

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

In the Matter of the Accusation Against:

Case No. 4559

MICHAEL RICHARD JAY
1814 West Tedmard Avenue
Anaheim, CA 92804-2646

Pharmacist License No. RPH 36457

Respondent.

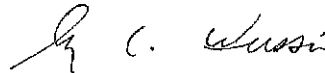
DECISION AND ORDER

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

This decision shall become effective on April 17, 2014.

It is so ORDERED on April 10, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

Case No. 4559

12 **MICHAEL RICHARD JAY**
13 **1814 West Tedmard Avenue**
14 **Anaheim, CA 92804-2646**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacist License No. RPH 36457**

16 Respondent.

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18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
21 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
22 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

23 **PARTIES**

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney
27 General.

1 **CULPABILITY**

2 9. Respondent admits the truth of each and every charge and allegation in First
3 Amended Accusation No. 4559.

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

6 **CONTINGENCY**

7 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 facsimile signatures
18 thereto, shall have the same force and effect as the originals.

19 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 admissions and stipulations, the parties agree that~~
26 ~~the Board may, without further notice or formal proceeding, issue and enter the following~~
27 ~~Disciplinary Order:~~

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 36457 issued to Michael
3 Richard Jay (Respondent) is revoked. However, the revocation is stayed and Respondent is
4 placed on probation for five (5) years on the following terms and conditions.

5 **1. Suspension**

6 As part of probation, respondent is suspended from working as a pharmacist for 180 days
7 beginning the effective date of this decision.

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

16 **2. Obey All Laws**

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

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

- 20 an arrest or issuance of a criminal complaint for violation of any provision of the
21 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
22 substances laws
23 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
24 criminal complaint, information or indictment
25 a conviction of any crime
26 discipline, citation, or other administrative action filed by any state or federal agency
27 which involves respondent's pharmacist license or which is related to the practice of
28 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

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1 **3. Report to the Board**

2 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
3 designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, respondent shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation. Failure to submit timely reports
6 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
7 in submission of reports as directed may be added to the total period of probation. Moreover, if
8 the final probation report is not made as directed, probation shall be automatically extended until
9 such time as the final report is made and accepted by the board.

10 **4. Interview with the Board**

11 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
12 with the board or its designee, at such intervals and locations as are determined by the board or its
13 designee. Failure to appear for any scheduled interview without prior notification to board staff,
14 or failure to appear at two (2) or more scheduled interviews with the board or its designee during
15 the period of probation, shall be considered a violation of probation.

16 **5. Cooperate with Board Staff**

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

20 **6. Continuing Education**

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

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

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

1 **8. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 4559 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 4559 and the terms and conditions
10 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
11 supervisor(s) submit timely acknowledgement(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 pharmacy
14 of the terms and conditions of the decision in case number 4559 in advance of the respondent
15 commencing work at each pharmacy. A record of this notification must be provided to the board
16 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 4559
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 acknowledgements 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 or relief service or pharmacy management service as a
28 pharmacist, pharmacy technician or in any position for which a pharmacist or
pharmacy technician license is a requirement or criterion for employment, whether
the respondent is considered an employee, independent contractor or volunteer.

1 **9. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, respondent shall pay to the
3 board its costs of investigation and prosecution in the amount of \$3,520.00. Respondent shall
4 make monthly payments as directed by the Board or its designee in the amount of \$97.78 until
5 paid in full. There shall be no deviation from this schedule absent prior written approval by the
6 board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
7 violation of probation.

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

10 **10. Probation Monitoring Costs**

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

15 **11. Status of License**

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

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

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

24 Following the effective date of this decision, should respondent cease work due to
25 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
26 respondent may tender his pharmacist license to the board for surrender. The board or its
27 designee shall have the discretion whether to grant the request for surrender or take any other
28 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the

1 license, respondent will no longer be subject to the terms and conditions of probation. This
2 surrender constitutes a record of discipline and shall become a part of the respondent's license
3 history with the board.

4 Upon acceptance of the surrender, respondent shall relinquish his pharmacist license to the
5 board within ten (10) days of notification by the board that the surrender is accepted. Respondent
6 may not reapply for any license, permit, or registration from the board for three (3) years from the
7 effective date of the surrender. Respondent shall meet all requirements applicable to the license
8 sought as of the date the application for that license is submitted to the board.

9 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
10 **Employment**

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

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

18 **14. Tolling of Probation**

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

25 Should respondent, regardless of residency, for any reason (including vacation) cease
26 working as a pharmacist for a minimum of 40 hours per calendar month in California, respondent
27 must notify the board in writing within ten (10) days of cessation of work and must further notify
28 the board in writing within ten (10) days of the resumption of the work. Any failure to provide

1 such notification(s) shall be considered a violation of probation.

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

5 'Cessation of work' means calendar month during which respondent is not
6 working for at least 40 hours as a pharmacist, as defined in Business and Professions
7 Code section 4115. 'Resumption of work' means any calendar month during which
8 respondent is working as a pharmacist for at least 40 hours as a pharmacist as defined
9 by Business and Professions Code section 4115.

10 15. Violation of Probation

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

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

23 16. Completion of Probation

24 Upon written notice by the board indicating successful completion of probation,
25 respondent's pharmacist license will be fully restored.

26 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
27 Subject to the above restrictions, respondent may continue to own or hold an interest in any
28 licensed premises in which he or she holds an interest at the time this decision becomes effective
unless otherwise specified in this order.

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

1 **17. No Ownership of Licensed Premises**

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

9 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
10 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
11 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
12 has any legal or beneficial interest in, or serve as a manager, administrator, member, officer,
13 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
14 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
15 that interest, but only to the extent of that position or interest as of the effective of this decision.
16 Violation of this restriction shall be considered a violation of probation.

17 **18. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

18 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
19 attendance at a recognized and established substance abuse recovery support group in California,
20 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
21 or its designee. Respondent must attend at least one group meeting per week unless otherwise
22 directed by the board or its designee. Respondent shall continue regular attendance and submit
23 signed and dated documentation confirming attendance with each quarterly report for the duration
24 of probation. Failure to attend or submit documentation thereof shall be considered a violation of
25 probation.

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1 **19. Work Site Monitor**

2 Within ten (10) days of the effective date of this decision, respondent shall identify a work
3 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
4 during working hours. Respondent shall be responsible for ensuring that the work site monitor
5 reports in writing to the board quarterly. Should the designated work site monitor determine at
6 any time during the probationary period that respondent has not maintained sobriety, he shall
7 notify the board immediately, either orally or in writing as directed. Should respondent change
8 employment, a new work site monitor must be designated, for prior approval by the board, within
9 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
10 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
11 considered a violation of probation.

12 **20. Medical Evaluation**

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

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

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

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

16 Respondent shall take all necessary steps to ensure that any treating physician submits
17 written quarterly reports to the board concerning respondent's fitness to practice, progress in
18 treatment, and other such information as may be required by the board or its designee.
19 If at any time an approved evaluating physician or respondent's approved treating physician
20 determines that respondent is unable to practice safely or independently as a pharmacist, the
21 evaluating or treating physician shall notify the board immediately by telephone and follow up by
22 written letter within three (3) working days. Upon notification from the board or its designee of
23 this determination, respondent shall be automatically suspended and shall not resume practice
24 until notified by the board that practice may be resumed.

25 During suspension, respondent shall not enter any pharmacy area or any portion of the
26 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
27 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
28 or controlled substances are maintained. Respondent shall not practice as a pharmacist nor do any

1 act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
2 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
3 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
4 drugs and controlled substances. Respondent shall not resume practice until notified by the
5 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 pharmacist or a designated
9 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 or she holds an interest at the time this decision becomes
12 effective unless otherwise specified in this order. Failure to comply with this suspension shall be
13 considered a violation of probation.

14 **21. Pharmacist Recovery Program**

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

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

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

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

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall result in the automatic
3 suspension of practice by respondent and shall be considered a violation of probation. Respondent
4 may not resume the practice of pharmacy until notified by the board in writing.

5 During suspension, respondent shall not enter any pharmacy area or any portion of the
6 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
7 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
8 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
9 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
10 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
11 board, or have access to or control the ordering, manufacturing or dispensing of dangerous
12 drugs and controlled substances. Respondent shall not resume practice until notified by the
13 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 pharmacist or a designated
17 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 or she holds an interest at the time this decision becomes
20 effective unless otherwise specified in this order.

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

22 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
23 timely paid to the PRP shall constitute a violation of probation. The Board will collect unpaid
24 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

25 **22. Random Drug Screening**

26 Respondent, at his or her own expense, shall participate in random testing, including but not
27 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
28 screening program as directed by the board or its designee. Respondent may be required to

1 participate in testing for the entire probation period and the frequency of testing will be
2 determined by the board or its designee. At all times, respondent shall fully cooperate with the
3 board or its designee, and shall, when directed, submit to such tests and samples for the
4 detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as
5 the board or its designee may direct. Failure to timely submit to testing as directed shall be
6 considered a violation of probation. Upon request of the board or its designee, respondent shall
7 provide documentation from a licensed practitioner that the prescription for a detected drug was
8 legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely
9 provide such documentation shall be considered a violation of probation. Any confirmed
10 positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part
11 of a documented medical treatment shall be considered a violation of probation and shall result
12 in the automatic suspension of practice of pharmacy by respondent. Respondent may not
13 resume the practice of pharmacy until notified by the board in writing.

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

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

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

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

5 **23. Abstain from Drugs and Alcohol Use**

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

18 **24. Prescription Coordination and Monitoring of Prescription Use**

19 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
20 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
21 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
22 history with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental
23 illness, and/or of gambling addiction and who will coordinate and monitor any prescriptions for
24 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
25 practitioner shall be provided with a copy of the board's First Amended Accusation and decision.
26 A record of this notification must be provided to the board upon request. Respondent shall sign a
27 release authorizing the practitioner to communicate with the board about respondent's
28 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist

1 shall report to the board on a quarterly basis for the duration of probation regarding respondent's
2 compliance with this condition. If any substances considered addictive have been prescribed, the
3 report shall identify a program for the time limited use of any such substances. The board may
4 require that the single coordinating physician, nurse practitioner, physician assistant or
5 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.
6 Should respondent, for any reason, cease supervision by the approved practitioner, respondent
7 shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the
8 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of
9 respondent's choice to the board or its designee for its prior approval. Failure to timely submit the
10 selected practitioner or replacement practitioner to the board for approval, or to ensure the
11 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

26 During suspension, respondent shall not engage in any activity that requires the
27 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
28

1 practice of pharmacy. Respondent shall not perform the duties of a pharmacist or a designated
2 representative for any entity licensed by the board.

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

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

7 **25. Supervised Practice**

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

13 Continuous - At least 75% of a work week

14 Substantial - At least 50% of a work week

15 Partial - At least 25% of a work week

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

17 Within thirty (30) days of the effective date of this decision, respondent shall have his or
18 her supervisor submit notification to the board in writing stating that the supervisor has read the
19 decision in case number 4559 and is familiar with the required level of supervision as determined
20 by the board or its designee. It shall be the respondent's responsibility to ensure that his or her
21 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
22 acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-
23 -charge to submit timely acknowledgements to the board shall be considered a violation of
24 probation.

25 If respondent changes employment, it shall be the respondent's responsibility to ensure that
26 his or her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
27 acknowledgement(s) to the board. Respondent shall have his or her new supervisor, within
28 fifteen (15) days after employment commences, submit notification to the board in writing stating

1 the direct supervisor and pharmacist-in-charge have read the decision in case number 4559 and is
2 familiar with the level of supervision as determined by the board. Respondent shall not practice
3 pharmacy and his or her license shall be automatically suspended until the board or its designee
4 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
5 submit timely acknowledgements to the board shall be considered a violation of probation.

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

7 During suspension, respondent shall not enter any pharmacy area or any portion of the
8 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
9 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
10 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
11 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
12 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
13 board, or have access to or control the ordering, manufacturing or dispensing of dangerous
14 drugs and controlled substances. Respondent shall not resume practice until notified by the
15 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 pharmacist or a designated
19 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 or she holds an interest at the time this decision becomes
22 effective unless otherwise specified in this order.

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

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

25 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
26 board, in writing, within ten (10) days of the issuance or modification of those conditions.
27 Respondent shall provide the name of his or her probation/parole officer to the board, in writing,
28 within ten (10) days after that officer is designated or a replacement for that officer is designated.

1 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten
2 (10) days after respondent receives a copy of such a report. Failure to timely make any of the
3 submissions required hereby shall be considered a violation of probation.

4 **27. Ethics Course**

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

10 **28. Community Services Program**

11 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
12 board or its designee, for prior approval, a community service program in which respondent shall
13 provide free health-care related services on a regular basis to a community or charitable facility
14 or agency for at least 75 hours per year for the first three years of probation. Within
15 thirty (30) days of board approval thereof, respondent shall submit documentation to the board
16 demonstrating commencement of the community service program. A record of this notification
17 must be provided to the board upon request. Respondent shall report on progress with the
18 community service program in the quarterly reports. Failure to timely submit, commence, or
19 comply with the program shall be considered a violation of probation.

20 **29. Tolling of Suspension**

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

28 ///

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

6 ACCEPTANCE

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

12
13 DATED: 3/7/14 
14 MICHAEL RICHARD JAY
Respondent

15 I have read and fully discussed with Respondent Michael Richard Jay the terms and
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
17 I approve its form and content.

18 DATED: 3-7-14 
19 COURTNEY E. PILCHMAN
Attorney for Respondent

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ENDORSEMENT

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

Dated:

Respectfully submitted,

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



LAURO A. PAREDES
Deputy Attorney General
Attorneys for Complainant

SD2013704879
Jay Stipulation.doc

Exhibit A

First Amended Accusation No. 4559

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LAURO A. PAREDES
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6 San Diego, CA 92186-5266
Telephone: (619) 645-2091
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4559

12 **MICHAEL RICHARD JAY**
13 **1814 West Tedmard Avenue**
14 **Anaheim, CA 92804-2646**

FIRST AMENDED ACCUSATION

15 **Pharmacist No. RPH 36457**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 17, 1981, the Board of Pharmacy issued Pharmacist Number
24 RPH 36457 to Michael Richard Jay (Respondent). The Pharmacist was in full force and effect at
25 all times relevant to the charges brought herein and will expire on February 28, 2015, unless
26 renewed.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

7 (b) The board shall discipline the holder of any license issued by the
8 board, whose default has been entered or whose case has been heard by the
board and found guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding
12 one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

15 ...

16 (e) The proceedings under this article shall be conducted in accordance
17 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
18 the Government Code, and the board shall have all the powers granted
therein. The action shall be final, except that the propriety of the action is
19 subject to review by the superior court pursuant to Section 1094.5 of the
Code of Civil Procedure.

20 **STATUTORY PROVISIONS**

21 5. Section 482 of the Code states:

22 Each board under the provisions of this code shall develop criteria to
23 evaluate the rehabilitation of a person when:

24 (a) Considering the denial of a license by the board under Section 480;

or

25 (b) Considering suspension or revocation of a license under Section
490.

26 "Each board shall take into account all competent evidence of
rehabilitation furnished by the applicant or licensee.

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1 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 7. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted
7 by a board within the department pursuant to law to deny an application for a
8 license or to suspend or revoke a license or otherwise take disciplinary
9 action against a person who holds a license, upon the ground that the
10 applicant or the licensee has been convicted of a crime substantially related
11 to the qualifications, functions, and duties of the licensee in question, the
12 record of conviction of the crime shall be conclusive evidence of the fact
13 that the conviction occurred, but only of that fact, and the board may inquire
14 into the circumstances surrounding the commission of the crime in order to
15 fix the degree of discipline or to determine if the conviction is substantially
16 related to the qualifications, functions, and duties of the licensee in question.

17 As used in this section, 'license' includes 'certificate,' 'permit,'
18 'authority,' and 'registration.'

19 8. Section 4301 of the Code states:

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

24 ...

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

 ...

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

(l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of
conviction of a violation of Chapter 13 (commencing with Section 801) of
Title 21 of the United States Code regulating controlled substances or of a
violation of the statutes of this state regulating controlled substances or

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

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769, states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and professions code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and professions code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or
2 offense(s).

3 10. California Code of Regulations, title 16, section 1770, states:

4 For the purpose of denial, suspension, or revocation of a personal or
5 facility license pursuant to Division 1.5 (commencing with Section 475) of
6 the Business and Professions Code, a crime or act shall be considered
7 substantially related to the qualifications, functions or duties of a licensee or
8 registrant if to a substantial degree it evidences present or potential unfitness
9 of a licensee or registrant to perform the functions authorized by his license
10 or registration in a manner consistent with the public health, safety, or
11 welfare.

9 COST RECOVERY

10 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 FIRST CAUSE FOR DISCIPLINE

17 (September 24, 2013 Driving Under the Influence on December 17, 2012)

18 12. Respondent's license is subject to discipline under Code sections 490 and 4301,
19 subdivision (l) in that he was convicted of a crime that is substantially related to the
20 qualifications, duties, and functions of a Pharmacist. The circumstances are as follows:

21 a. On or about September 24, 2013, in a criminal proceeding entitled *People of the*
22 *State of California v. Michael Richard Jay*, in Orange County Superior Court, Case Number
23 AN12NM14510, Respondent was charged with violating Vehicle Code sections 23152
24 subdivision (a), driving under the influence. Respondent was convicted on his plea of guilty to
25 driving under the influence.

26 b. As a result of his conviction on or about September 24, 2013, Respondent was
27 sentenced to 5 years probation, ordered to serve 90 days in custody and complete the 18 month
28 multiple offender DUI program, among other terms and conditions.

1 toxicology screen of his blood found the presence of Clonazepam, a muscle relaxant, and
2 Clonazepam metabolites; Triazolam, a sedative; Hydroxyethylfurazepam, a derivative of the
3 sleeping medication flurazepam; Desalkylfurazepam, a derivative of the sleeping medication
4 Quazepam; Tramadol, a moderate to severe pain medication, and its metabolite, Hydrocodone, an
5 opiate-derived pain medication and Zolpidem, a sedative drug sold under the brand name
6 Ambien.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(September 24, 2013 Conviction for Resisting a Peace Officer on March 11, 2013)**

9 14. Respondent's license is subject to discipline under Code sections 490 section 4301,
10 subdivision (l) in that he was convicted of a crime that is substantially related to the
11 qualifications, duties, and functions of a Pharmacist. The circumstances are as follows:

12 a. On or about September 24, 2013, in a criminal proceeding entitled *People of the*
13 *State of California v. Michael Jay*, in Orange County Superior Court, Case Number 13NM02713,
14 Respondent was convicted on his plea of guilty of violating Penal Code Section 148 subdivison
15 (a)(1), resisting, delaying or obstructing a peace officer.

16 b. As a result of his conviction on or about September 24, 2013, Respondent was
17 sentenced to 1 day in jail and ordered to pay \$245 in fines.

18 c. The facts that led to the conviction are that on or about March 11, 2013, at
19 approximately 9:53 p.m., Anaheim Police responded to Respondent's home after a 911 hang-up
20 call. Once at Respondent's home, the police interviewed Respondent's wife who complained of
21 being thrown down and pushed by Respondent. Respondent admitted that he had been drinking
22 earlier in the evening and that he and his wife had an argument. After interviewing both
23 Respondent and his wife, police attempted to arrest Respondent for domestic violence.
24 Respondent pulled away from police as they tried to handcuff him and continued to resist arrest
25 until several officers had to hold him down and subdue him.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Dangerous Use of Alcohol and drugs)**

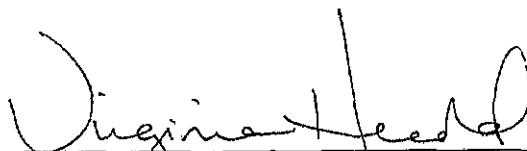
3 15. Respondent's license is subject to discipline under sections 490 and 4301 subdivision
4 (h) of the Code in that on or about on December 17, 2012 and May 31, 2010, Respondent used
5 alcohol and controlled substances to an extent or in a manner dangerous or injurious to himself
6 and the public when he drove a vehicle under the influence of alcohol as outlined in paragraph 12
7 and 13 and on March 11, 2013, when he was arrested for resisting a peace officer as outlined in
8 paragraph 14, above.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacist Number RPH 36457, issued to Michael Richard
13 Jay;
- 14 2. Ordering Michael Richard Jay to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 2/14/14



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

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LAURO A. PAREDES
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4 State Bar No. 254663
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4559

12 **MICHAEL RICHARD JAY**
13 **1814 West Tedmard Avenue**
Anaheim, CA 92804-2646

A C C U S A T I O N

14 **Pharmacist No. RPH 36457**

15 Respondent.
16

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 17, 1981, the Board of Pharmacy issued Pharmacist Number
23 RPH 36457 to Michael Richard Jay (Respondent). The Pharmacist was in full force and effect at
24 all times relevant to the charges brought herein and will expire on February 28, 2015, unless
25 renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

7 (b) The board shall discipline the holder of any license issued by the
8 board, whose default has been entered or whose case has been heard by the
board and found guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding
12 one year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

15 ...

16 (e) The proceedings under this article shall be conducted in accordance
17 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
18 the Government Code, and the board shall have all the powers granted
19 therein. The action shall be final, except that the propriety of the action is
Code of Civil Procedure.

20 **STATUTORY PROVISIONS**

21 5. Section 482 of the Code states:

22 Each board under the provisions of this code shall develop criteria to
23 evaluate the rehabilitation of a person when:

24 (a) Considering the denial of a license by the board under Section 480;

or

25 (b) Considering suspension or revocation of a license under Section
26 490.

"Each board shall take into account all competent evidence of
rehabilitation furnished by the applicant or licensee.

27 ///

28 ///

1 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 7. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted
7 by a board within the department pursuant to law to deny an application for a
8 license or to suspend or revoke a license or otherwise take disciplinary
9 action against a person who holds a license, upon the ground that the
10 applicant or the licensee has been convicted of a crime substantially related
11 to the qualifications, functions, and duties of the licensee in question, the
12 record of conviction of the crime shall be conclusive evidence of the fact
13 that the conviction occurred, but only of that fact, and the board may inquire
14 into the circumstances surrounding the commission of the crime in order to
15 fix the degree of discipline or to determine if the conviction is substantially
16 related to the qualifications, functions, and duties of the licensee in question.

17 As used in this section, 'license' includes 'certificate,' 'permit,'
18 'authority,' and 'registration.'

19 8. Section 4301 of the Code states:

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

24 ...

25 (h) The administering to oneself, of any controlled substance, or the
26 use of any dangerous drug or of alcoholic beverages to the extent or in a
27 manner as to be dangerous or injurious to oneself, to a person holding a
28 license under this chapter, or to any other person or to the public, or to the
29 extent that the use impairs the ability of the person to conduct with safety to
30 the public the practice authorized by the license.

31 ...

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

35 (l) The conviction of a crime substantially related to the qualifications,
36 functions, and duties of a licensee under this chapter. The record of
37 conviction of a violation of Chapter 13 (commencing with Section 801) of
38 Title 21 of the United States Code regulating controlled substances or of a
39 violation of the statutes of this state regulating controlled substances or

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

17 ...

18 REGULATORY PROVISIONS

19 9. California Code of Regulations, title 16, section 1769, states:

20 (a) When considering the denial of a facility or personal license under
21 Section 480 of the Business and professions code, the board, in evaluating
22 the rehabilitation of the applicant and his present eligibility for licensing or
23 registration, will consider the following criteria:

24 (1) The nature and severity of the act(s) or offense(s) under
25 consideration as grounds for denial.

26 (2) Evidence of any act(s) committed subsequent to the act(s) or
27 crime(s) under consideration as grounds for denial under Section 480 of the
28 Business and professions code.

(3) The time that has elapsed since commission of the act(s) or
crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole,
probation, restitution or any other sanctions lawfully imposed against the
applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
convicted of a crime, the board, in evaluating the rehabilitation of such
person and his present eligibility for a license will consider the following
criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or
2 offense(s).

3 10. California Code of Regulations, title 16, section 1770, states:

4 For the purpose of denial, suspension, or revocation of a personal or
5 facility license pursuant to Division 1.5 (commencing with Section 475) of
6 the Business and Professions Code, a crime or act shall be considered
7 substantially related to the qualifications, functions or duties of a licensee or
8 registrant if to a substantial degree it evidences present or potential unfitness
9 of a licensee or registrant to perform the functions authorized by his license
10 or registration in a manner consistent with the public health, safety, or
11 welfare.

12 **COST RECOVERY**

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
18 included in a stipulated settlement.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(July 19, 2011 Driving Under the Influence on May 31, 2010)**

21 12. Respondent's license is subject to discipline under Code section 490 subdivisions
22 section 4301 subdivisions (l) in that he was convicted of a crime that is substantially related to the
23 qualifications, duties, and functions of a Pharmacy Technician. The circumstances are as follows:

24 a. On or about September 29, 2012, in a criminal proceeding entitled *People of the State*
25 *of California v. Michael Richard Jay*, in Orange County Superior Court, Case Number
26 AN10NM11993, Respondent was charged with violating Vehicle Code sections 23152
27 subdivision (a), driving under the influence. Respondent was convicted on his plea of guilty to
28 driving under the influence of prescription drugs.

b. As a result of his conviction on or about July 19, 2011, Respondent was
sentenced to 3 years probation, and ordered to pay \$1073 in fines, ordered to complete a first
offender DUI program and serve one day in jail.

1 c. The facts that led to the conviction are that on or about May 31, 2010, at
2 approximately 5:38 p.m. Respondent attempted to turn in front of a passenger bus. Respondent's
3 abrupt turn caused a collision between his vehicle and the passage bus. When police arrived they
4 noticed that Respondent showed objective signs of intoxication such as slow and slurred speech.
5 Respondent was asked to perform a serious of field sobriety tests which he failed. Respondent at
6 first denied ingesting either drugs or alcohol prior to driving, but later admitted that using Ambien
7 and Diovan/HCT earlier in the day. Respondent was arrested and a toxicology screen of his
8 blood found the presence of Clonazepam a muscle relaxant and Clonazepam metabolites;
9 Triazolam a sedative; Hydroxyethylfurazepam a derivative of the sleeping medication flurazepam;
10 Desalkylfurazepam a derivative of the sleeping medication Quazepam, Tramadol a moderate to
11 severe pain medication and its metabolite, Hydrocodone an opiate derived pain medication and
12 Zolpidem a drug sold under the brand name Ambien as a sedative.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Dangerous Use of Alcohol and drugs)**

15 13. Respondent's license is subject to discipline under sections 490 and section 4301 (h)
16 of the Code in that on or about May 31, 2010, Respondent used controlled substances to an extent
17 or in a manner dangerous or injurious to himself and the public when he was arrested for driving
18 under the influence after consuming prescription drugs as outlined in paragraph 11, above.

19 **PRAYER**

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

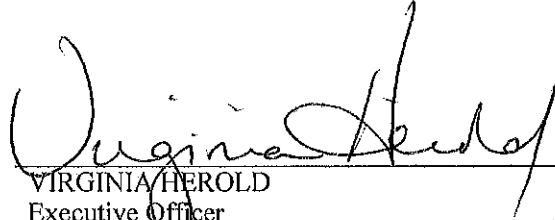
- 22 1. Revoking or suspending Pharmacist Number RPH 36457, issued to Michael Richard
23 Jay;
- 24 2. Ordering Michael Richard Jay to pay the Board of Pharmacy the reasonable costs of
25 the investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;
- 27 ///
- 28 ///

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

DATED:

3/27/13



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