

**California State Board of Pharmacy**

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

2014 AUG 11 AM 9:01

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>DAVID Anthony Dean</u>	Case No. <u>4205</u>
Address of Record: <u>312 East Victoria St.</u> <u>Santa Barbara CA 93101</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 4205, I hereby request to surrender my license, License No. 40094. 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the 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 requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

David A. Dean
Applicant's Signature8/5/14
DateAngie Harold
Executive Officer's Approval8/12/14
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 Accusation Against:

DAVID ANTHONY DEAN

312 e. Victoria Street
Santa Barbara, CA 93101

Pharmacist License No. RPH 40094

Respondent.

Case No. 4205

OAH Case No. 2012110903

DECISION AND ORDER

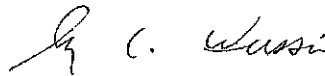
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 9, 2013.

It is so ORDERED on September 9, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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7

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

10 In the Matter of the Accusation Against:

Case No. 4205

11 **DAVID ANTHONY DEAN**

OAH No. 2012110903

12 312 E. Victoria Street
Santa Barbara, CA 93101

13 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

14 **Pharmacist License No. RPH 40094**

15 Respondent.

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

18 PARTIES

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
20 She brought this action solely in her official capacity and is represented in this matter by Kamala
21 D. Harris, Attorney General of the State of California, by Helene E. Swanson, Deputy Attorney
22 General.

23 2. Respondent David Anthony Dean (Respondent) is represented in this proceeding by
24 attorney Scott J. Harris, Esq., whose address is: Scott J. Harris, Esq.

25 SJ Harris Law

26 8383 Wilshire Blvd., Suite 830

27 Beverly Hills, CA 90211

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3. On or about April 1, 1986, the Board of Pharmacy issued Pharmacist License No. RPH 40094 to David Anthony Dean (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 4205 and will expire on July 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. 4205 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 31, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 4205 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4205. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 4205.

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. 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.

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

13. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 40094 issued to Respondent David Anthony Dean (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1 **1. Suspension**

2 As part of probation, respondent is suspended from the practice of pharmacy for 45 days,
3 beginning the effective date of this decision.

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

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

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

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

20 **2. Obey All Laws**

21 Respondent shall obey all state and federal laws and regulations.

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

- 24 • an arrest or issuance of a criminal complaint for violation of any provision of the
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
26 substances laws
- 27 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
28 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 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.

3. 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.

4. 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.

5. 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.

6. Continuing Education

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

1 **7. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 4205 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 4205, and terms and conditions imposed
10 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
11 submit timely acknowledgment(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the board of the terms and conditions of the decision in case number 4205 in advance
15 of the respondent commencing work at each licensed entity. A record of this notification must be
16 provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment
19 service, respondent shall cause his direct supervisor with the pharmacy employment service to
20 report to the board in writing acknowledging that he has read the decision in case number 4205
21 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
22 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

5 During the period of probation, respondent shall not supervise any intern pharmacist, be the
6 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board,
7 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
8 unauthorized supervision responsibilities shall be considered a violation of probation.

9 **9. Reimbursement of Board Costs**

10 As a condition precedent to successful completion of probation, respondent shall pay to the
11 board its costs of investigation and prosecution in the amount of \$3,332.50. Respondent will be
12 permitted to make payments in a payment plan to be approved by the Board, and shall pay full
13 costs by no later than three years after the effective date of this decision.

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

17 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
18 reimburse the board its costs of investigation and prosecution.

19 **10. Probation Monitoring Costs**

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

24 **11. Status of License**

25 Respondent shall, at all times while on probation, maintain an active, current license with
26 the board, including any period during which suspension or probation is tolled. Failure to
27 maintain an active, current license shall be considered a violation of probation.
28

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

5 **12. License Surrender While on Probation/Suspension**

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

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

19 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
20 **Employment**

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

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

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1 **14. Tolling of Probation**

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

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

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

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

21 **15. Violation of Probation**

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

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

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

6 **16. Completion of Probation**

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

9 **17. Pharmacists Recovery Program (PRP)**

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

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

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

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

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

27 Respondent may not resume the practice of pharmacy until notified by the board in writing.

28 During suspension, respondent shall not enter any pharmacy area or any portion of the

1 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
2 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
3 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
4 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
5 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
6 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
7 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

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

19 **18. Random Drug Screening**

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

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

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

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

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

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

24 **19. Abstain from Drugs and Alcohol Use**

25 Respondent shall completely abstain from the possession or use of alcohol, controlled
26 substances, dangerous drugs and their associated paraphernalia except when the drugs are
27 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
28 request of the board or its designee, respondent shall provide documentation from the licensed

1 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
2 treatment of the respondent. Failure to timely provide such documentation shall be considered a
3 violation of probation. Respondent shall ensure that he is not in the same physical location as
4 individuals who are using illicit substances even if respondent is not personally ingesting the
5 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
6 not supported by the documentation timely provided, and/or any physical proximity to persons
7 using illicit substances, shall be considered a violation of probation.

8 **20. Prescription Coordination and Monitoring of Prescription Use**

9 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
10 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
11 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
12 history [with the use of alcohol] and who will coordinate and monitor any prescriptions for
13 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
14 practitioner shall be provided with a copy of the board's Accusation and decision. A record of
15 this notification must be provided to the board upon request. Respondent shall sign a release
16 authorizing the practitioner to communicate with the board about respondent's treatment(s). The
17 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the
18 board on a quarterly basis for the duration of probation regarding respondent's compliance with
19 this condition. If any substances considered addictive have been prescribed, the report shall
20 identify a program for the time limited use of any such substances. The board may require that
21 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a
22 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,
23 for any reason, cease supervision by the approved practitioner, respondent shall notify the board
24 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
25 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the
26 board or its designee for its prior approval. Failure to timely submit the selected practitioner or
27 replacement practitioner to the board for approval, or to ensure the required reporting thereby on
28 the quarterly reports, shall be considered a violation of probation.

1 If at any time an approved practitioner determines that respondent is unable to practice
2 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
3 telephone and follow up by written letter within three (3) working days. Upon notification from
4 the board or its designee of this determination, respondent shall be automatically suspended and
5 shall not resume practice until notified by the board that practice may be resumed.

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

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

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

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

22 **21. Community Services Program**

23 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
24 board or its designee, for prior approval, a community service program in which respondent shall
25 provide free health-care related services on a regular basis to a community or charitable facility or
26 agency for at least 40 hours per year for each year of probation. Within thirty (30) days of board
27 approval thereof, respondent shall submit documentation to the board demonstrating
28 commencement of the community service program. A record of this notification must be

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

4 **22. Supervised Practice**

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

10 Continuous – At least 75% of a work week

11 Substantial - At least 50% of a work week

12 ~~Partial - At least 25% of a work week~~

13 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

14 Within thirty (30) days of the effective date of this decision, respondent shall have his
15 supervisor submit notification to the board in writing stating that the supervisor has read the
16 decision in case number 4205 and is familiar with the required level of supervision as determined
17 by the board or its designee. It shall be the respondent's responsibility to ensure that his
18 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
19 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
20 acknowledgements to the board shall be considered a violation of probation.

21 If respondent changes employment, it shall be the respondent's responsibility to ensure that
22 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
23 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
24 commences, submit notification to the board in writing stating the direct supervisor and
25 pharmacist-in-charge have read the decision in case number 4205 and is familiar with the level of
26 supervision as determined by the board. Respondent shall not practice pharmacy and his license
27 shall be automatically suspended until the board or its designee approves a new supervisor.
28 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely

1 acknowledgements to the board shall be considered a violation of probation.

2 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

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

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

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

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

19 **23. No Ownership of Licensed Premises**

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

27 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
28 manager, administrator, member, officer, director, trustee, associate, or partner of any additional

1 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
2 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
3 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
4 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
5 that interest, but only to the extent of that position or interest as of the effective date of this
6 decision. Violation of this restriction shall be considered a violation of probation.

7 **24. Ethics Course**

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

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

14 **25. Medical Evaluation**

15 Within thirty (30) days of the effective date of this decision, and on a periodic basis
16 thereafter as may be required by the board or its designee, respondent shall undergo a medical
17 evaluation, at respondent's own expense, by a board-appointed or board-approved physician who
18 shall furnish a medical report to the board. The approved physician shall be provided with a copy
19 of the board's Accusation and decision. A record of this notification must be provided to the
20 board upon request. Respondent shall sign a release authorizing the physician to furnish the
21 board with a current diagnosis and a written report regarding the respondent's ability to function
22 independently as a pharmacist with safety to the public. Respondent shall comply with all the
23 recommendations of the physician if directed by the board or its designee.

24 If the physician recommends, and the board or its designee directs, that respondent undergo
25 medical treatment, respondent shall, within thirty (30) days of written notice from the board,
26 submit to the board or its designee, for prior approval, the name and qualifications of a licensed
27 physician of respondent's choice. Within thirty (30) days of approval thereof, respondent shall
28 submit documentation to the board demonstrating the commencement of treatment with the

1 approved physician. Should respondent, for any reason, cease treatment with the approved
2 physician, respondent shall notify the board immediately and, within thirty (30) days of ceasing
3 treatment, submit the name of a replacement physician of respondent's choice to the board or its
4 designee for prior approval. Within thirty (30) days of approval thereof, respondent shall submit
5 documentation to the board demonstrating the commencement of treatment with the approved
6 replacement. Failure to comply with any deadline stated by this paragraph shall be considered a
7 violation of probation.

8 Upon approval of the initial or any subsequent physician, respondent shall undergo and
9 continue treatment with that physician, at respondent's own expense, until the treating physician
10 recommends in writing to the board, and the board or its designee agrees by way of a written
11 notification to respondent, that no further treatment is necessary. Upon receipt of such
12 recommendation from the treating physician, and before determining whether to accept or reject
13 said recommendation, the board or its designee may require respondent to undergo, at
14 respondent's own expense, a medical evaluation by a separate board-appointed or board-approved
15 physician. If the approved evaluating physician recommends that respondent continue treatment,
16 the board or its designee may require respondent to continue treatment.

17 Respondent shall take all necessary steps to ensure that any treating physician submits
18 written quarterly reports to the board concerning respondent's fitness to practice, progress in
19 treatment, and other such information as may be required by the board or its designee.

20 If at any time an approved evaluating physician or respondent's approved treating physician
21 determines that respondent is unable to practice safely or independently as a pharmacist, the
22 evaluating or treating physician shall notify the board immediately by telephone and follow up by
23 written letter within three (3) working days. Upon notification from the board or its designee of
24 this determination, respondent shall be automatically suspended and shall not resume practice
25 until notified by the board that practice may be resumed.

26 During suspension, respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
28 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
3 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
4 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
5 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

14 **26. Criminal Probation/Parole Reports**

15 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
16 board, in writing, within ten (10) days of the issuance or modification of those conditions.
17 Respondent shall provide the name of his probation/parole officer to the board, in writing, within
18 ten (10) days after that officer is designated or a replacement for that officer is designated.
19 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten
20 (10) days after respondent receives a copy of such a report. Failure to timely make any of the
21 submissions required hereby shall be considered a violation of probation.

22 **27. Tolling of Suspension**

23 During the period of suspension, respondent shall not leave California for any period
24 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
25 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
26 absence from California during the period of suspension exceeding ten (10) days shall toll the
27 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
28 respondent is absent from California. During any such period of tolling of suspension,

1 respondent must nonetheless comply with all terms and conditions of probation.

2 Respondent must notify the board in writing within ten (10) days of departure, and must
3 further notify the board in writing within ten (10) days of return. The failure to provide such
4 notification(s) shall constitute a violation of probation. Upon such departure and return,
5 respondent shall not resume the practice of pharmacy until notified by the board that the period of
6 suspension has been satisfactorily completed.

7 ACCEPTANCE

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

13
14 DATED: 7/11/13

David Anthony Dean
DAVID ANTHONY DEAN
Respondent

16 I have read and fully discussed with Respondent David Anthony Dean the terms and
17 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

18 I approve its form and content.

19 DATED: 7/11/2013

Scott J. Harris, Esq.
Scott J. Harris, Esq.
Attorney for Respondent

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Dated: July 12, 2013

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
Helene E. Swanson
HELENE E. SWANSON
Deputy Attorney General
Attorneys for Complainant

LA2011505487; 51316628.doc

Exhibit A

Accusation No. 4205

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-3005
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4205

13 **DAVID ANTHONY DEAN**

312 E. Victoria Street
14 Santa Barbara, CA 93101

15 Pharmacist License No. RPH 40094

Respondent.

A C C U S A T I O N

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 1, 1986, the Board of Pharmacy (Board) issued Pharmacist License
22 No. RPH 40094 to David Anthony Dean (Respondent). The Pharmacist License was in full force
23 and effect at all times relevant to the charges brought herein and will expire on July 31, 2013,
24 unless renewed.

25 **JURISDICTION**

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

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

6

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

24 REGULATORY PROVISIONS

25 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

26 “For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5 COST RECOVERY

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

10 FIRST CAUSE FOR DISCIPLINE

11 (Conviction of a Substantially Related Crime)

12 10. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and
13 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
14 Respondent was convicted of a crime substantially related to the qualifications, functions, or
15 duties of a Pharmacist. On or about August 4, 2011, after pleading nolo contendere, Respondent
16 was convicted of one misdemeanor count of violating Vehicle Code section 23103.5 [wet/reckless
17 driving] in the criminal proceeding entitled *The People of the State of California v. David Dean*
18 (Super. Ct. Santa Barbara County, 2011, No. 1387615). The Court sentenced Respondent to
19 serve two days in Santa Barbara County Jail and placed him on three years' probation, with terms
20 and conditions. The circumstances surrounding the conviction are as follows:

21 11. On or about May 12, 2011, during an investigation of a possible drunk driver by the
22 Santa Barbara Police Department, Respondent was contacted. Respondent's vehicle was in front
23 of New House II Sober Living Home (Sober Living), blocking traffic, he was intoxicated and
24 attempting to drive away. While speaking to Respondent, the officer detected an odor of
25 alcoholic beverage on his breath. He was observed to have bloodshot, watery eyes, and his
26 speech was agitated, slow, and slurred. The officer administered field sobriety tests on
27 Respondent during which he exhibited numerous signs of impairment. When asked how much he
28 had to drink, Respondent initially indicated he had consumed three glasses of wine, and then

1 stated he had "four glasses of white wine." Respondent admitted to the officer that he had arrived
2 at Sober Living with alcohol on his breath and was loading his belongings because he knew he
3 had to leave for failing to stay sober. He further admitted that he had only been at Sober Living
4 for two to three days beforehand, and that he had recently been discharged from "CRC" (the
5 Cottage Hospital rehabilitation center on West Montecito Street). Respondent submitted to a
6 Preliminary Alcohol Screening Test (PAS) that resulted in a breath-alcohol content level of
7 0.094%. Respondent was subsequently arrested because he was deemed to be so intoxicated that
8 he could have been a danger to himself or others, and he was charged with violating Vehicle
9 Code section 23152, subdivision (a) [driving under the influence of alcohol or drugs] and Vehicle
10 Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol
11 in his blood]. A blood sample was also taken from Respondent, and the test results showed that
12 his blood alcohol content level was 0.09%.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Alcohol)**

15 12. Respondent is subject to disciplinary action under Section 4301, subdivision (h), in
16 that Respondent used alcoholic beverage to an extent or in a manner dangerous or injurious to
17 himself, another person, or the public, as follows:

18 a. On or about May 12, 2011, Respondent was under the influence of alcohol, in a
19 public place, and which posed a danger to his safety and/or the safety of others. Complainant
20 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 10 and
21 11, as though set forth fully.

22 **PRAYER**

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

- 25 1. Revoking or suspending Pharmacist License No. RPH 40094, issued to Respondent
26 David Anthony Dean;
- 27 2. Ordering Respondent David Anthony Dean to pay the Board the reasonable costs of
28 the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: _____

8/13/12

Virginia K. Herold

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

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