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

In the Matter of the First Amended Accusation Against:

Case No. 3932

OAH No. L-2011061376

ELLIOT MILES STONE 42451 15TH Street West Lancaster, CA 93534

Pharmacy Technician License No. TCH 82587

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the

Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 22, 2012.

It is so ORDERED on February 21, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

(. Jusi

By

STANLEY C. WEISSER Board President

· ·				
1	KAMALA D. HARRIS Attorney General of California			
2	KAREN B. CHAPPELLE Supervising Deputy Attorney General			
3	Randy M. Mailman			
4	Deputy Attorney General State Bar No. 246134			
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013			
6	Telephone: (213) 897-2442 Facsimile: (213) 897-2804			
7	Attorneys for Complainant			
8		RE THE PHARMACY		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10	In the Matter of the First Amended Accusation	Case No. 3932		
11	Against:	OAH No. L- 2011061376		
12	ELLIOT MILES STONE 42451 15th Street West	STIPULATED SURRENDER OF		
13	Lancaster, CA 93534 Pharmacy Technician License No. TCH	LICENSE AND ORDER		
14	82587			
15	Respondent.			
16	In the interest of a prompt and speedy resolution of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs			
17				
18				
19	the parties hereby agree to the following Stipulated Surrender of License and Order which will be			
20	submitted to the Board for approval and adoption as the final disposition of the First Amende			
21	Accusation.			
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 Kan			
25	D. Harris, Attorney General of the State of California, by Randy M. Mailman, Deputy Attorney			
26	General.			
	2. Elliot Miles Stone is represented in t	his proceeding by attorney Kathryn A. Ogas,		
27	whose address is 10755-F Scripps Poway Parkw	ay #281, San Diego, CA 92131.		
28				
	· · · · · · · · · · · · · · · · · · ·	1		
	1			

3. On or about March 28, 2008, the Board of Pharmacy issued Pharmacy Technician License No. TCH 82587 to Elliot Miles Stone ("Respondent"). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in the First Amended Accusation No. 3932 and expired on July 31, 2011. Respondent's Pharmacy Technician License has not been renewed.

JURISDICTION

4. First Amended Accusation No. 3932 was filed before the Board of Pharmacy ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on December 21, 2011. Respondent timely filed his Notice of Defense contesting the First Amended Accusation. A copy of the First Amended Accusation No. 3932 is attached as Exhibit A and incorporated by reference.

13

1

2

3

4

5

6

7

8

9

10

11

12

ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in the First Amended Accusation No. 3932. Respondent also has
16 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
17 Surrender of License and Order.

Respondent is fully aware of his legal rights in this matter, including the right to a
 hearing on the charges and allegations in the First Amended 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.

2

27

25

26

CULPABILITY

1

Ż

3

4

5

6

7

28

Respondent admits the truth of each and every charge and allegation in the First
 Amended Accusation No. 3932, agrees that cause exists for discipline and hereby surrenders his
 Pharmacy Technician License No. TCH 82587 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 8 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 9 communicate directly with the Board regarding this stipulation and surrender, without notice to or 10 participation by Respondent or his counsel. By signing the stipulation, Respondent understands 11 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the 12 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its 13 Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or 14 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, 15 and the Board shall not be disqualified from further action by having considered this matter. 16

17 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
18 License and Order, including facsimile signatures thereto, shall have the same force and effect as
19 the originals.

12. This Stipulated Surrender of License and 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 Surrender of License and 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 Order:

ORDER 1 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 82587, issued to 2 3 Respondent Elliot Miles Stone, is surrendered and accepted by the Board of Pharmacy. 1. The surrender of Respondent's Pharmacy Technician License and the acceptance of 4 the surrendered license by the Board shall constitute the imposition of discipline against 5 6 Respondent. This stipulation constitutes a record of the discipline and shall become a part of 7 Respondent's license history with the Board of Pharmacy. 2. Respondent shall lose all rights and privileges as a pharmacy technician in California 8 as of the effective date of the Board's Decision and Order. 9 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was 10 issued, his wall certificate on or before the effective date of the Decision and Order. 11 Respondent may not apply for any license, permit, or registration from the Board for three 12 4. years from the effective date of this decision. If Respondent ever applies for licensure or petitions for 13 reinstatement in the State of California, the Board shall treat it as a new application for licensure. 14 Respondent must comply with all the laws, regulations and procedures for licensure in effect at 15 the time the application or petition is filed, and all of the charges and allegations contained in the 16 First Amended Accusation No. 3932 shall be deemed to be true, correct and admitted by 17 Respondent when the Board determines whether to grant or deny the application or petition. 18 5. Respondent shall pay the agency its costs of investigation and enforcement in the 19 amount of \$6,194.00 prior to issuance of a new license. 2.0 6. If Respondent should ever apply or reapply for a new license or certification, or 21 petition for reinstatement of a license, by any other health care licensing agency in the State of 22 California, all of the charges and allegations contained in the First Amended Accusation, No. 23 3932 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any 24 Statement of Issues or any other proceeding seeking to deny or restrict licensure. 25 /// 26 27 28

1			
· 2	ACCEPTANCE		
3	i have carefully read the above Stipulated Surrender of License and Order and have fully		
4	discussed it with my attorney, Kathryn A. Ogas. I understand the stipulation and the effect it will		
5	have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and		
6	Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order		
7	of the Board of Pharmacy.		
8	DATED: 1/1/2 Ellot Stone		
9	DATED: 1/6/12 EUCO MUNCO		
10	Respondent		
11	I have read and fully discussed with Respondent Elliot Miles Stone the terms and		
12	conditions and other matters contained in this Stipulated Surrender of License and Order. I		
13	approve its form and content.		
14	DATED: 16/12 trathring (190)		
15	Attorney for Respondent		
16			
17	ENDORSEMENT The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted		
18 19	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.		
20	Dated: 1/9/2012 Respectfully submitted,		
21 22	KAMALA D. HARRIS Attorney General of California KAREN B. CHAPPELLE		
23	Supervising Deputy Attorney General		
24			
25	RANDY M. MAILMAN		
26	Deputy Attorney General Attorneys for Complainant		
27			
28			
	LA2011600153 51066326.dcc 5		
	Stipulated Surrender of License (Case No. 3932)		

Exhibit A

First Amended Accusation No. 3932

	2	
	II	
	1	Kamala D. Harris
	1	Attorney General of California
	2	KAREN B. CHAPPELLE
	3	Supervising Deputy Attorney General RANDY M. MAILMAN
· · ·	2	Deputy Attorney General
	4	State Bar No. 246134
	5	300 So. Spring Street, Suite 1702
	5	Los Angeles, CA 90013 Telephone: (213) 897-2442
	6	Telephone: (213) 897-2442 Facsimile: (213) 897-2804 Attorneys for Complainant
	-	Attorneys for Complainant
	7	BEFORE THE
	8	BOARD OF PHARMACY
	0	DEPARTMENT OF CONSUMER AFFAIRS
	9	STATE OF CALIFORNIA
	10	
		In the Matter of the First Amended Accusation Case No. 3932
	11	Against:
	12	ELLIOT MILES STONE
		42451 15th Street West FIRST AMENDED ACCUSATION
	13	Lancaster, CA 93534
	14	Pharmacy Technician License No. TCH 82587
	15	Respondent.
	16	
		Complainant alleges:
	17	PARTIES
	18	<u>FARTIES</u>
		1. Virginia Herold ("Complainant") brings this First Amended Accusation solely in her
	19	official constitutes the Europytius Officer of the Board of Pharmone, Department of Consumer
· .	20	official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
		Affairs.
•	21	2 On or about March 28, 2008 the Deard of Diamage is and J Diamage Training
	22	2. On or about March 28, 2008, the Board of Pharmacy issued Pharmacy Technician
		License Number TCH 82587 to Elliot Miles Stone ("Respondent"). The Pharmacy Technician
	23	
	24.	License was in full force and effect at all times relevant to the charges brought herein and will
		expire on July 31, 2011, unless renewed.
	25	
	26	
·	27	
	28	
	20	
		1
		First Amended Accusation
		·

JURISDICTION

This First Amended Accusation is brought before the Board of Pharmacy ("Board"), 3. 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.

STATUTORY PROVISIONS

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 7 disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

Section 490 states: 5.

1

2

3

4

5

6

8

9

10

"(a) In addition to any other action that a board is permitted to take against a licensee, a 11 board may suspend or revoke a license on the ground that the licensee has been convicted of a 12 13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. 14

Notwithstanding any other provision of law, a board may exercise any authority to 15 (b) discipline a licensee for conviction of a crime that is independent of the authority granted under 16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties 17 18 of the business or profession for which the licensee's license was issued.

A conviction within the meaning of this section means a plea or verdict of guilty or a (c) 19 conviction following a plea of nolo contendere. Any action that a board is permitted to take 20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or 21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is 22 made suspending the imposition of sentence, irrespective of a subsequent order under the 23 provisions of Section 1203.4 of the Penal Code." 24

> Section 4060 of the Code states: 6.

"No person shall possess any controlled substance, except that furnished to a person upon 26 27 the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . ."

2

28

7. Section 4059, subdivision (a), of the Code provides: "A person may not furnish any
 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

8. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
7 license issued by the Board.

9. Section 4301 states:

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

12

. . . .

8

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

18

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

21

(1) The conviction of a crime substantially related to the qualifications, functions, and
duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
(commencing with Section 801) of Title 21 of the United States Code regulating controlled
substances or of a violation of the statutes of this state regulating controlled substances or
dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
The board may inquire into the circumstances surrounding the commission of the crime, in order

to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the 2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 4 of this provision. The board may take action when the time for appeal has elapsed, or the 5 judgment of conviction has been affirmed on appeal or when an order granting probation is made 6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of 7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 9 indictment..." 10

REGULATORY PROVISION

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

11

1

10. 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."

CONTROLLED SUBSTANCE-DANGEROUS DRUGS

Marijuana is designated as a Schedule I controlled substance by Health and 11. Safety Code section 11054(d)(13) and is a dangerous drug pursuant to Business and Professions Code section 4022.

12. Section 11357 (b) of the Health and Safety Code states, in pertinent part,

"Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100)."

COST RECOVERY

13. Section 125.3 of the Code provides, 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

(Self Administration of Marijuana)

8 14. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the 9 Code for unprofessional conduct in that Respondent self administered marijuana to the extent or 10 in a manner as to be dangerous or injurious to himself, to a person holding a license under this 11 chapter, or to any other person or to the public, or to the extent that the use impairs his ability to 12 conduct with safety to the public, the practice authorized by the license. The basis of the conduct 13 is as follows:

14 15. From June 23, 2008, through September 25, 2009, Respondent was employed as a
15 pharmacy technician at Wal-Mart in Lancaster, California.

16 16. On or about September 22, 2009, Respondent submitted a biological sample for drug
17 screening to Wal-Mart.

18

1

2

3

4

5

6

7

17. Drug analysis revealed that Respondent had consumed marijuana.

18. Respondent did not report to work subsequent to providing the biological sample.
 19. On or about August 3, 2011, Respondent was convicted of one misdemeanor count of
 reckless driving in violation of California Vehicle Code section 23103, in the criminal proceeding
 entitled *The People of the State of California v. Elliot Miles Stone* (Super. Ct. Los Angeles
 County, 2010, No. 0AV07023). Respondent was sentenced to probation for a period of 2 years,

24 ordered to attend a DMV impaired driver education course and fined.

25 20. The circumstances surrounding the conviction are that on May 21, 2010 at 3:18 a.m.,
26 Respondent was stopped by a deputy with the Los Angeles' Sheriff's Department when he was
27 found driving his car at 85 miles per hour, in a 65 mile per hour zone, while under the influence
28 of marijuana to the extent that he could not safely operate a motor vehicle.

1	SECOND CAUSE FOR DISCIPLINE		
2	(Violate Law Regulating Controlled Substances)		
3	21. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the		
4	Code for unprofessional conduct, in that Respondent violated a law regulating controlled		
5	substances. Complainant refers to, and by this reference incorporates, the allegations set forth in		
6	paragraphs 15 through 20, inclusive, above, as though set forth fully.		
7	THIRD CAUSE FOR DISCIPLINE		
8	(Conviction of Substantially-Related Crime)		
9	22. Respondent is subject to disciplinary action under section 490, 4300, and 4301,		
10	subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the		
11	grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially		
12 ·	related to the qualifications, functions or duties of a registered pharmacy technician which to a		
13	substantial degree evidence her present or potential unfitness to perform the functions authorized		
14	by her registration in a manner consistent with the public health, safety, or welfare. Complainant		
15	refers to, and by this reference incorporates, the allegations set forth in paragraphs 19 through 20,		
16	inclusive, above, as though set forth fully.		
17	FOURTH CAUSE FOR DISCIPLINE		
18	(Dangerous Use of Marijuana)		
19	23. Respondent is subject to disciplinary action under section 4301, subdivision (h), in		
20	that Respondent used a controlled substance, to wit marijuana, in manner dangerous to himself		
21	and others. Complainant refers to, and by this reference incorporates, the allegations set forth		
22	above in paragraphs 15 through 20, inclusive, as though set forth fully.		
23			
24	FIFTH CAUSE FOR DISCIPLINE		
25	(Unprofessional Conduct)		
26	24. Respondent is subject to disciplinary action under section 4301 of the Code for		
27	unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations		
28	set forth in paragraphs 15 through 20, inclusive, above, as though set forth fully.		
	6		
	First Amended Accusation		

PRAYER 1 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 2 and that following the hearing, the Board of Pharmacy issue a decision: 3 1. Revoking or suspending Pharmacy Technician License Number TCH 82587, issued 4 to Elliot Miles Stone; 5 2. Ordering Elliot Miles Stone to pay the Board of Pharmacy the reasonable costs of the 6 investigation and enforcement of this case, pursuant to Business and Professions Code section 7 125.3; 8 3. Taking such other and further action as deemed necessary and proper. 9 10 11 12 DATED: 13 VIRGINIA HEROLD Executive Officer 14 Board of Pharmacy Department of Consumer Affairs 15 State of California Complainant 16 LA2011600153 17 50892679.doc 18 19 20 21 22 23 24 25 26 27 28 7

First Amended Accusation