

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

In the Matter of the Accusation Against:

Case No. 4030

**DOUGLAS FAUCHER
250 Bonita Glen Dr. #A2
Chula Vista, CA 91910**

Pharmacist License No. RPH 37890

Respondent.

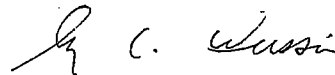
DECISION AND ORDER

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 March 9, 2012.

It is so ORDERED on February 8, 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 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4030

13 **DOUGLAS FAUCHER**
14 **P.O. Box 750**
Chula Vista, CA 91912

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacist License No. RPH 37890**

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 of the Department of Consumer Affairs,
20 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
21 be submitted to the Board for approval and adoption as the final disposition of the 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 Kamala
25 D. Harris, Attorney General of the State of California, by Adrian R. Contreras, Deputy Attorney
26 General.

27 2. Respondent Douglas Faucher (Respondent) is representing himself in this proceeding
28 and has chosen not to exercise his right to be represented by counsel.

1 3. On or about September 2, 1983, the Board of Pharmacy issued Pharmacist License
2 No. RPH 37890 to Douglas Faucher (Respondent). The Pharmacist License was in full force and
3 effect at all times relevant to the charges brought in Accusation No. 4030 and will expire on
4 February 28, 2013, unless renewed.

5 JURISDICTION

6 4. Accusation No. 4030 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on September 13, 2011.
9 Respondent timely filed his Notice of Defense contesting the Accusation.

10 A copy of Accusation No. 4030 is attached as exhibit A and incorporated herein by
11 reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, and understands the charges and allegations in
14 Accusation No. 4030. Respondent has also carefully read, and understands the effects of this
15 Stipulated Settlement and Disciplinary Order.

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

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

25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 4030.

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

3 CONTINGENCY

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

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

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

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

25 DISCIPLINARY ORDER

26 IT IS HEREBY ORDERED that Pharmacist License No. RPH 37890 issued to Respondent
27 Douglas Faucher (Respondent) is revoked. However, the revocation is stayed and Respondent is
28 placed on probation for five (5) years on the following terms and conditions.

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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.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
2 the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

4 Respondent shall cooperate with the board's inspection program and with the board's
5 monitoring and investigation of respondent's compliance with the terms and conditions of his
6 probation. Failure to cooperate shall be considered a violation 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**

11 During the period of probation, respondent shall notify all present and prospective
12 employers of the decision in case number 4030 and the terms, conditions and restrictions imposed
13 on respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
15 respondent undertaking any new employment, respondent shall cause his direct supervisor,
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
17 tenure of employment) and owner to report to the board in writing acknowledging that the listed
18 individual(s) has/have read the decision in case number 4030, and terms and conditions imposed
19 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
20 submit timely acknowledgment(s) to the board.

21 If respondent works for or is employed by or through a pharmacy employment service,
22 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
23 licensed by the board of the terms and conditions of the decision in case number 4030 in advance
24 of the respondent commencing work at each licensed entity. A record of this notification must be
25 provided to the board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
27 (15) days of respondent undertaking any new employment by or through a pharmacy employment
28 service, respondent shall cause his direct supervisor with the pharmacy employment service to

1 report to the board in writing acknowledging that he has read the decision in case number 4030
2 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
3 that his employer(s) and/or supervisor(s) submit 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,
8 part-time, temporary, relief or pharmacy management service as a pharmacist or any
9 position for which a pharmacist license is a requirement or criterion for employment,
10 whether the respondent is an employee, independent contractor or volunteer.

11 **7. Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
12 **Designated Representative-in-Charge, or Serving as a Consultant**

13 During the period of probation, respondent may remain at Medical Center Pharmacy.
14 Respondent cannot be the pharmacist-in-charge if he leaves. As the current pharmacist-in-charge,
15 he must have a consultant review operations monthly for the first year, then quarterly for the rest
16 of probation. During the period of probation, respondent shall not otherwise supervise any intern
17 pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity
18 licensed by the board nor serve as a consultant unless otherwise specified in this order.
19 Assumption of any such unauthorized supervision responsibilities shall be considered a violation
20 of probation.

21 **8. Reimbursement of Board Costs**

22 As a condition precedent to successful completion of probation, respondent shall pay to the
23 board its costs of investigation and prosecution in the amount of \$1,907.50. Respondent shall
24 make said payments in one payment or in a payment schedule that is approved by the Board.

25 There shall be no deviation from this schedule absent prior written approval by the board or
26 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
27 probation.

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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 as
6 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
7 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 have
20 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 to
25 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
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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 forty (40) hours per calendar month.
15 Any month during which this minimum is not met shall toll the period of probation, i.e., the
16 period of probation shall be extended by one month for each month during which this minimum is
17 not met. During any such period of tolling of probation, respondent must nonetheless comply
18 with all 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 forty (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 forty (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 forty (40)
3 hours as a pharmacist as defined by Business and Professions Code section 4000 et
4 seq.

5 **14. Violation of Probation**

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

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

18 **15. Completion of Probation**

19 Upon written notice by the board or its designee indicating successful completion of
20 probation, respondent's license will be fully restored.

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

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

27 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
28 the effective date of this decision is no longer considered a self-referral under Business and

1 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
2 his current contract and any subsequent addendums with the PRP.

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

5 Probation shall be automatically extended until respondent successfully completes the PRP.

6 Any person terminated from the PRP program shall be automatically suspended by the board.

7 Respondent may not resume the practice of pharmacy until notified by the board in 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 any
25 licensed premises in which he holds an interest at the time this decision becomes effective unless
26 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 its
11 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
12 of probation. Upon request of the board or its designee, respondent shall provide documentation
13 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
14 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
15 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
16 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
17 shall be considered a violation of probation and shall result in the automatic suspension of
18 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
19 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.

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

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

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

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

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

21 **19. Community Services Program**

22 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
23 board or its designee, for prior approval, a community service program in which respondent shall
24 provide free health-care related services on a regular basis to a community or charitable facility or
25 agency for one hundred and fifty (150) hours before the end of probation, with at least fifty (50)
26 hours provided in the first year. Within thirty (30) days of board approval thereof, respondent
27 shall submit documentation to the board demonstrating commencement of the community service
28 program. A record of this notification must be provided to the board upon request. Respondent

1 shall report on progress with the community service program in the quarterly reports. Failure to
2 timely submit, commence, or comply with the program shall be considered a violation of
3 probation.

4 **20. Remedial Education**

5 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
6 board or its designee, for prior approval, an appropriate program of remedial education related to
7 drug and alcohol abuse. The program of remedial education shall consist of at least twenty (20)
8 hours, which shall be completed within two (2) years at respondent's own expense. All remedial
9 education shall be in addition to, and shall not be credited toward, continuing education (CE)
10 courses used for license renewal purposes.

11 Failure to timely submit or complete the approved remedial education shall be considered a
12 violation of probation. The period of probation will be automatically extended until such
13 remedial education is successfully completed and written proof, in a form acceptable to the board,
14 is provided to the board or its designee.

15 Following the completion of each course, the board or its designee may require the
16 respondent, at his own expense, to take an approved examination to test the respondent's
17 knowledge of the course. If the respondent does not achieve a passing score on the examination,
18 this failure shall be considered a violation of probation. Any such examination failure shall
19 require respondent to take another course approved by the board in the same subject area.

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

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

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1 22. Ethics Course

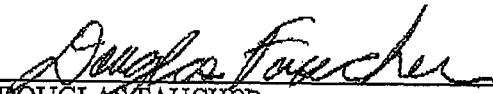
2 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
3 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
4 Failure to initiate the course during the first year of probation, and complete it within the second
5 year of probation, is a violation of probation.

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

8 ACCEPTANCE

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

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14 DATED: 10-19-11


DOUGLAS FAUCHER
Respondent

Douglas Faucher

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ENDORSEMENT

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

Dated: 10/19/11

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Adrian R. Contreras
ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4030

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2 ALFREDO TERRAZAS
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Attorneys for Complainant
8

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

12 **In the Matter of the Accusation Against:**

Case No. 4030

13 **DOUGLAS MARTIN FAUCHER**
171 Montebello Street
14 Chula Vista, CA 91910

A C C U S A T I O N

15 **Pharmacist License No. RPH 37890**

16 **Respondent.**

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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 September 2, 1983, the Board of Pharmacy issued Pharmacist License
23 No. RPH 37890 to Douglas Martin Faucher (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on February 28,
25 2013, unless renewed.

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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 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."

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9. Section 4301 of the Code states:

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

.....
(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.

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

.....
(l) 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 qualifications, functions, and duties of a licensee under this 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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10. Code section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

11. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

REGULATORY PROVISIONS

12. 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.

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13. 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.

14. Code section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

15. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

COST RECOVERY

16. 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.

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1 DRUGS

2 17. Methamphetamine is a Schedule II controlled substance as designated by Health
3 and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and
4 Professions Code section 4022.

5 18. Clonazepam, generic name for Klonopin, is a Schedule IV controlled substance
6 under California Health and Safety Code section 11057(d)(7), and is a dangerous drug pursuant to
7 Business and Professions Code section 4022.
8

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(December 9, 2009 Criminal Conviction for Reckless Driving Involving Alcohol**
11 **on July 31, 2009)**

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

15 20. On or about December 9, 2009, in a criminal proceeding entitled *People of the State*
16 *of California v. Douglas Martin Faucher*, in the San Diego County Superior Court, South County
17 Division, in Case No. S232650, Respondent was convicted on his plea of guilty to violating
18 Vehicle Code section 23103, subdivision (a) (Reckless Driving) per Vehicle Code section
19 23103.5, a misdemeanor. As a result of Respondent's plea, the Court dismissed the charges that
20 had originally been filed for violation of Vehicle Code sections 23152(a) (Driving Under the
21 Influence of Alcohol) and 23152(b) (Driving Under the Influence of Alcohol With a BAC of
22 0.08% Or More).

23 21. The circumstances surrounding the conviction are that on or about July 31, 2009, at
24 approximately 2000 hours, Chula Vista Police Officers performed a traffic stop on a vehicle that
25 made a quick right turn near a DUI checkpoint. Officers followed the vehicle into a parking lot
26 and witnessed Respondent stumble as he got out of his vehicle. Respondent admitted to officers
27 that he had been drinking that evening and could not recall how much he had to drink.
28

1 Respondent told officers that he takes Hytrin, which made him drowsy. Respondent failed a field
2 sobriety test and was arrested for driving under the influence of alcohol. Respondent was
3 transferred to the Chula Vista Police Department where a breath test was administered. The
4 results of the breath test were 0.10% BAC.

5 22. As a result of the conviction Respondent was placed on three (3) years summary
6 probation and ordered to violate no laws, pay various fines and fees, enroll in and complete a
7 three-month First Conviction Program, complete a MADD program, and not drive without a valid
8 driver's license and liability insurance.

9
10 **SECOND CAUSE FOR DISCIPLINE**

11 **(November 17, 2010 Criminal Conviction for Possession of Controlled Substances
12 on October 14, 2010)**

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

16 24. On or about April 26, 2010, in a criminal proceeding entitled *People of the State of*
17 *California v. Douglas Martin Faucher*, in the San Diego County Superior Court, South County
18 Division, in Case No. S242897, Respondent was convicted on his plea of guilty to violating
19 Health and Safety Code sections 11377(a) (Possession of a Controlled Substance –
20 Methamphetamine), a misdemeanor, and 11375(b)(2) (Possession of Designated Controlled
21 Substance – Clonazepam), misdemeanors. As a result of Respondent's plea, the Court dismissed
22 the original charge that had been filed for violation of Health and Safety Code section 11550
23 (Under the Influence of a Controlled Substance), a misdemeanor.

24 25. The circumstances surrounding the conviction are that on or about October 14, 2010,
25 at approximately 0540 hours, Chula Vista Police Officers made contact with Respondent in the
26 300 block of Del Mar Avenue in Chula Vista, CA. Respondent showed symptoms of being under
27 the influence of a controlled substance, as Respondent had red, watery eyes, an odor of an
28 alcoholic beverage about his person, droopy eyes, a thick white coating on his tongue, was

1 sweating, and appeared to be falling asleep. Respondent was placed under arrest and transported
2 to the Chula Vista Police Department Jail for a Drug Recognition Expert (DRE) Evaluation.
3 While at the jail, three white pills identified as Klonopin, a schedule IV drug, and a white
4 crystalline substance that tested presumptively positive for methamphetamine, were located in
5 Respondent's wallet. While at the jail, Respondent provided a breath test, which came back at
6 .087%. Respondent was booked for being in possession of a controlled substance and for being
7 under the influence of a controlled substance.

8 26. As a result of the conviction, Respondent was placed on three (3) years summary
9 probation, ordered to pay various fines and fees, complete twenty (20) days in a Public Service
10 Work Program if directed by the Court, and participate in and successfully complete a drug
11 treatment program as directed by the Court. The Court also ordered that Respondent authorize
12 treatment providers and counselors to provide progress reports to the probation officer, follow all
13 rules and regulations of the treatment program, attend AA/NA or other self-help groups as
14 directed by the Court, totally abstain from drinking alcoholic beverages and not be in places
15 where alcohol is the primary source of business, not use or possess any controlled substance
16 (except for work-related purposes) or solicit others to use or possess or associate with others who
17 use or possess any controlled substance, submit to any test for the use of controlled substances
18 and/or alcohol and authorize release of results to the probation officer, submit to search and
19 seizure, and register pursuant to Health and Safety Code section 11590. Respondent was further
20 ordered to obey all laws, not possess any firearms, report any change of address or employment to
21 probation officer within 72 hours, and to obtain the consent of the Court before leaving San Diego
22 County.

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THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol and Controlled Substances in a Manner Dangerous & Injurious to Oneself & the Public)

27. Respondent has subjected his license to disciplinary action under section 4301, subdivision (h), of the Code in that on or about July 31, 2009, Respondent drove a vehicle with a blood alcohol content of .10%, and on October 14, 2010, was under the influence of controlled substances, which posed a serious risk of injury and/or death to himself and to the public, as detailed in paragraphs 17 and 24, above, which are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE

(Multiple Convictions Involving the Use of Alcoholic Beverages)

28. Respondent has subjected his license to disciplinary action under section 4301, subdivision (k), of the Code in that on or about December 9, 2009, and November 17, 2010, Respondent was convicted in two separate cases on charges involving the consumption of alcoholic beverages and controlled substances, as detailed in paragraphs 17 and 24, above, which are incorporated here by reference.

DISCIPLINARY CONSIDERATIONS

29. To determine the degree if discipline, if any, to be imposed on Respondent for the violations alleged above, pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges:

a. In a prior disciplinary action entitled "*In the Matter of the Accusation Against Douglas Martin Faucher*," Case No. 1789, the Board of Pharmacy adopted the stipulation in settlement as its decision, effective July 25, 1996. The stipulation revoked original licentiate permit No. RPH 27890 to practice pharmacy issued to Douglas Martin Faucher. However, said revocation was stayed and Respondent was placed on probation for five (5) years.

b. The Accusation further alleged, and Respondent admitted, that on or about October 13, 1987, Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152 (driving under the influence of alcohol), in *People v. Douglas Faucher*, San Diego

1 Municipal Court, El Cajon Judicial District, Case No. C74862. Such conduct is substantially
2 related to the qualifications, functions and duties of a pharmacist.

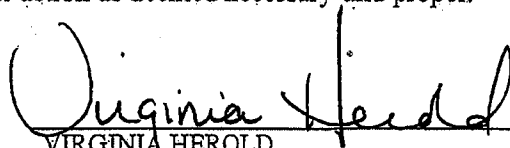
3 c. The Accusation alleged, and Respondent admitted, that on or about October 26, 1993,
4 Respondent was convicted on his plea of guilty of violating of Health and Safety Code sections
5 11377(a) (possession of a controlled substance - Phendimetrazine and Hydrocodone) and
6 11550(a) (under the influence of a controlled substance), and Vehicle Code section 23151
7 (driving under the influence of a controlled substance), in *People v. Douglas Faucher*, San Diego
8 Municipal Court, El Cajon Judicial District, Case No. C144583. Such conduct is substantially
9 related to the qualifications, functions, and duties of a pharmacist.

10 **PRAYER**

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

- 13 1. Revoking or suspending Original Pharmacist License Number RPH 37890, issued to
14 Douglas Martin Faucher;
- 15 2. Ordering Douglas Martin Faucher to pay the Board of Pharmacy the reasonable costs
16 of the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 9/1/11


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

27
28 SD2011800321