

California State Board of Pharmacy 1625 N. Market Blvd, N219, Sacramento, CA 95834 Phone: (916) 574-7900

Phone: (916) 574-7900 Fax: (916) 574-8618 www.pharmacy.ca.gov BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOU	R RESPONSES
Name: Calvin Thomas Tyree J	Jr Case No. 4093
Address of Record:	
4674 Tanglewood Trl	
Boulder, CO 80301	
Pursuant to the terms and conditions of my prob	pation with the California State Board of Pharmacy (Board)
A A A A	hereby request to surrender my license,
7000	. The Board or its designee shall have the discretion
whether to grant the request for surrender or take	ce any other action it deems appropriate and reasonable.
Upon formal acceptance of the surrender of the	license, I will no longer be subject to the terms and
conditions of probation. I understand that this sa	urrender constitutes a record of discipline and shall
become a part of my license history with the Boa	ard.
Upon the acceptance of the surrender, I shall re	linquish my pocket and wall license to the Board within
ten (10) days of notification by the Board that the	e surrender is accepted. I understand that I may not
reapply for any license from the board for three	(3) years from the effective date of the surrender. I
further understand that I shall meet all requirement	ents applicable to the license sought as of the date the
application for that license is submitted to the Bo	oard, including any outstanding costs.
	RELIEVED OF THE REQUIREMENTS OF YOUR
PROBATION UNLESS THE BOARD NOTIFIES LICENSE HAS BEEN ACCEPTED.	S YOU THAT YOUR REQUEST TO SURRENDER YOUR
	, ,
Cal Deput	7/21/15
Applicant's Signature /	Date
$1) \sim 1$	76/-
(). Hedd	
Executive Officer's Approval	Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574–7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Statement of Issues Against:

Case No. 4093

CALVIN THOMAS TYREE, JR. 4674 Tanglewood Trail Boulder, CO 80301

Applicant for Registered Pharmacist License

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 May 4, 2012.

It is so ORDERED on April 4, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

1	KAMALA D. HARRIS				
2	Attorney General of California FRANK H. PACOE				
3	Supervising Deputy Attorney General JOSHUA A. ROOM				
4	Deputy Attorney General State Bar No. 214663				
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004	· ·			
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480				
7	Attorneys for Complainant				
8	BEFORE BOARD OF P				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
10		· · · · · · · · · · · · · · · · · · ·			
11	In the Matter of the Statement of Issues Against:	Case No. 4093			
12	CALVIN THOMAS TYREE, JR. 4674 Tanglewood Trail	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER			
13	Boulder, CO 80301	DISCH LIVARY ORDER			
14	Applicant for Registered Pharmacist License				
15	Respondent.				
16					
17	In the interest of a prompt and speedy settler	nent of this matter, consistent with the public			
18					
19					
20	the Board for approval and adoption as the final disposition of the Statement of Issues.				
21	·	•			
22	PART	<u>IES</u>			
23	Virginia Herold (Complainant), Execu	tive Officer of the Board of Pharmacy, brough			
24	this action solely in her official capacity and is represented in this matter by Kamala D. Harris,				
25	Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.				
26	2. Respondent Calvin Thomas Tyree, Jr. (Respondent) is representing himself in this				
27	proceeding and has chosen not to exercise his right to be represented by counsel.				
28	///				

3. On or about October 19, 2010, the Board of Pharmacy, Department of Consumer Affairs received an Application for Pharmacist Licensure and Examination from Calvin Thomas Tyree, Jr. (Respondent). On or about October 3, 2010, Respondent certified under penalty of perjury as to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about April 29, 2011.

JURISDICTION

4. Statement of Issues No. 4093 was filed before the Board of Pharmacy (Board),
Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
Issues and all other statutorily required documents were properly served on Respondent on
November 15, 2011. A copy of Statement of Issues No. 4093 is attached as exhibit A and is
incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, and understands, the charges and allegations in Statement of Issues No. 4093. 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 Statement of Issues; 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.

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CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 4093.
- 9. Respondent agrees that his Application for Pharmacist Licensure and Examination is subject to denial and he agrees to be bound by the 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 stipulation, 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, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that, upon satisfaction of statutory and regulatory requirements for issuance thereof, a Registered Pharmacist License shall be issued to Calvin Thomas Tyree, Jr. (Respondent), and immediately revoked. The revocation is stayed and the Pharmacist License is placed on probation for five (5) years on the terms and conditions detailed below. All terms and conditions are severable and independently enforceable, in the event any are later invalidated.

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Status of License

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

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

7. Employment Requirement: Tolling of Probation

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

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

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

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

8. Supervised Practice

During the period of probation, Respondent shall practice only under the supervision of a licensed pharmacist not on probation with the board. Upon and after the effective date of this decision, Respondent shall not practice pharmacy and his license shall be automatically suspended until a supervisor is approved by the board or its designee. The supervision shall be, as required by the board or its designee, either:

Continuous – At least 75% of a work week Substantial - At least 50% of a work week Partial - At least 25% of a work week Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within thirty (30) days of the effective date of this decision, Respondent shall have his supervisor submit notification to the board in writing stating that the supervisor has read the decision in case number 4093 and is familiar with the required level of supervision as determined by the board or its designee. It shall be the Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

If Respondent changes employment, it shall be the Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 4093 and is/are familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and his license shall be automatically suspended until the board or its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

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

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

Failure to comply with any such suspension shall be considered a violation of probation.

9. Employment Record, Report to the Board

Respondent shall at all times during probation keep an accurate record of his employment, showing the name and address of each employer, the date(s) and hour(s) worked, and the name of the direct supervisor. Where Respondent works for or through a pharmacy employment service, this record shall include information pertaining to both the employment service and each work site. A copy of this up-to-date record shall be produced to the board or its designee upon request.

In addition, by at least the Wednesday prior to any week during which Respondent will be working, Respondent shall submit a document, completed and signed under penalty of perjury, that identifies all of Respondent's anticipated dates, places, and hours of employment during the upcoming week. This document shall include the employer name(s), employer address(es), and the name(s) of the supervisor(s) or owner(s). If the information changes, Respondent shall submit an amended document to the board or its designee identifying the changed information. All such submissions shall be transmitted the board or its designee by facsimile or overnight mail.

Failure to accurately keep or timely submit the employment record, or to timely include or amend employment information on a weekly basis, shall be considered a violation of probation.

10. Notification of Change in Employment, Name, Address(es), or Phone(s)

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

11. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4093 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4093, and terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and supervisor(s) submit timely acknowledgment(s) to the board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 4093 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the board or its designee upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any employment by or through a pharmacy employment service, Respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that s/he has read the decision in case number 4093 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, intern pharmacist, or pharmacy technician, or any position for which licensure in any of these categories is a requirement or criterion for employment, whether the Respondent is an employee, independent contractor or volunteer.

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

During the period of probation, Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

13. Ethics Course

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

Respondent shall submit a certificate of completion to the board or its designee within five (5) days after completing the course.

14. Testimonial

Respondent has authored a letter describing his incentives to participate and his level of participation in filling and/or dispensing internet prescriptions, and detailing the consequences of this participation for him, his family, the public health, and the profession, what he has learned from this experience, and what he would advise others who are approached to fill or dispense internet prescriptions. The letter is attached hereto as exhibit B, is incorporated herein by reference, and is part of Respondent's public record of discipline with the Board. The Board may print, reprint, quote, or make other use of this letter in Board communications and/or on its website. Further, upon provision of reasonable notice, Respondent shall appear for and take part in a videotaping of him reading the letter, at a time and place arranged by the Board or its designee, which video shall be similarly subject to use by the Board in its communications and/or on its website. Failure by Respondent, upon reasonable notice, to timely appear for and participate in such videotaping shall be considered a violation of probation.

15. Community Services Program

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the board or its designee, for prior approval, a community service program in which Respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least two hundred (200) hours total over the period of probation, with at least fifty (50) of those hours coming during the first year of probation. Within thirty (30) days of receiving approval by the board or its designee thereof, Respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

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16. Probation Monitoring Costs

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

17. No Ownership of Licensed Premises

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

18. License Surrender While on Probation/Suspension

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

Upon acceptance of surrender, Respondent shall relinquish his pocket and wall license to the board within ten (10) days of notification by the board the surrender is accepted.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs owed to the board.

19. Violation of Probation

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

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

20. Completion of Probation

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

ACCEPTANCE

I have carefully read the foregoing Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on both my Application for Pharmacist Licensure and Examination, and my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:	2/6/12	CALVIN THOMAS TYREE, JR. Respondent	
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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: 2/21/2017

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General

Jøshua A. Room

Deputy Attorney General Attorneys for Complainant

SF2011202119 40517605.doc

Exhibit A

Statement of Issues No. 4093

!1					
1	Kamala D. Harris Attorney General of California				
2	Frank H. Pacoe				
3	Supervising Deputy Attorney General JOSHUA A. ROOM				
4	Deputy Attorney General State Bar No. 214663				
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004				
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480				
7	Attorneys for Complainant				
8	BEFORE THE BOARD OF PHARMACY				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
10	STATE OF CALIFORNIA				
11	In the Matter of the Statement of Issues Against: Case No. 4093				
	CALVIN THOMAS TYREE, JR.				
12	4674 Tanglewood Trail Boulder, CO 80301 STATEMENT OF ISSUES				
13	Applicant for Registered Pharmacist License				
14	Respondent.				
15					
16	Complainant alleges:				
17	<u>PARTIES</u>				
18	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official				
19	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.				
20	2. On or about October 19, 2010, the Board of Pharmacy, Department of Consumer				
21	Affairs received Application for Pharmacist Licensure and Examination from Calvin Thomas				
22	Tyree, Jr. (Respondent). On or about October 3, 2010, Respondent certified under penalty of				
23	perjury as to the truthfulness of all statements, answers, and representations in the application.				
24	The Board denied the application on or about April 29, 2011.				
0.5	JURISDICTION				
25					
26	3. This Statement of Issues is brought before the Board of Pharmacy (Board),				
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STATUTORY AND REGULATORY PROVISIONS

- 4. Section 480 of the Code states, in pertinent part:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- "(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
- "(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

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

- 5. Section 4300, subdivision (c), of the Code states:
- "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."
- 6. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (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 drugs.
- (n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.
- (o) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate, any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

- 7. Section 4067 of the Code, in pertinent part, prohibits dispensing or furnishing of dangerous drugs without a prescription issued pursuant to a good faith prior examination.
- 8. Health and Safety Code section 11153, in pertinent part, places a corresponding responsibility on the dispensing pharmacist to ensure that controlled substances are dispensed only pursuant to prescriptions issued for legitimate medical purposes by a licensed prescriber acting in the usual course of his or her professional practice.
 - 9. 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 SUBSTANCES / DANGEROUS DRUGS

10. Section 4021 of the Code states:

"Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

11. Section 4022 of the Code states, in pertinent part:

"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 12. **Ambien** is a brand name for **zolpidem tartrate**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug/sleep aid.

13. For an unknown total time period including but not necessarily limited to 2005, Respondent owned and operated one or more pharmacies in the State of Colorado, while being licensed in Colorado as a registered pharmacist (Colorado license number PHA-16164).

- 14. For an unknown total time period including but not necessarily limited to 2005, Respondent dispensed dangerous drugs and/or controlled substances to patients in the absence of valid prescriptions, pursuant to prescriptions facilitated by and/or transmitted via the internet. During this time period Respondent dispensed an unknown number of prescriptions to patients in California in the absence of valid prescriptions, including but not necessarily limited to a prescription for **Ambien** dispensed to a California patient on or about September 1, 2005.
- 15. Between in or about 2007 and in or about 2011, Respondent's license(s) to practice¹ were subjected to discipline by the State Board of Pharmacy for the State of Colorado (Colorado Board). The orders entered against Respondent's license(s) by the Colorado Board include:
 - A Stipulation and Final Agency Order effective January 26, 2007 resolving Case No. 2006-3367, pursuant to which Respondent admitted to having misrepresented his criminal history when submitting his application for licensure as a pharmacist intern in 1999, and when submitting his application for licensure as a pharmacist in 2001, and in disposition of which Respondent was issued a Letter of Admonition;
 - A Final Agency Order effective September 23, 2008, in Case No. PH 2007-0011, in which the Colorado Board found that Respondent had failed to adequately or promptly inform the Colorado Board, or cause the Colorado Board to be informed, of criminal charges that had been filed against him in California arising out of the facts described in paragraphs 13 and 14 (charges that were subsequently dismissed), and in which the Colorado Board entered an order placing Respondent's license to practice pharmacy in Colorado on probation for a period of three (3) years, on specified terms and conditions;

¹ Respondent was also previously licensed as a Pharmacist Intern (License No. IN-99070) by the State of Colorado. That license expired and/or was canceled in 2001.

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• A Stipulation and Final Agency Order effective May 31, 2011 resolving Case Nos. 2009-1786, 2009-1787, 2010-1141, and 2011-0920, in which the Colorado Board had alleged that Respondent (a) failed to notify the Colorado Board that he was named as a civil defendant in a 2007 lawsuit arising out of his practice of pharmacy, (b) improperly transferred controlled substances to another pharmacy, (c) failed to promptly notify the DEA of the closure of his pharmacy location, (d) failed to submit proof of completion of an ethics course required to be completed as part of his probation, and (e) edited and falsified a malpractice reporting form from his malpractice insurance carrier, wherein Respondent denied the allegations and offered his own versions of these events, but in the interest of compromise agreed to relinquish (surrender) his license(s), terminating his ongoing probation obligation(s) and ceasing practice in the State of Colorado.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Dishonesty and/or Corruption)

16. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f), in that, as described in paragraphs 13 and 14 above, Respondent engaged in dishonest and/or corrupt conduct by dispensing prescriptions for one or more dangerous drugs or controlled substances in the absence of a valid prescription and/or without exercising his corresponding responsibility.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dispensing Without Valid Prescription)

17. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301(j), (o), 4067, and/or Health and Safety Code section 11153; and/or 4300(c) by reference to 4301(j), (o), 4067, and/or Health and Safety Code section 11153, in that, as described in paragraphs 13 and 14 above, Respondent dispensed prescriptions for one or more dangerous drugs or controlled substances in the absence of a valid prescription and/or without exercising his corresponding responsibility.

THIRD CAUSE FOR DENIAL OF APPLICATION 1 (License Discipline by Another State) 2 18. Respondent's application is subject to denial under the following section(s) of the 3 Code: 480(a)(3) by reference to 4301(n) and/or 4300(c) by reference to 4301(n), in that, as 4 described in paragraph 15 above, between in or about 2007 and in or about 2011 Respondent's 5 license(s) to practice pharmacy in the State of Colorado were subjected to discipline.. 6 7 FOURTH CAUSE FOR DENIAL OF APPLICATION 8 (Unprofessional Conduct) 9 19. Respondent's application is subject to denial under the following section(s) of the 10 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described 11 12 in paragraphs 13 to 18 above, Respondent engaged in unprofessional conduct. 13 **PRAYER** 14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 15 and that following the hearing, the Board of Pharmacy issue a decision: 16 Denying the application of Calvin Thomas Tyree, Jr. for licensure and examination as 17 a Registered Pharmacist; 18 Taking such other and further action as is deemed necessary and proper. 19 20 DATED: 21 Executive Officer 22 Board of Pharmacy Department of Consumer Affairs 23 State of California Complainant 24 25 SF2011202119 20517423.doc 26 27 28

Exhibit B

Testimonial Letter

Calvin T. Tyree Jr. 4674 Tanglewood Trl. Boulder, CO 80301

February 6, 2012

Joshua A. Room Office of the Attorney General 455 Golden Gate Ave, Suite 11000 San Francisco, CA 94102-7004

RE: Board of Pharmacy Case No. 4093

Stipulated Settlement Term and Condition 14 Exhibit B Internet Pharmacy Testimonial

I never imagined being described as a rogue or unscrupulous pharmacist when I graduated from Pharmacy School, but that and many other undesirable adjectives seem to be my official designation now. I share my experiences with internet pharmacy not to bore you with my problems, but hopefully as a warning not to let this happen to you. Internet Pharmacy is just one aspect of the illegal sale of prescription drugs. Participating in this illicit activity can be as complicated as my involvement in internet pharmacy or as simple as a pharmacist not questioning an unusual prescription for an unknown patient written by an unknown prescriber. The common denominator is the pharmacist loses focus on patient care and begins to focus on just filling prescriptions.

Internet Pharmacy is a huge business and there are many big names involved. Google recently paid \$500 million, one of the largest settlements ever, to the federal government for it's involvement in illegal internet pharmacies. The facilitators of Internet Pharmacy rarely quit. They change their tactics and limit their exposure, but they rarely give up on this revenue stream. Their biggest problem is continuously finding new sources of prescription medications to meet their ever growing demand, but they are very experienced and successful at problem solving. You will not be approached by a shady drug dealer type asking if you want to participate in illegal activity like Internet Pharmacy; you will be approached by people that you know and trust sharing a great new opportunity.

I first heard about Internet Pharmacy while discussing pharmacy trends with a friend in 2004. Despite stories of wild profits, this business model just didn't sound right and I wanted nothing to do with it. Six months later I had opened a second pharmacy and was behind on loan payments to my wholesaler. When I requested a modification of my loan, my representative informed me that there would be no loan modification but offered to show me how other customers were making big profits with Internet Pharmacy. I was provided with multiple documents from legal and professional sources seeming to

validate the legal issues. A couple of days later I was introduced to another wholesaler customer who set my pharmacy up to start filling Internet Prescriptions. Over night my pharmacies went from filling around 100 prescriptions a day to around 1000 prescriptions a day. My profit margin went from a couple of dollars per prescription to more than seven dollars per prescription. My wholesaler purchases went from less than \$100,000 per month to almost \$1,000,000 per month.

My original business plan called for service exceeding the expectations of the customers and professionals we served. Suddenly I was convinced to believe in a business model that I originally wanted nothing to do with. This model was focused not on service or patient care but profits and questionable legal interpretations. I was sold a very smooth, practiced and convincing legalistic argument based on half truths, misdirection and lies. Without realizing it, and with 100% conviction that I was doing the right thing, I had stepped over the line separating the pharmacist we all believe we are and that rogue pharmacist we could never become. I lost focus on patient care and had just been recruited as the latest supplier of illicit prescription medications.

I participated in internet pharmacy for about 3 months. Since then I have been forced to close all my pharmacies and I have been unable to practice pharmacy since 2008. I have spent more than 100 times any profit made from internet pharmacy on administrative, civil, criminal and divorce attorneys. Yes, those 3 months not only completely destroyed my professional life but my family life as well.

As a Registered Pharmacist I had not just a legal obligation but also an ethical and a professional responsibility to my patients, my fellow healthcare professionals, and my profession. My decisions failed to meet these responsibilities causing a severe negative impact on all involved. There are already more ways to get illegal prescription medications than can be listed here. And, as long as demand continues to increase the facilitators of this illicit business will continue to find new and creative ways to get these prescriptions filled by exploiting weaknesses such as: inexperience, finances, apathy and greed. When your decision to fill a prescription is based on interests such as legality, liability, profit or anything other than patient care and the patient's best interests – just say no.

Calvin T Tyree Jr, PharmD