or condition
23 of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall
24 automatically be extended, until all terms and conditions have been satisfied or the Board has
25 taken other action as deemed appropriate to treat the failure to comply as a violation of probation,
26 to terminate probation, and to impose the penalty that was stayed.

27 If Respondent violates probation in any respect, the Board, after giving Respondent notice
28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that

1 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
2 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
3 a petition to revoke probation or an accusation is filed against Respondent during probation, the
4 Board shall have continuing jurisdiction and the period of probation shall be automatically
5 extended until the petition to revoke probation or accusation is heard and decided.

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

8 16. **Pharmacists Recovery Program (PRP).** Within thirty (30) days of the effective date
9 of this decision, Respondent shall contact the Pharmacists Recovery Program (PRP) for
10 evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the
11 treatment contract and any subsequent addendums as recommended and provided by the PRP and
12 as approved by the Board or its designee. The costs for PRP participation shall be borne by the
13 Respondent.

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

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

20 Probation shall be automatically extended until Respondent successfully completes the
21 PRP. Any person terminated from the PRP program shall be automatically suspended by the
22 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
23 writing.

24 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
25 licensed practitioner as part of a documented medical treatment shall result in the automatic
26 suspension of practice by Respondent and shall be considered a violation of probation.
27 Respondent may not resume the practice of pharmacy until notified by the Board in writing.
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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 or she holds an interest at the time this decision becomes
15 effective unless otherwise specified in this order.

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

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

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

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

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

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

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

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

24 **18. Abstain from Drugs and Alcohol Use.** Respondent shall completely abstain from
25 the possession or use of alcohol, controlled substances, dangerous drugs and their associated
26 paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a
27 documented medical treatment. Upon request of the Board or its designee, Respondent shall
28 provide documentation from the licensed practitioner that the prescription for the 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. Respondent shall
3 ensure that he or she is not in the same physical location as individuals who are using illicit
4 substances even if Respondent is not personally ingesting the drugs. Any possession or use of
5 alcohol, controlled substances, or their associated paraphernalia not supported by the
6 documentation timely provided, and/or any physical proximity to persons using illicit substances,
7 shall be considered a violation of probation.

8 **19. Community Services Program.** Within sixty (60) days of the effective date of this
9 decision, Respondent shall submit to the Board or its designee, for prior approval, a community
10 service program in which Respondent shall provide free health-care related services on a regular
11 basis to a community or charitable facility or agency for **at least 50 hours per year** for the first
12 three years of probation. Within thirty (30) days of Board approval thereof, Respondent shall
13 submit documentation to the Board demonstrating commencement of the community service
14 program. A record of this notification must be provided to the Board upon request. Respondent
15 shall report on progress with the community service program in the quarterly reports. Failure to
16 timely submit, commence, or comply with the program shall be considered a violation of
17 probation.

18 **20. No Ownership of Licensed Premises.** Respondent shall not own, have any legal or
19 beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee,
20 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
21 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
22 entity licensed by the Board within ninety (90) days following the effective date of this decision
23 and shall immediately thereafter provide written proof thereof to the Board. Failure to timely
24 divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a
25 violation of probation.

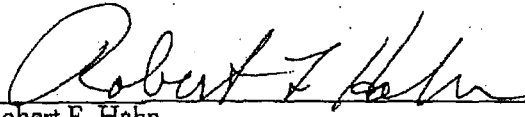
26 ACCEPTANCE

27 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
28 discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will

1 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
 2 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
 3 Board of Pharmacy.


4
 5 DATED: 11/3/11 
 6 CHRISTOPHER JOHN SMITH
 Respondent

7 I have read and fully discussed with Respondent Christopher John Smith the terms and
 8 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
 9 I approve its form and content.

10 DATED: 11/3/11 
 11 Robert F. Hahn
 Attorney for Respondent

12 ENDORSEMENT

13 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
 14 submitted for consideration by the Board of Pharmacy.

15 Dated: 11/8/11
 16 Respectfully submitted,
 17 KAMALA D. HARRIS
 Attorney General of California
 18 GREGORY J. SALUTE
 Supervising Deputy Attorney General
 19 
 20 NANCY A. KAISER
 Deputy Attorney General
 Attorneys for Complainant

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Exhibit A

Accusation No. 3779

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083,
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3779

13 **CHRISTOPHER JOHN SMITH**

14 203 Via Fiesta
Newbury Park, CA 91320

A C C U S A T I O N

15 **Pharmacist License No. RPH 44647**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 14, 1991, the Board of Pharmacy (Board) issued Pharmacist
24 License No. RPH 44647 to Christopher John Smith (Respondent). The Pharmacist License was
25 in full force and effect at all times relevant to the charges brought herein and will expire on May
26 31, 2011, unless renewed.

27 ///

28 ///

JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4
5 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
6 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
7 action during the period within which the license may be renewed, restored, reissued or
8 reinstated.

9 5. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
10 license issued by the Board.

11 6. Section 4301 states:

12 "The board shall take action against any holder of a license who is guilty of unprofessional
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

14 Unprofessional conduct shall include, but is not limited to, any of the following:

15

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

21

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

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

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision. The board may take action when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.

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

21 REGULATORY PROVISIONS

22 7. California Code of Regulations, title 16, section 1770, states:

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

1 COST RECOVERY

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

5 FIRST CAUSE FOR DISCIPLINE

6 (Criminal Convictions of Substantially Related Crimes)

7 9. Respondent is subject to disciplinary action under sections 4301, subdivision (1), as
8 defined in California Code of Regulations, title 16, section 1770, in that Respondent was
9 convicted of crimes, which are substantially related to the qualifications, functions, or duties of a
10 licensed pharmacist, as follows:

11 a. On or about April 7, 2010, after pleading guilty, Respondent was convicted of three
12 misdemeanor counts of violating Vehicle Code section 23152(b) [driving with a blood-alcohol
13 content level greater than 0.8%], Vehicle Code section 23152 S/A [drunk driving-priors], and
14 Vehicle Code section 23578 [excessive blood alcohol or refusal to take chemical testing], in the
15 criminal proceeding entitled *People v. Christopher John Smith* (Super. Ct. Ventura County, 2010,
16 No. 2009045240). Respondent was sentenced to sixty (60) months of probation, 180 days in
17 county jail, one (1) year ignition interlock device, and fined. In addition, Respondent violated the
18 terms and conditions of probation on prior case no. 2008047561.

19 b. The circumstances surrounding the convictions are that on or about December 11,
20 2009, while under the influence of alcohol, Respondent drove at an unsafe speed and collided
21 with the rear-end of a vehicle stopped at a red light, causing minor injuries to the driver. Officers
22 of the California Highway Patrol arrested Respondent for driving a motor vehicle while under the
23 influence of an alcoholic beverage or drugs causing injury and driving on a suspended driver's
24 license with a prior DUI conviction. Approximately one hour after Respondent was arrested, his
25 BAC was .353.

26 c. On or about January 23, 2009, after pleading guilty, Respondent was convicted of
27 three misdemeanor counts of violating Vehicle Code section 23153(b) [driving with a blood-
28 alcohol content level greater than 0.8%], Vehicle Code section 23152S/A [drunk driving-priors],

1 and Vehicle Code section 23578 [excessive blood alcohol or refusal to take chemical testing], in
2 the criminal proceeding entitled *People v. Christopher John Smith* (Super. Ct. Ventura County,
3 2009, No. 2008047561). Respondent was sentenced to 60 months of probation, 40 days of jail,
4 and fined. The circumstances surrounding the convictions are that on or about November 13,
5 2008, Respondent was observed driving erratically by California Highway Patrol officers.
6 Respondent failed the field sobriety tests and was arrested for driving a motor vehicle while under
7 the influence of an alcoholic beverage and or controlled substance.

8 d. On or about April 13, 2005, after pleading no contest, Respondent was convicted of
9 one misdemeanor count of violating Vehicle Code section 23152(a) [driving under the influence
10 of an alcoholic beverage or drug], in the criminal proceeding entitled *People v. Christopher John*
11 *Smith* (Super. Ct. San Mateo County, 2005, No. SM338099A). Respondent was sentenced to 36
12 months of probation, two days of jail, and fined. On or about February 20, 2005, Respondent was
13 arrested for driving while under the influence of an alcoholic beverage or drug.

14 SECOND CAUSE FOR DISCIPLINE

15 (Multiple Alcohol Related Convictions)

16 10. Respondent is subject to disciplinary action under section 4301, subdivision (k), on
17 the grounds of unprofessional conduct, in that on or about April 7, 2010, January 23, 2009, and
18 April 13, 2005, Respondent was convicted of misdemeanors involving the consumption of an
19 alcoholic beverage. Complainant refers to, and by this reference incorporates, the allegations set
20 forth in paragraph 9, as though set forth fully.

21 THIRD CAUSE FOR DISCIPLINE

22 (Alcohol Abuse)

23 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
24 the grounds of unprofessional conduct, in that on or about December 11, 2009, November 13,
25 2008, and February 20, 2005, Respondent used and consumed alcoholic beverages to the extent or
26 in a manner as to be dangerous or injurious to himself or to others. Complainant refers to, and by
27 this reference incorporates, the allegations set forth in paragraph 9, subparagraphs (a), (b), and
28 (c), inclusive, as though set forth fully.

PRAYER

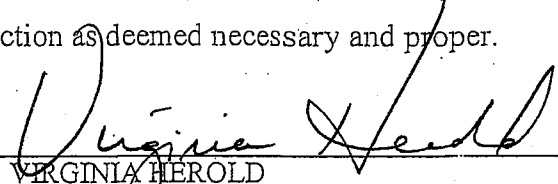
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacist License No. RPH 44647, issued to Christopher John Smith;

2. Ordering Christopher John Smith 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: 1/27/11



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

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