

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

In the Matter of the Accusation Against:

Case No. 3803

STEVEN MONTAG
10802 Camino Ruiz, #H
San Diego, CA 92126

Pharmacist License No. RPH 59622

Respondent.

DECISION AND ORDER

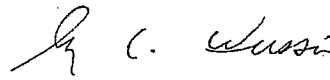
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

13 **STEVEN MONTAG**
14 **10802 Camino Ruiz, #H**
San Diego, CA 92126

15 **Pharmacist License No. RPH 59622**

16 Respondent.

Case No. 3803

OAH No. 2011010979

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

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

25 2. Respondent Steven Montag, (Respondent) is representing himself in this proceeding
26 and has chosen not to exercise his right to be represented by counsel.
27
28

3. On or about June 12, 2007, the Board of Pharmacy issued Pharmacist License No. RPH 59622 to Steven Montag (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3803 and will expire on June 30, 2011, unless renewed.

JURISDICTION

4. Accusation No. 3803 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 10, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3803 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3803. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3803.

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

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 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. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 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.

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:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 59622 issued to Respondent Steven Montag (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- 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 Pharmacist License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

Respondent 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 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.

1 **3. Interview with the Board**

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

7 **4. Cooperate with Board Staff**

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

11 **5. Continuing Education**

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

14 **6. Notice to Employers**

15 During the period of probation, Respondent shall notify all present and prospective
16 employers of the decision in Case Number 3803 and the terms, conditions and restrictions
17 imposed on Respondent by the decision, as follows:

18 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
19 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
21 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
22 individual(s) has/have read the decision in Case Number 3803, and terms and conditions imposed
23 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
24 supervisor(s) submit timely acknowledgment(s) to the Board.

25 If Respondent works for or is employed by or through a pharmacy employment service,
26 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
27 licensed by the Board of the terms and conditions of the decision in Case Number 3803 in
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1 advance of the Respondent commencing work at each licensed entity. A record of this
2 notification must be provided to the Board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of Respondent undertaking any new employment by or through a pharmacy
5 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
6 service to report to the Board in writing acknowledging that he has read the decision in Case
7 Number 3803 and the terms and conditions imposed thereby. It shall be Respondent's
8 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
9 acknowledgment(s) to the Board.

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

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

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

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

23 **8. Reimbursement of Board Costs**

24 As a condition precedent to successful completion of probation, Respondent shall pay to the
25 Board its costs of investigation and prosecution in the amount of \$2,255.00. Such costs shall be
26 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such
27 costs by the deadline(s) as directed shall be considered a violation of probation.

1 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
2 reimburse the Board its costs of investigation and prosecution.

3 **9. Probation Monitoring Costs**

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

8 **10. Status of License**

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

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

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

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

24 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
25 to the Board within ten (10) days of notification by the Board that the surrender is accepted.
26 Respondent may not reapply for any license from the Board for three (3) years from the effective
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
28

1 of the date the application for that license is submitted to the Board, including any outstanding
2 costs.

3 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
4 **Employment**

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 **13. Tolling of Probation**

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

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

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

27 "Cessation of practice" means any calendar month during which Respondent is
28 not practicing as a pharmacist for at least 40 hours, as defined by Business and

1 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
2 month during which Respondent is practicing as a pharmacist for at least 40 hours as
3 a pharmacist as defined by Business and Professions Code section 4000 et seq.

4 **14. Violation of Probation**

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

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

17 **15. Completion of Probation**

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

20 **16. Pharmacists Recovery Program (PRP)**

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

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

1 his current contract and any subsequent addendums with the PRP.

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

4 Probation shall be automatically extended until Respondent successfully completes the
5 PRP. Any person terminated from the PRP program shall be automatically suspended by the
6 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
7 writing.

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

11 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

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

28 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not

1 timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid
2 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

3 **17. Random Drug Screening**

4 Respondent, at his own expense, shall participate in random testing, including but not
5 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
6 screening program as directed by the Board or its designee. Respondent may be required to
7 participate in testing for the entire probation period and the frequency of testing will be
8 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the
9 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
10 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
11 its designee may direct. Failure to timely submit to testing as directed shall be considered a
12 violation of probation. Upon request of the Board or its designee, Respondent shall provide
13 documentation from a licensed practitioner that the prescription for a detected drug was
14 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
15 provide such documentation shall be considered a violation of probation. Any confirmed positive
16 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
17 documented medical treatment shall be considered a violation of probation and shall result in the
18 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the
19 practice of pharmacy until notified by the Board in writing.

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

28 During suspension. Respondent shall not engage in any activity that requires the

1 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
2 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
3 designated representative for any entity licensed by the Board.

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

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

8 **18. Abstain from Drugs and Alcohol Use**

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

20 **19. Community Services Program**

21 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
22 Board or its designee, for prior approval, a community service program in which Respondent
23 shall provide free health-care related services on a regular basis to a community or charitable
24 facility or agency for at least 50 hours per calendar year for the first 2 years of probation. Within
25 thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board
26 demonstrating commencement of the community service program. A record of this notification
27 must be provided to the Board upon request. Respondent shall report on progress with the
28 community service program in the quarterly reports. Failure to timely submit, commence, or

1 comply with the program shall be considered a violation of probation.

2 **20. No Ownership of Licensed Premises**

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

10 **ACCEPTANCE**

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

15
16 DATED: May 27, 2011

Steven Montag
17 STEVEN MONTAG, RPH
Respondent

18 **ENDORSEMENT**

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

21 DATED: June 2, 2011

Respectfully submitted,

22 KAMALA D. HARRIS
23 Attorney General of California
24 JAMES M. LEDAKIS
Supervising Deputy Attorney General

25 Nicole R. Cook
26 NICOLE R. COOK
27 Deputy Attorney General
28 Attorneys for Complainant

Exhibit A

Accusation No. 3803

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2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
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Attorneys for Complainant

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11 **STATE OF CALIFORNIA**

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13 **STEVEN R. MONTAG**
14 **10802 Camino Ruiz H**
San Diego, CA 92126

ACCUSATION

15 **Pharmacist License No. RPH 59622**

16 **Respondent.**

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about June 12, 2007, the Board of Pharmacy issued Original Pharmacist
23 License No. RPH 59622 to Steven R. Montag (Respondent). The Original Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2011, unless renewed.

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27 ///

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JURISDICTION

3. This Accusation 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 unless otherwise indicated.

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

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482(b) provides, in pertinent part, that when considering the suspension or revocation of a license under Section 490, each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

1 9. Section 4301 of the Code states:

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

6

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

12

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

16

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

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

.....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(April 26, 2010 Criminal Conviction for Driving With Blood Alcohol of 0.08% or More on June 8, 2009)

13. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

1 a. On or about April 26, 2010, in a criminal proceeding entitled *People of the State of*
2 *California v. Steven R. Montag*, San Diego County Superior Court, case number M083760,
3 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152,
4 subdivision (b) (driving with a blood alcohol content of 0.08% or more), a misdemeanor.

5 b. The circumstances surrounding the conviction are that on or about June 8, 2009,
6 California Highway Patrol officers stopped Respondent's vehicle for possible drunk driving. As
7 Respondent exited his vehicle, officers smelled a strong odor of an alcoholic beverage on his
8 person. Respondent walked to the front of his car and officers noticed Respondent was slow and
9 unsteady on his feet and was very lethargic in his movements. Upon close contact, officers
10 observed his eyes to be red, watery and bloodshot and could smell a strong odor of an alcoholic
11 beverage emitting from his breath when he spoke. Officers asked Respondent how much he had
12 had to drink, and he responded, "One beer and one shot." Officers asked if Respondent had
13 anything to drink earlier, and Respondent told officers he had had 1-2 beers around 4:30 p.m., but
14 started to say 2-3 beers and stopped himself. Officers observed that Respondent's speech was
15 very slow and mumbled. Officers requested that Respondent perform field sobriety tests and he
16 showed signs of impairment in performing them and then refused to perform a preliminary
17 alcohol screening test. Respondent was placed under arrest for driving a motor vehicle while
18 intoxicated and transported to the San Diego County Jail where he elected to take a blood test.
19 Respondent's BAC was analyzed at 0.15%.

20 c. As a result of the conviction Respondent was placed on five years summary
21 probation. Respondent was ordered to pay various fines and fees, ordered to enroll in and serve
22 four days in the Public Service Program consecutive to Case Number M093222 (see Second
23 Cause for Discipline), enroll in and complete the MAAD program concurrent with Case Number
24 093222, and enroll in and complete a first offender program. Respondent was further ordered to
25 not drive with any measurable amount of alcohol in his system.

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1 program. Respondent was further ordered to not drive with any measurable amount of alcohol in
2 his system.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

5 15. Respondent has subjected his license to disciplinary action under section 4301,
6 subdivision (h) of the Code in that on or about June 8, 2009 and October 4, 2009, Respondent
7 drove a vehicle while under the influence of an alcoholic beverage, which posed a serious risk of
8 injury and/or death to himself and to the public, as detailed in paragraphs 13 and 14, above, and
9 which are incorporated here by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

12 16. Respondent has subjected his license to disciplinary action under section 4301,
13 subdivision (k) of the Code in that on or about April 26, 2010, Respondent was convicted in two
14 separate cases on charges involving the consumption of alcoholic beverages, as detailed in
15 paragraphs 13 and 14, above, which are incorporated here by reference.

16 **PRAYER**

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

19 1. Revoking or suspending Original Pharmacist License Number RPH 59622, issued to
20 Steven R. Montag;

21 2. Ordering Steven R. Montag to pay the Board of Pharmacy the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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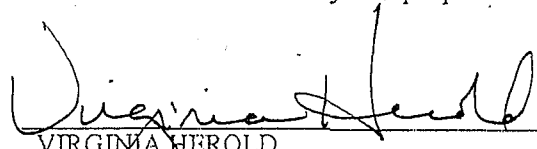
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3. Taking such other and further action as deemed necessary and proper.

DATED: _____

1/4/11



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

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