| 1 2 3 4 5 6 7 8 | BOARD OF | RE THE PHARMACY ONSUMER AFFAIRS | |
|--------------------------------------|---|--|--|
| 9 | | CALIFORNIA | |
| 10 | In the Matter of the Accuration Accients | Core No. 4552 | |
| 11 | In the Matter of the Accusation Against: FREDRICK LAMAR JOHNSON ¹ | Case No. 4552 | |
| 12 | P.O. Box 23041 Oakland, CA 94623 | OAH No. 2013061116 | |
| 13 | Pharmacist License No. RPH 61283 | STIPULATED SETTLEMENT AND DISCIPLINARY ORDER | |
| 14 | Respondent. | | |
| 15 | | | |
| 16 | In the interest of a prompt and speedy settlement of this matter, consistent with the public | | |
| 17 | interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, | | |
| 18 | the parties hereby agree to the following Stipulat | ed Settlement and Disciplinary Order which will | |
| 19 | be submitted to the Board for approval and adop | tion as the final disposition of the Accusation. | |
| 20 | PAR | TIES | |
| 21 | 1. Virginia Herold ("Complainant"), Ex | ecutive Officer, Board of Pharmacy, brought this | |
| 22 | action solely in her official capacity and is repres | sented herein by Kamala D. Harris, Attorney | |
| 23 | General of the State of California, by Joshua A. | Room, Supervising Deputy Attorney General. | |
| 24 | /// | | |
| 25 | | | |
| 26 | first name, which is spelled Fredrick rather than | enly filed using a misspelling of Respondent's the Frederick used on the Accusation. By way of | |
| 27 | it is also reflected in Board records, is Fredrick I | | |
| 28 | and Disciplinary Order amends the previously-fi | led Accusation to make this correction. | |
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| | STIPULATE | D SETTLEMENT (Case No. 4552; OAH No. 2013061116) | |

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| 1 | 2. Fredrick Lamar Johnson ("Respondent") is represented in this proceeding by attorney |
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| 2 | Paul Chan, Law Offices of Paul Chan, 2311 Capitol Avenue, Sacramento, CA 95816. |
| 3 | 3. On or about August 6, 2008, the Board of Pharmacy issued Pharmacist License No. |
| 4 | RPH 61283 to Fredrick Lamar Johnson (Respondent). The Pharmacist License was in full force |
| 5 | and effect at all times relevant to the charges brought in Accusation No. 4552 and will expire on |
| 6 | April 30, 2014, unless renewed. |
| 7 | JURISDICTION |
| 8 | 4. Accusation No. 4552 was filed before the Board of Pharmacy (Board), Department of |
| 9 | Consumer Affairs, and is currently pending against Respondent. The Accusation and all other |
| 10 | statutorily required documents were properly served on Respondent on May 20, 2013. |
| 11 | Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation |
| 12 | No. 4552 is attached as exhibit A and incorporated herein by reference. |
| 13 | ADVISEMENT AND WAIVERS |
| 14 | 5. Respondent has carefully read, fully discussed with counsel, and understands the |
| 15 | charges in Accusation No. 4552. Respondent has also carefully read, fully discussed with |
| .16 | counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order. |
| 17 | 6. Respondent is fully aware of his legal rights in this matter, including the right to a |
| 18 | hearing on the charges and allegations in the Accusation; the right to be represented by counsel at |
| 19 | his own expense; the right to confront and cross-examine the witnesses against him; the right to |
| 20 | present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel |
| 21 | the attendance of witnesses and the production of documents; the right to reconsideration and |
| 22 | court review of an adverse decision; and all other rights accorded by the California |
| 23 | Administrative Procedure Act and other applicable laws. |
| 24 | 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and |
| 25 | every right set forth above. |
| 26 | CULPABILITY |
| 27 | 8. Respondent admits the truth of each and every charge and allegation in Accusation |
| 28 | No. 4552. |
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STIPULATED SETTLEMENT (Case No. 4552; OAH No. 2013061116)

9. 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.

RESERVATION

10. Admissions made by Respondent herein are only for the purposes of this proceeding. 4 or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding. 6

CONTINGENCY

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

12. The parties understand and agree that Portable Document Format (PDF) and facsimile 17 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format 18 19 (PDF) and 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 20 integrated writing representing the complete, final, and exclusive embodiment of their agreement. 21 It supersedes any and all prior or contemporaneous agreements, understandings, discussions, 22 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary 23 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a 24 writing executed by an authorized representative of each of the parties. 25

14. In consideration of the foregoing, the parties agree that the Board may, without 26 further notice or formal proceeding, issue and enter the following Disciplinary Order: 27

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| 1 | DISCIPLINARY ORDER |
| 2 | IT IS HEREBY ORDERED that Pharmacist License No. RPH 61283, issued to Fredrick |
| 3 | Lamar Johnson (Respondent), is revoked. However, the revocation is stayed and Respondent is |
| 4 | placed on probation for three (3) years on the following terms and conditions. |
| 5 | 1. Obey All Laws |
| 6 | Respondent shall obey all state and federal laws and regulations. |
| 7 | Respondent shall report any of the following occurrences to the board, in writing, within |
| 8 | seventy-two (72) hours of such occurrence: |
| 9 | • an arrest or issuance of a criminal complaint for violation of any provision of the |
| 10 | Pharmacy Law, state and federal food and drug laws, or state and federal controlled |
| 11 | substances laws |
| 12 | • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any |
| 13 | criminal complaint, information or indictment |
| 14 | • a conviction of any crime |
| 15 | • discipline, citation, or other administrative action filed by any state or federal agency |
| 16 | which involves respondent's pharmacist license or which is related to the practice of |
| 17 | pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging |
| 18 | for any drug, device or controlled substance. |
| 19 | Failure to timely report such occurrence shall be considered a violation of probation. |
| 20 | 2. Report to the Board |
| 21 | Respondent shall report to the board quarterly, on a schedule as directed by the board or its |
| 22 | designee. The report shall be made either in person or in writing, as directed. Among other |
| 23 | requirements, respondent shall state in each report under penalty of perjury whether there has |
| 24 | been compliance with all the terms and conditions of probation. Failure to submit timely reports |
| 25 | in a form as directed shall be considered a violation of probation. Any period(s) of delinquency |
| 26 | in submission of reports as directed may be added to the total period of probation. Moreover, if |
| 27 | the final probation report is not made as directed, probation shall be automatically extended until |
| 28 | such time as the final report is made and accepted by the board. |
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| 1 | 3. Interview with the Board |
| 2 | Upon receipt of reasonable prior notice, respondent shall appear in person for interviews |
| 3 | with the board or its designee, at such intervals and locations as are determined by the board or its |
| 4 | designee. Failure to appear for any scheduled interview without prior notification to board staff, |
| 5 | or failure to appear for two (2) or more scheduled interviews with the board or its designee during |
| 6 | the period of probation, shall be considered a violation of probation. |
| 7 | 4. Cooperate with Board Staff |
| 8 | Respondent shall cooperate with the board's inspection program and with the board's |
| 9 | monitoring and investigation of respondent's compliance with the terms and conditions of his |
| 10 | probation. Failure to cooperate shall be considered a violation of probation. |
| 11 | 5. Continuing Education |
| 12 | Respondent shall provide evidence of efforts to maintain skill and knowledge as a |
| 13 | pharmacist as directed by the board or its designee. |
| 14 | 6. Status of License |
| 15 | Respondent shall, at all times while on probation, maintain an active, current license with |
| 16 | the board, including any period during which suspension or probation is tolled. Failure to |
| 17 | maintain an active, current license shall be considered a violation of probation. |
| 18 | If respondent's license expires or is cancelled by operation of law or otherwise at any time |
| 19 | during the period of probation, including any extensions thereof due to tolling or otherwise, upon |
| 20 | renewal or reapplication respondent's license shall be subject to all terms and conditions of this |
| 21 | probation not previously satisfied. |
| 22 | 7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as |
| 23 | Designated Representative-in-Charge, or Serving as a Consultant |
| 24 | During the period of probation, respondent shall not supervise any intern pharmacist, be the |
| 25 | pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board, |
| 26 | nor serve as a consultant unless otherwise specified in this order. Assumption of any such |
| 27 | unauthorized supervision responsibilities shall be considered a violation of probation. |
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STIPULATED SETTLEMENT (Case No. 4552; OAH No. 2013061116)

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8. 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.

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9. 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.

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10. Employment Requirement: Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be 18 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month. 19 Any month during which this minimum is not met tolls the period of probation, i.e., the period of 20 probation is extended by one month for each month in which the minimum is not met. During 21 any such period of tolling, Respondent must comply with all terms and conditions of probation. 22 Should Respondent, regardless of residency, for any reason (including vacation) cease 23 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California, 24 Respondent must notify the board in writing within ten (10) days of the cessation of practice, and 25 must further notify the board in writing within ten (10) days of the resumption of practice. Any 26 failure to provide such notification(s) shall be considered a violation of probation. 27

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| 1 | It is a violation of probation for Respondent's probation to remain tolled pursuant to the |
| 2 | provisions of this condition for a total period, counting consecutive and non-consecutive months |
| 3 | or smaller time periods, exceeding thirty-six (36) months. |
| 4 | "Cessation of practice" means any calendar month during which Respondent is |
| 5 | 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 |
| 6 | 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. |
| 7 | 11. Notice to Employers |
| 8 | During the period of probation, Respondent shall notify all present and prospective |
| 9 | employers of the decision in case number 4552 and the terms, conditions and restrictions imposed |
| 10 | on Respondent by the decision, as follows: |
| 11 | Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of |
| 12 | Respondent undertaking any new employment, Respondent shall cause his direct supervisor, |
| 13 | pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's |
| 14 | tenure of employment) and owner to report to the board in writing acknowledging that the listed |
| 15 | individual(s) has/have read the decision in case number 4552, and terms and conditions imposed |
| 16 | thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or |
| 17 | supervisor(s) submit timely acknowledgment(s) to the board. |
| 18 | If Respondent works for or is employed by or through a pharmacy employment service, |
| 19 | Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity |
| 20 | licensed by the board of the terms and conditions of the decision in case number 4107 in advance |
| 21 | of the Respondent commencing work at each licensed entity. A record of this notification must |
| 22 | be provided to the board upon request. |
| 23 | Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen |
| 24 | (15) days of Respondent undertaking any employment by or through a pharmacy employment |
| 25 | service, Respondent shall cause his direct supervisor with the pharmacy employment service to |
| 26 | report to the board in writing acknowledging that he has read the decision in case number 4552 |
| 27 | and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure |
| 28 | that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board. |
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| 1 | Failure to timely notify present or prospective employer(s) or to cause employer(s) to |
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| 2 | submit timely acknowledgments to the board shall be considered a violation of probation. |
| 3 | "Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any |
| 4 | position for which a pharmacist license is a requirement or criterion for employment, |
| 5 | whether the Respondent is an employee, independent contractor or volunteer. |
| 6 | 12. Supervised Practice |
| 7 | During the period of probation, respondent shall practice only under the supervision of a |
| 8 | licensed pharmacist not on probation with the board. Upon and after the effective date of this |
| 9 | decision, respondent shall not practice pharmacy and his license shall be automatically suspended |
| 10 | until a supervisor is approved by the board or its designee. The supervision shall be, as required |
| 11 | by the board or its designee, either: |
| 12 | Continuous – At least 75% of a work week |
| 13 | Substantial - At least 50% of a work week |
| 14 | Partial - At least 25% of a work week |
| 15 | Daily Review - Supervisor's review of probationer's daily activities within 24 hours |
| 16 | Within thirty (30) days of the effective date of this decision, respondent shall have his |
| 17 | supervisor submit notification to the board in writing stating that the supervisor has read the |
| 18 | decision in case number 4552 and is familiar with the required level of supervision as determined |
| 19 | by the board or its designee. It shall be respondent's responsibility to ensure that his employer(s), |
| 20 | pharmacist-in-charge and/or supervisor(s) submit timely acknowledgment(s) to the board. Failure |
| 21 | to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements |
| 22 | to the board shall be considered a violation of probation. |
| 23 | If respondent changes employment, it shall be the respondent's responsibility to ensure that |
| 24 | his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgment(s) to |
| 25 | the board. Respondent shall have his new supervisor, within fifteen (15) days after employment |
| 26 | commences, submit notification to the board in writing stating the direct supervisor and |
| 27 | pharmacist-in-charge have read the decision in case number 4552 and are familiar with the level |
| 28 | of supervision as determined by the board. |
| | 8 |

In this circumstance, 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.

5 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 6 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and 7 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do 8 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or 9 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee 10 of the board, or have access to or control ordering, manufacturing or dispensing of dangerous 11 drugs or controlled substances. Respondent shall not resume practice until notified by the board. 12 During any such suspension, respondent shall not engage in any activity that requires the 13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the 14 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a 15 designated representative for any entity licensed by the board. 16

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

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13. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the 19 board or its designee, for prior approval, a community service program in which respondent shall 20 provide free health-care related services on a regular basis to a community or charitable facility or 21 agency for at least fifty (50) hours per year for each year of probation (150 hours total). Within 22 thirty (30) days of board approval thereof, respondent shall submit documentation to the board 23 demonstrating commencement of the community service program. Respondent shall report on 24 progress with the community service program in the quarterly reports. Failure to timely submit, 25 commence, or comply with the program shall be considered a violation of probation. 26

With prior approval from the board or its designee, respondent may accelerate completion of his community service hours by completing more than fifty (50) hours in any given year.

14. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, Respondent shall, at
his own expense, enroll in a course in ethics approved in advance by the board or its designee.
Respondent shall submit a certificate of completion to the board or its designee within five (5)
days after completing the course. Failure to initiate the course during the first year of probation,
and complete it within the second year of probation, shall be considered a violation of probation.

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15. Criminal Probation/Parole Reports

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

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16. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2,025.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, so long as full payment is made within fifty-four (54) months of the effective date of this decision. There is to be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

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17. 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.

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.

9 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to 10 the board within ten (10) days of notification by the board that surrender is accepted. Respondent 11 may not reapply for any license from the board for three (3) years from the effective date of the 12 surrender. Respondent shall meet all requirements applicable to the license sought as of the date 13 the application for that license is submitted to the board, including any outstanding costs.

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19. Violation of Probation

15 If a respondent has not complied with any term or condition of probation, the board shall 16 have continuing jurisdiction over respondent, and probation shall automatically be extended, until 17 all terms and conditions have been satisfied or the board has taken other action as deemed 18 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and 19 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. 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.

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20. Completion of Probation

26 Upon written notice by the board or its designee indicating successful completion of 27 probation, respondent's license will be fully restored.

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NO. 6470 P. 1

| 1 | ACCEPTANCE |
|----|--|
| 2 | I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully |
| 3 | discussed it with my attorney, Paul Chan. I understand the stipulation and the effect It will have |
| 4 | on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order |
| 5 | voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Other of the |
| 6- | -Board of Pharmacy. |
| 7 | DATED: 11 = 2017 treduck home Auron |
| 8 | FREDRICK LAMAR JOHNSON Respondent |
| 9 | I have read and fully discussed with Respondent Fredrick Lamar Johnson the terms and |
| 10 | conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. |
| 11 | I approve its form and content. |
| 12 | DATED: 11/5/13 |
| 13 | PAUL CHAN Attorney for Respondent |
| 14 | |
| 15 | ENDORSEMENT |
| 16 | The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully |
| 17 | submitted for consideration by the Board of Pharmacy. |
| 18 | Dated: Respectfully submitted, |
| 19 | Kamala D. Harris |
| 20 | Attorney General of California FRANK H. PACOE |
| 21 | Supervising Deputy Attorney General |
| 22 | |
| 23 | JOSHUA A. ROOM Supervising Deputy Attorney General |
| 24 | Supervising Deputy Attorney General Attorneys for Complainant |
| 25 | |
| 26 | |
| 27 | SF2013403870 |
| 28 | 40808102.doc |
| | 12 |
| | STIPULATED SETTLEMENT (Case No. 4552; OAH No. 2013061116) |

| 1 | ACCEPTANCE |
|-----|--|
| 2 | I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully |
| 3 | discussed it with my attorney, Paul Chan. I understand the stipulation and the effect it will have |
| 4 | on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order |
| 5 | voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the |
| 6 | Board of Pharmacy. |
| 7 | DATED: |
| 8 - | FREDRICK LAMAR JOHNSON Respondent |
| 9 | I have read and fully discussed with Respondent Fredrick Lamar Johnson the terms and |
| 10 | conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. |
| 11 | I approve its form and content. |
| 12 | DATED: PAUL CHAN |
| 13 | Attorney for Respondent |
| 14 | |
| 15 | ENDORSEMENT |
| 16 | The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully |
| 17 | submitted for consideration by the Board of Pharmacy. |
| 18 | Dated: $ 2/2/20:3$ Respectfully submitted, |
| 19 | KAMALA D. HARRIS Attorney General of California |
| 20 | FRANK H. PACOE Supervising Deputy Attorney General |
| 21 | |
| 22 | ALC |
| 23 | JOSHUA A. ROOM Supervising Deputy Attorney General |
| 24 | Attorneys for Complainant |
| 25 | |
| 26 | |
| 27 | SF2013403870 40808102.doc |
| 28 | |
| | 12 STIPULATED SETTLEMENT (Case No. 4552; OAH No. 2013061116) |

Exhibit A

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Accusation No. 4552

| 1 | KAMALA D. HARRIS | |
|-----|--|--|
| 2 | Attorney General of California FRANK H. PACOE | |
| 3 | Supervising Deputy Attorney General JOSHUA A. ROOM | |
| 4 | Supervising Deputy Attorney General State Bar No. 214663 | |
| 5 | 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Talankanan (415) 702 1200 | |
| . 6 | Telephone: (415) 703-1299 Facsimile: (415) 703-5480 | |
| 7 | Attorneys for Complainant | |
| 8 | BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS | |
| 9 | | ALIFORNIA |
| 10 | To the Matter of the Accuration Assists | Core No. 4552 |
| 11 | In the Matter of the Accusation Against: FREDERICK LAMAR JOHNSON | Case No. 4552 |
| 12 | P.O. Box 23041 | ACCUSATION |
| 13 | Oakland, CA 94623 Pharmacist License No. RPH 61283 | ACCUSATION |
| 14 | | |
| 15 | Respondent. | |
| 16 | Complainant alleges: | |
| 17 | PAR | TIES |
| 18 | 1. Virginia Herold (Complainant) bring | s this Accusation solely in her official capacity |
| 19 | as the Executive Officer of the Board of Pharma | cy, Department of Consumer Affairs. |
| 20 | 2. On or about August 6, 2008, the Boa | rd of Pharmacy issued Pharmacist License |
| 21 | Number RPH 61283 to Frederick Lamar Johnson | n (Respondent). The Pharmacist License was in |
| 22 | full force and effect at all times relevant to the cl | narges brought herein and will expire on April 30, |
| 23 | 2014, unless renewed. | |
| 24 | JURISI | DICTION |
| 25 | 3. This Accusation is brought before the | e Board of Pharmacy (Board), Department of |
| 26 | Consumer Affairs, under the authority of the following laws. All section references are to the | |
| 27 | Business and Professions Code (Code) unless of | herwise indicated. |
| 28 | /// | |
| | | 1 |
| |]] | Accusation |

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or 6. suspension of a Board-issued license, 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.

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STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following: 14

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 15 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and 16 whether the act is a felony or misdemeanor or not. 17

(1) The conviction of a crime substantially related to the qualifications, functions, and duties 18 of a licensee under this chapter. 19

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or 20 revoke a license when it finds that the licensee has been convicted of a crime substantially related 21 to the qualifications, functions or duties of the license. 22

- 9. California Code of Regulations, title 16, section 1770, provides in pertinent part that, 23 for the purpose of denial, suspension, or revocation of a personal or facility license, a crime or act 24 shall be considered substantially related to the qualifications, functions or duties of a licensee or 25 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or 26 registrant to perform the functions authorized by her license or registration in a manner consistent 27 with the public health, safety, or welfare. 28
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FACTUAL BACKGROUND

10. On or about November 8, 2011, officer(s) of the Oakland Police Department were dispatched to a residence in Oakland, California to respond to a report of a domestic disturbance made by a female resident. The reporting party also stated that there was a gun in the house.

11. The reporting officer(s) made contact with Respondent and the female victim-witness in the residence. The victim-witness made several statements about Respondent to the officer(s), including that he had allegedly grabbed her by the shoulders and shoved her, that he had hit and – punched her in the past, and that Respondent had a handgun in the house.

9 12. Respondent stated that he and his girlfriend had been arguing, but otherwise offered a 10 different account of events in which his girlfriend threatened him with a knife. When asked by 11 the officer(s) if there was a gun in the house, Respondent said no. He said he used to have a gun, 12 but it was stolen sometime in March 2011. After the victim-witness said she had seen a gun more 13 recently in the house, the officer(s) asked for Respondent's consent to search the residence. He 14 refused, and the officer(s) secured a search warrant. Respondent then directed the officer(s) to a 15 black semiautomatic 9mm pistol, on which the serial number had been obliterated/scratched off.

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FIRST CAUSE FOR DISCIPLINE

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(Conviction of Substantially Related Crime(s))

Respondent is subject to discipline under section 4301(l) and/or section 490 of the
 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
 a substantially related crime, in that on or about August 22, 2012, in the criminal case *People v. Frederick Lamar Johnson*, Case No. 574667 in Alameda County Superior Court, Respondent was
 convicted of violating Penal Code section 23920 (Purchase, Sale, Possession, or Transfer of an
 Unmarked Firearm), a misdemeanor, and Penal Code section 273.5 (Infliction of Corporal Injury
 on Spouse/Cohabitant), also a misdemeanor, as follows:

a. On or about November 10, 2011, based on the conduct described in the arrest
reports relating to paragraphs 10 to 12, Respondent was charged in Case No. 574667 in Alameda
County Superior Court with four felonies and three special allegations.

| 1 | b. On or about August 22, 2012, by motion of the District Attorney a fifth count |
|--|---|
| 2 | was added: Penal Code section 273.5 (Infliction of Corporal Injury on Spouse/Cohabitant), a |
| 3 | misdemeanor. By the same motion, the original fourth count was amended to a lesser-included or |
| 4 | reasonably related offense of Penal Code section 23920 (Purchase, Sale, Possession, or Transfer |
| 5 | of an Unmarked Firearm), a misdemeanor. Respondent pleaded no contest to the new count (4) |
| 6 | and the added count (5), stipulated to a factual basis for the pleas, and was found guilty of both. |
| 7 | The remaining counts were dismissed as part of the plea. Imposition of sentence was suspended- |
| 8 | in favor of a conditional sentence of thirty six (36) months, on terms and conditions including a |
| 9 | domestic violence course, an order to stay away from the victim, and search conditions. |
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| 11 | SECOND CAUSE FOR DISCIPLINE |
| 12 | (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption) |
| 13 | 14. Respondent is subject to discipline under section 4301(f) of the Code in that |
| 14 | Respondent, as described in paragraphs 10 to 12 above, committed acts involving moral |
| 15 | turpitude, dishonesty, fraud, deceit, or corruption. |
| 16 | |
| } | THIRD CAUSE FOR DISCIPLINE |
| 17 | |
| 17 18 | (Unprofessional Conduct) |
| | (Unprofessional Conduct) 15. Respondent is subject to discipline under section 4301 of the Code in that |
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| 18 19 | 15. Respondent is subject to discipline under section 4301 of the Code in that |
| 18 19 20 | 15. Respondent is subject to discipline under section 4301 of the Code in that |
| 18 19 20 21 | 15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct. |
| 18 19 20 21 22 | 15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct. <u>PRAYER</u> |
| 18 19 20 21 22 23 | 15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct. <u>PRAYER</u> WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 18 19 20 21 22 23 24 | 15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct. <u>PRAYER</u> 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: |
| 18 19 20 21 22 23 24 25 | 15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct. <u>PRAYER</u> 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 No. RPH 61283, issued to Frederick |
| 18 19 20 21 22 23 24 25 26 | 15. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 10 to 14 above, engaged in unprofessional conduct. <u>PRAYER</u> 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: Revoking or suspending Pharmacist License No. RPH 61283, issued to Frederick Lamar Johnson (Respondent); |

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Taking such other and further action as is deemed necessary and proper. 3. DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2013403870 40676214.doc

Accusation