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

In the Matter of the Accusation Against:

Case No. 4391

GARY JOSEPH ZALESKI

1743 W. Greenview Avenue Corona, CA 92880

Pharmacist License No. RPH 35530

Respondent.

## **DECISION AND ORDER**

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

This decision shall become effective on January 28, 2015.

It is so ORDERED on January 21, 2015.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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STAN C. WEISSER Board President

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1	KAMALA D. HARRIS			
2	Attorney General of California GREGORY J. SALUTE			
3	Supervising Deputy Attorney General RITA M. LANE Deputy Attorney General State Bar No. 171352			
4				
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8	Attorneys for Complainant			
9	BEFORE THE BOARD OF PHARMACY			
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
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12	In the Matter of the Accusation Against:	Case No. 4391		
13	GARY JOSEPH ZALESKI 1743 W. Greenview Avenue	OAH No. 2013120068		
14	Corona, CA 92880	STIPULATED SURRENDER OF LICENSE AND ORDER		
15	Pharmacist License No. 35530			
16	Respondent.			
17		<b>-</b>		
18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-			
19	entitled proceedings that the following matters are true:			
20	<u>PARTIES</u>			
21	Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.			
22	She brought this action solely in her official capacity and is represented in this matter by Kamala			
23	D. Harris, Attorney General of the State of California, by Rita M. Lane, Deputy Attorney			
24	General.			
25	2. Gary Joseph Zaleski (Respondent) is represented in this proceeding by attorney Ton			
26	J. Park, whose address is 2855 Michelle Drive, Suite 180, Irvine, CA 92606-1027.			
27	3. On or about August 15, 1980, the Board of Pharmacy (Board) issued Pharmacist			
28	License No. 35530 to Respondent. The Pharmacist License was in full force and effect at all			

times relevant to the charges brought in Accusation No. 4391 and will expire on May 31, 2016, unless renewed.

## JURISDICTION

4. Accusation No. 4391 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 3, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 4391 is attached as Exhibit A and incorporated by reference.

## ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4391. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to 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.

## <u>CULPABILITY</u>

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 4391, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. 35530 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

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## 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 surrender, 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 Surrender 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 Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

## ORDER

IT IS HEREBY ORDERED that Pharmacist License No. 35530, issued to Respondent Gary Joseph Zaleski, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

- 2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 4391 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$5,000.00 prior to issuance of a new or reinstated license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 4391 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 7. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board of Pharmacy's Decision and Order.

## ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Tony J. Park. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 12/10/2014

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GARY JOSEPH ZALESKI Respondent

1	I have read and fully discussed with Respondent Gary Joseph Zaleski the terms and		
2	conditions and other matters contained in this Stipulated Surrender of License and Order. I		
3	approve its form and content.		
4	DATED: 12/10/2014 Imp Park		
5	TONY J. PARK Attorney for Respondent		
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8	<u>ENDORSEMENT</u>		
9	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted		
10	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.		
11.	DATED: 12-17-14 Respectfully submitted,		
12	KAMALA D. HARRIS Attorney General of California		
13	GREGORY J. SALUTE Supervising Deputy Attorney General		
14	Rota M. Rane		
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16	Deputy Attorney General  Attorneys for Complainant		
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Exhibit A

Accusation No. 4391

1 2 3 4 5 6 7 8 9 10	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General RITA M. LANE Deputy Attorney General State Bar No. 171352 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2614 Facsimile: (619) 645-2061 Attorneys for Complainant  BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against:	Case No. 4391	
12	GARY JOSEPH ZALESKI	ACCUSATION	
13	1743 W. Greenview Avenue Corona, CA 92880	ACCUSATION	
14			
15	Pharmacist License No. RPH 35530		
16	Responden		
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
21	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
22	2. On or about August 15, 1980, the Board of Pharmacy issued Pharmacist License		
23	Number 35530 to Gary Joseph Zaleski (Respondent). The Pharmacist License was in full force		
24	and effect at all times relevant to the charges brought herein and will expire on May 31, 2014,		
25	unless renewed.		
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Accusation

#### JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
  - 4. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

## STATUTORY PROVISIONS

6. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

7. Section 4301 of the Code states:

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

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

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

### DRUGS

12. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

#### **FACTS**

- domestic disturbance. Upon the officers' arrival, Respondent was in the garage. Respondent walked to the driveway and spoke with the officers. When asked if he had any weapons on his person, Respondent stated he had a screwdriver in his pocket. When officers performed a pat down of Respondent, looking for the screwdriver, they found a leather case with methamphetamine and a glass pipe used to smoke methamphetamine. The officers observed that Respondent exhibited several objective symptoms that he was under the influence of a controlled substance. Respondent was arrested for possession of a methamphetamine, possession of drug paraphernalia and for being under the influence of a controlled substance.
- 14. As a result of Respondent's arrest, on or about July 30, 2012, a felony complaint was filed in the matter of the *People vs. Gary Joseph Zaleski*, in Riverside Superior Court, Case Number RIF 1204486, charging Respondent with possession of a controlled substance (Health and Safety Code section 11377(a)), methamphetamine; possession of a device and paraphernalia used for unlawful injecting and smoking a controlled substance (Health and Safety Code section 11364.1) and for unlawful use and under the influence of a controlled substance (Health and Safety Code section 11550).
- 15. At a hearing on September 6, 2012, Respondent pled guilty to the felony complaint as charged and a deferred entry of judgment was entered pursuant to Penal Code section 1000. Respondent was referred to Drug Court to complete an 18 month drug diversion program. The matter was set for a follow up sentencing or dismissal hearing on March 6, 2014.

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## **FIRST CAUSE FOR DISCIPLINE**

(Unprofessional Conduct: Possession of a Controlled Substance Without a Prescription)

16. Respondent is subject to disciplinary action under Code section 4301(j) in conjunction with Code section 4060 in that on or about June 1, 2012, Respondent was arrested and subsequently pled guilty to possession of a controlled substance without a prescription, an act constituting unprofessional conduct. The circumstances are set forth in detail in paragraphs 13 through 15 above.

## SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Self-Administration of a Controlled Substance)

17. Respondent is subject to disciplinary action under Code section 4301(h) for self-administration of a controlled substance in that on or about June 1, 2012, Respondent was arrested and subsequently pled guilty to unlawful use and under the influence of a controlled substance, an act constituting unprofessional conduct. The circumstances are set forth in detail in paragraphs 13 through 15 above.

#### **PRAYER**

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

- 1. Revoking or suspending Pharmacist License Number 35530, issued to Gary Joseph Zaleski;
- 2. Ordering Gary Joseph Zaleski to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 9 19 13

VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant