

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

In the Matter of the Accusation Against:

Case No. 4599

DONNY JAMES WEINBERGER

5608 Tares Circle
Elk Grove, CA 95757

Intern Pharmacist Registration No. INT 26871

AND

In the Matter of the Statement of Issues Against:

Case No. 4879

DONNY JAMES WEINBERGER

Applicant for Pharmacist License.

Respondent.

DECISION AND ORDER

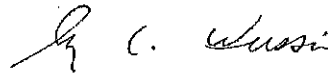
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 1, 2014.

It is so ORDERED on September 24, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

11 In the Matter of the Accusation Against:

12 **DONNY JAMES WEINBERGER**
13 **5608 Tares Circle**
Elk Grove, CA 95757

Case No. 4599

14 **Intern Pharmacist Registration No. INT**
15 **26871**

**CONSOLIDATED STIPULATED
SETTLEMENT AND DISCIPLINARY
ORDER**

16 **AND**

17 In the Matter of the Statement of Issues
Against:

18 **DONNY JAMES WEINBERGER**

Case No. 4879

19 **Applicant for Pharmacist License.**

20
21 **Respondent.**

22 **IT IS STIPULATED AND AGREED** by and between the parties to the above-entitled
23 proceedings that the following matters are true:

24 **PARTIES**

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought these actions solely in her official capacity and is represented in this matter
27 by Kamala D. Harris, Attorney General of the State of California, by Brian S. Turner, Deputy
28 Attorney General.

2. Respondent Donny James Weinberger (Respondent) is represented by Attorney Paul Chan whose address is: 2311 Capitol Avenue, Sacramento, CA 95816

3. On or about September 29, 2010, the Board issued Intern Pharmacist Registration No. INT 26871 to Donny James Weinberger (Respondent). The Intern Pharmacist Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4599 and will expire on September 30, 2014, unless renewed.

4. On or about May 23, 2013 Respondent submitted application for licensure as a pharmacist when eligible. The application was denied on or about June 19, 2013 and the denial was subsequently updated denying the application pending investigation. Respondent timely filed an appeal of the denial.

JURISDICTION

5. Accusation No. 4599 was filed before the Board, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 7, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

6. Statement of Issues No. 4879 was filed before the Board, Department of Consumer Affairs and is currently pending before the Board. The Statement of Issues and all other statutorily required documents were served on Respondent on January 7, 2014. Respondent submitted a Notice of Representation by Mr. Chan.

7. A copy of Accusation No. 4599 is attached as Exhibit A and incorporated herein by reference. A copy of the Statement of Issues No. 4879 is attached as Exhibit B and incorporated herein by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, and understands the charges and allegations in Accusation No. 4599 and Statement of Issues No. 4879. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

9. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation and Statement of Issues; the right to be

1 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
2 against him; the right to present evidence and to testify on his own behalf; the right to the
3 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
4 the right to reconsideration and court review of an adverse decision; and all other rights accorded
5 by the California Administrative Procedure Act and other applicable laws.

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

8 CULPABILITY

9 11. Respondent admits the truth of each and every charge and allegation in Accusation
10 No. 4599 and Statement of Issues No. 4879.

11 12. Respondent agrees that his Intern Pharmacist Registration is subject to discipline and
12 Respondent further agrees any application by Respondent for licensure as a Pharmacist is subject
13 to denial. With this knowledge, Respondent agrees to be bound by the Board's probationary terms
14 as set forth in the Disciplinary Order

15 CONTINGENCY

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

25 14. The parties understand and agree that facsimile or emailed copies of this Stipulated
26 Settlement and Disciplinary Order, including facsimile or emailed signatures thereto, shall have
27 the same force and effect as the originals.

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15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

DISCIPLINARY ORDER

IT IS ORDERED that Intern Pharmacist Registration No. INT 26871 issued to Respondent Donny James Weinberger is **REVOKED**. The revocation is stayed and Respondent is placed on probation for five (5) years. Upon successful completion of the Intern Registration probation, Respondent's Intern Registration will be cancelled automatically. Upon Respondent's satisfaction of all probation terms and conditions required for the Intern Pharmacist Registration and satisfaction of all statutory and regulatory requirements and conditions for issuance of a license, a pharmacist license will be issued to Respondent. Respondent's pharmacist's license shall be immediately revoked. The revocation will be stayed, and Respondent's pharmacist's license shall be placed on probation for all remaining time of the five years probation subject to the following terms and conditions.

1. Suspension

As part of probation, Respondent is suspended from the practice of pharmacy for ninety (90) days beginning the effective date of this decision. Respondent shall be given credit for suspension time already served in the Pharmacist in Recovery Program.

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

1 any 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 devices or controlled substances.

5 Respondent shall not engage in any activity that requires the professional judgment of a
6 Pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
7 Respondent shall not perform the duties of a pharmacy technician or a designated representative
8 for any entity Licensed by the Board.

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

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

13 **2. Obey All Laws**

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

15 Respondent shall report any of the following occurrences to the Board, in writing, within
16 seventy-two (72) hours of such occurrence:

- 17 a. an arrest or issuance of a criminal complaint for violation of any provision of the
18 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
19 substances laws
- 20 b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
21 criminal complaint, information or indictment
- 22 c. a conviction of any crime
- 23 d. discipline, citation, or other administrative action filed by any state or federal agency
24 which involves Respondent's Pharmacist's Intern or should he pass the Pharmacist's
25 test, Respondent's Pharmacist License or which is related to the practice of pharmacy
26 or the manufacturing, obtaining, handling, distributing, billing, or charging for any
27 drug, device or controlled substance

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

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
13 its designee. Failure to appear for any scheduled interview without prior notification to Board
14 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
15 during 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. Notice to Employers**

24 During the period of probation, Respondent shall notify all present and prospective
25 employers of the decision in case number 4300 and the terms, conditions and restrictions imposed
26 on Respondent by the decision, as follows:

27 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
28 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,

1 Pharmacist-in-charge (including each new Pharmacist-in-charge employed during Respondent's
2 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
3 individual(s) has/have read the decision in case number 4300, and terms and conditions imposed
4 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
5 supervisor(s) submit timely acknowledgment(s) to the Board.

6 If Respondent works for or is employed by or through a pharmacy employment service,
7 Respondent must notify his direct supervisor, Pharmacist-in-charge, and owner at every entity
8 Licensed by the Board of the terms and conditions of the decision in case number 4300 in
9 advance of the Respondent commencing work at each Licensed entity. A record of this
10 notification must be provided to the Board upon request.

11 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
12 (15) days of Respondent undertaking any new employment by or through a pharmacy
13 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
14 service to report to the Board in writing acknowledging that he has read the decision in case
15 number 4599 and the terms and conditions imposed thereby. It shall be Respondent's
16 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
17 acknowledgment(s) to the Board.

18 Failure to timely notify present or prospective employer(s) or to cause that/those
19 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
20 probation.

21 "Employment" within the meaning of this provision shall include any full-time,
22 part-time, temporary, relief or pharmacy management service as a Pharmacist or any
23 position for which a Pharmacist License is a requirement or criterion for employment,
24 whether the Respondent is an employee, independent contractor or volunteer.

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

3 During the period of probation, Respondent shall not supervise any Intern Pharmacist, be
4 the Pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
5 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
6 unauthorized supervision responsibilities shall be considered a violation of probation.

7 **9. Reimbursement of Board Costs**

8 As a condition precedent to successful completion of probation, Respondent shall pay to the
9 Board its costs of investigation and prosecution in the amount of \$4,326.00. Respondent shall
10 make said payments as follows:

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

14 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
15 reimburse the Board its costs of investigation and prosecution.

16 **8. Probation Monitoring Costs**

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

21 **9. Status of Pharmacist Intern Registration**

22 Respondent shall, at all times while on probation as a registered Pharmacist Intern, maintain
23 an active, current Pharmacist Intern Registration with the Board, including any period during
24 which suspension or probation is tolled. Failure to maintain an active, current Registration shall
25 be considered a violation of probation.

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

3 **10. Status of Pharmacist License**

4 Respondent shall, at all times while on probation as a Pharmacist, maintain an active,
5 current Pharmacist License with the Board, including any period during which suspension or
6 probation is tolled. Failure to maintain an active, current License shall be considered a violation
7 of probation.

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

12 **11. Pharmacist Intern Registration Surrender While on Probation/Suspension**

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

21 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall Intern
22 Registration to the Board within ten (10) days of notification by the Board that the surrender is
23 accepted. Respondent may not reapply for any intern registration from the Board for three (3)
24 years from the effective date of the surrender. Respondent shall meet all requirements applicable
25 to the intern registration sought as of the date the application for that intern registration is
26 submitted to the Board, including any outstanding costs.

27 **12. Pharmacist License Surrender While on Probation/Suspension**

28 Following the effective date of this decision, should Respondent cease practice due to

1 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
2 Respondent may tender his License to the Board for surrender. The Board or its designee shall
3 have the discretion whether to grant the request for surrender or take any other action it deems
4 appropriate and reasonable. Upon formal acceptance of the surrender of the License, Respondent
5 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
6 record of discipline and shall become a part of the Respondent's License history with the Board.

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

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

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

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

22 **14. Tolling of Probation While Registered Pharmacist Intern**

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

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

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

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

15 Respondent is required to practice as a pharmacist intern in a licensed pharmacy setting that
16 dispenses medication for a minimum of one year prior to the completion of probation. After the
17 first year of probation, the Board or its designee may consider a modification of this requirement.
18 If Respondent fails to comply with this requirement or a subsequent modification thereto, such
19 failure shall be considered a violation of probation.

20 **15. Tolling of Probation While a Pharmacist**

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

27 Should Respondent, regardless of residency, for any reason (including vacation) cease
28 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,

1 Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and
2 must further notify the Board in writing within ten (10) days of the resumption of practice. Any
3 failure to provide such notification(s) shall be considered a violation of probation.

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

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

12 Respondent is required to practice as a pharmacist intern in a licensed pharmacy setting that
13 dispenses medication for a minimum of one year prior to the completion of probation. After the
14 first year of probation, the Board or its designee may consider a modification of this requirement.
15 If Respondent fails to comply with this requirement or a subsequent modification thereto, such
16 failure shall be considered a violation of probation.

17 **16. Violation of Probation**

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

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

3 **17. Completion of Probation**

4 Upon written notice by the Board or its designee indicating successful completion of
5 pharmacist license intern and pharmacist probation, Respondent's pharmacist licensure will be
6 fully restored.

7 **18. Pharmacists Recovery Program (PRP)**

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

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

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

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

23 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
24 licensed practitioner as part of a documented medical treatment shall result in the automatic
25 suspension of practice by Respondent and shall be considered a violation of probation.
26 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

27 During suspension, Respondent shall not enter any pharmacy area or any portion of the
28 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of

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

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

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

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

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

19 Respondent shall work in a pharmacy setting with access to controlled substances for
20 six (6) consecutive months before successfully completing probation. If Respondent fails to do
21 so, probation shall be automatically extended until this condition has been met. Failure to satisfy
22 this condition within six (6) months beyond the original date of expiration of the term of
23 probation shall be considered a violation of probation.

24 19. Random Drug Screening

25 Respondent, at his own expense, shall participate in random testing, including but not
26 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
27 screening program as directed by the Board or its designee. Respondent may be required to
28 participate in testing for the entire probation period and the frequency of testing will be

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

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

22 During suspension, Respondent shall not engage in any activity that requires the
23 professional judgment of a Pharmacist. Respondent shall not direct or control any aspect of the
24 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
25 designated representative for any entity Licensed by the Board.

26 Subject to the above restrictions, Respondent may continue to own or hold an interest in
27 any licensed premises in which he holds an interest at the time this decision becomes effective
28 unless otherwise specified in this order.

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

2 **20. Abstain from Drugs and Alcohol Use**

3 Respondent shall completely abstain from the possession or use of alcohol, controlled
4 substances, dangerous drugs and their associated paraphernalia except when the drugs are
5 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
6 request of the Board or its designee, Respondent shall provide documentation from the licensed
7 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
8 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
9 violation of probation.

10 Respondent shall ensure that he is not in the same physical location as individuals who are
11 using illicit substances even if Respondent is not personally ingesting the drugs. Any possession
12 or use of alcohol, controlled substances, or their associated paraphernalia not supported by the
13 documentation timely provided, and/or any physical proximity to persons using illicit substances,
14 shall be considered a violation of probation.

15 **21. Prescription Coordination and Monitoring of Prescription Use**

16 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
17 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
18 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the
19 Respondent's history with the use of controlled substances and/or dangerous drugs and who will
20 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
21 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
22 the Board's Accusation and decision. A record of this notification must be provided to the Board
23 upon request. Respondent shall sign a release authorizing the practitioner to communicate with
24 the Board about Respondent's treatment(s). The coordinating physician, nurse practitioner,
25 physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of
26 probation regarding Respondent's compliance with this condition. If any substances considered
27 addictive have been prescribed, the report shall identify a program for the time limited use of any
28 such substances. The Board may require that the single coordinating physician, nurse

1 practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a
2 specialist in addictive medicine. Should Respondent, for any reason, cease supervision by the
3 approved practitioner, Respondent shall notify the Board immediately and, within thirty (30) days
4 of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician
5 assistant, or psychiatrist of Respondent's choice to the Board or its designee for its prior approval.
6 Failure to timely submit the selected practitioner or replacement practitioner to the Board for
7 approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered
8 a violation of probation.

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

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
17 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
18 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
19 patient consultation; nor shall Respondent manage, administer, or be a consultant to any Licensee
20 of the 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 pharmacy technician or a
26 designated representative for any entity Licensed by the Board.

27 Subject to the above restrictions, Respondent may continue to own or hold an interest in
28 any licensed premises in which he holds an interest at the time this decision becomes effective

1 unless otherwise specified in this order.

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

3 **22. Community Services Program**

4 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
5 Board or its designee, for prior approval, a community service program in which Respondent
6 shall provide free health-care related services on a regular basis to a community or charitable
7 facility or agency for at least sixty-four (64) hours to be completed within the first eighteen
8 months of probation. Within thirty (30) days of Board approval thereof, Respondent shall submit
9 documentation to the Board demonstrating commencement of the community service program. A
10 record of this notification must be provided to the Board upon request. Respondent shall report
11 on progress with the community service program in the quarterly reports. Failure to timely
12 submit, commence, or comply with the program shall be considered a violation of probation.

13 **23. Supervised Practice**

14 During the period of probation, Respondent shall practice only under the supervision of a
15 licensed pharmacist not on probation with the Board. Upon and after the effective date of this
16 decision, Respondent shall not practice pharmacy and his pharmacist intern registration or
17 pharmacist license, whichever is in effect at the time, shall be automatically suspended until a
18 supervisor is approved by the Board or its designee. The supervision shall be, as required by the
19 Board or its designee, either:

20 Continuous - At least 75% of a work week

21 Substantial - At least 50% of a work week

22 Partial - At least 25% of a work week

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

24 Within thirty (30) days of the effective date of this decision, Respondent shall have his
25 supervisor submit notification to the Board in writing stating that the supervisor has read the
26 decision in case number 4300 and is familiar with the required level of supervision as determined
27 by the Board or its designee. It shall be the Respondent's responsibility to ensure that his
28 employer(s), Pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the

1 Board. Failure to cause the direct supervisor and the Pharmacist-in-charge to submit timely
2 acknowledgements to the Board shall be considered a violation of probation.

3 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
4 that his employer(s), Pharmacist-in-charge and/or supervisor(s) submit timely
5 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)
6 days after employment commences, submit notification to the Board in writing stating the direct
7 supervisor and Pharmacist-in-charge have read the decision in case number 4300 and is familiar
8 with the level of supervision as determined by the Board. Respondent shall not practice
9 pharmacy and his License shall be automatically suspended until the Board or its designee
10 approves a new supervisor. Failure to cause the direct supervisor and the Pharmacist-in-charge to
11 submit timely acknowledgements to the Board shall be considered a violation of probation.

12 Within ten (10) days of leaving employment, Respondent shall notify the Board in writing.

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

22 During suspension, Respondent shall not engage in any activity that requires the
23 professional judgment of a Pharmacist. Respondent shall not direct or control any aspect of the
24 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
25 designated representative for any entity Licensed by the Board.

26 Subject to the above restrictions, Respondent may continue to own or hold an interest in
27 any licensed premises in which he holds an interest at the time this decision becomes effective
28 unless otherwise specified in this order.

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

2 **24. No Ownership of Licensed Premises**

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

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

18 **25. Tolling of Suspension**

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

26 Respondent must notify the Board in writing within ten (10) days of departure, and must
27 further notify the Board in writing within ten (10) days of return. The failure to provide such
28 notification(s) shall constitute a violation of probation. Upon such departure and return,

Respondent shall not resume the practice of pharmacy until notified by the Board that the period of suspension has been satisfactorily completed.

26. **Ethics Course**

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

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

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Intern Pharmacist Registration and/or Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 6/13/14


DONNY JAMES WEINBERGER
Respondent

I have read and fully discussed with Respondent Donny James Weinberger the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/13/14


PAUL CHAN
Attorney for Respondent

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ENDORSEMENT

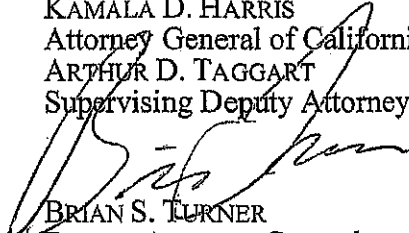
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

June 19, 2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


BRIAN S. TURNER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4599

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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. 4599

12 **DONNY JAMES WEINBERGER**
13 **5608 Tares Circle**
14 **Elk Grove, CA 95757**

ACCUSATION

15 Intern Pharmacist Registration No. INT 26871

16 Respondent.

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 (Board), Department of Consumer Affairs.

22 2. On or about September 29, 2010 the Board issued Intern Pharmacist Registration
23 Number INT 26871 to Donny James Weinberger (Respondent). The Intern Pharmacist
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on September 30, 2014, unless renewed.

26 ///

27 ///

JURISDICTION AND STATUTORY PROVISIONS

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

Section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

4. Section 4060 provides:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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1 5. Section 4301 provides in relevant part:

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

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

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

18 (j) The violation of any of the statutes of this state, of any
19 other state, or of the United States regulating controlled substances
20 and dangerous drugs.

21 (o) Violating or attempting to violate, directly or indirectly, or
22 assisting in or abetting the violation of or conspiring to violate
23 any provision or term of this chapter or of the applicable federal
24 and state laws and regulations governing pharmacy, including
25 regulations established by the board or by any other state or federal
26 regulatory agency.

27 (p) Actions or conduct that would have warranted denial of a
28 license."

CONTROLLED SUBSTANCES

29 6. "Phernterimine" is designated a Schedule IV substance by Health and Safety Code
30 section 11055(f)(3).

COSTS

31 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
32 administrative law judge to direct a licensee found to have committed a violation or violations of

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

3 I.

4 FACTUAL ALLEGATIONS

5 8. In 2010 Respondent began working as a pharmacist intern at a hospital pharmacy.
6 Drugs dispensed by the pharmacy but not administered to patients are returned to the pharmacy in
7 a drug return bin. Between approximately December 2010 and April 2012 Respondent diverted,
8 took, stole, and self-administered Phentermine without a lawful prescription. Respondent
9 obtained the Phentermine by taking the drug from the hospital's drug return bin. Respondent
10 self-administered the drug and was under the influence of the drug while performing the duties,
11 obligations and responsibilities of a pharmacist intern.

12 II.

13 CAUSES FOR DISCIPLINE

14 FIRST CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct-Corrupt Acts)

16 9. Respondent's intern license is subject to disciplinary action for unprofessional
17 conduct pursuant to section 4301(f) for engaging in acts involving moral turpitude, dishonesty,
18 fraud, deceit and corruption. The circumstances are as follows:

19 10. Paragraph 8 is incorporated herein as though set forth at length. Respondent took and
20 diverted Phentermine from the hospital's drug return bin for personal use without a prescription
21 in violation of 4301(f).

22 SECOND CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct-Self-Administration)

24 11. Respondent's intern license is subject to disciplinary action for unprofessional
25 conduct pursuant to section 4301(h) because Respondent self-administered Phentermine, a
26 controlled substance without a lawful prescription. The circumstances are as follows:

27 ///

28 ///

1 12. Paragraph 8 is incorporated herein as though set forth at length. Between
2 approximately December 2010 and April 2012 Respondent self-administered Phentermine
3 obtained while performing the job duties and responsibilities of a pharmacist intern for a hospital
4 pharmacy.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct-Unlawful Possession Controlled Substances)**

7 13. Respondent's intern pharmacist license is subject to disciplinary action for
8 unprofessional conduct pursuant to sections 4301(j) and (o) for possession of a controlled
9 substance and dangerous drug. The circumstances are as follows:

10 14. Paragraph 8 is incorporated herein as though set forth at length. Respondent took and
11 possessed Phentermine without lawful prescription.

12 **PRAYER**

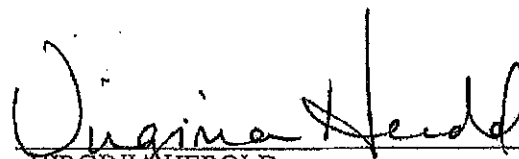
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Pharmacy issue a decision:

15 1. Revoking or suspending Intern Pharmacist Registration Number INT 26871, issued to
16 Donny James Weinberger;

17 2. Ordering Donny James Weinberger to pay the Board of Pharmacy the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3;

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

21
22
23 DATED: 12/12/13


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

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25
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27
28 SA2012105740

Exhibit B

Statement of Issues 4879

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Sacramento, CA 94244-2550
6 Telephone: (916) 445-0603
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues Against: Case No. 4879

12
13 **DONNY JAMES WEINBERGER**

STATEMENT OF ISSUES

14 Respondent.
15

16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in her official capacity as the
19 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

20 2. On or about May 23, 2013, the Board received an application for a Pharmacist license
21 from Donny James Weinberg ("Respondent"). On or about May 10, 2013, Respondent certified
22 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
23 application. The Board denied the application on June 19, 2013. On or about July 2, 2013 the
24 Board issued an updated letter denying the application based on a pending investigation.

25 3. On or about September 29, 2010 the Board issued Intern Pharmacist Registration No.
26 INT 26871, to Respondent. Respondent's Intern Pharmacist Registration will expire on
27 September 30, 2014, unless renewed.
28

STATUTORY PROVISIONS

4. Section 475 provides in relevant part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

5. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

6. Business and Professions Code ("Code") section 4301 provides, in pertinent part;

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

7. Section 4301 provides in relevant part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct

Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(p) Actions or conduct that would have warranted denial of a license.

9. Section 4022 provides in relevant part:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

10. Section 4060 provides in relevant part:

No person shall possess any controlled substance, furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, issued by a certified... a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2.

1 **CONTROLLED SUBSTANCES**

2 11. "Phentermine" is designated a Schedule IV substance by Health and Safety Code
3 section 11055(f)(3).

4 **FACTUAL ALLEGATIONS**

5 12. In 2010 Respondent was working as a pharmacist intern at a hospital pharmacy.
6 Drugs dispensed by the pharmacy but not administered to patients are returned to the pharmacy
7 in a drug return bin. Between approximately December 2010 and April 2012 Respondent
8 diverted, took, stole, and self-administered Phentermine without a lawful prescription.
9 Respondent obtained the Phentermine by taking the drug from the hospital's drug return bin.
10 Respondent self-administered the drug and was under the influence of the drug while performing
11 the duties, obligations and responsibilities of a pharmacist intern.

12 **FIRST CAUSE FOR DENIAL**

13 **(Self-Administration of Dangerous Drug)**

14 13. Respondent's application is subject to denial pursuant to Code sections,
15 480 (a)(3)(A) and 4301(h) in that Respondent committed unprofessional conduct by self-
16 administering a dangerous drug without a prescription, an act which if done by a licensee would
17 be grounds for revocation or suspension of a pharmacist license.

18 14. Paragraph 12 is incorporated herein as though set forth at length. Respondent self-
19 administered the dangerous drug phentermine from at least December 2010 to April 2012.
20 Respondent did not possess a lawful prescription for the dangerous drug.

21 **SECOND CAUSE FOR DENIAL**

22 **(Unprofessional Conduct-Dishonest Acts)**

23 15. Respondent's application is subject to denial pursuant to Code sections 480(a)(3) and
24 4301(f) in that Respondent committed acts involving dishonesty and deceit.

25 16. Paragraph 12 is incorporated herein as though set forth at length. Respondent
26 diverted, took, stole or removed the dangerous drug phentermine from the drug return bin at his
27 place of employment and self-administered the drug while performing and discharging the duties,
28 responsibilities and obligations of a registered pharmacist intern with the intent to substantially

1 benefit Respondent. These actions would be cause for revocation or suspension of a pharmacist
2 license.

3 **THIRD CAUSE FOR DENIAL**

4 **(Unprofessional Conduct- Possession of Dangerous Drugs)**

5 17. Respondent's application is subject to denial pursuant to Code sections 480 (a)(3)(A),
6 4060 and 4301(j) in that Respondent possessed a dangerous drug without a lawful prescription.

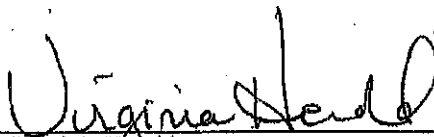
7 18. Paragraph 12 is incorporated herein as though set forth at length. Respondent
8 possessed the dangerous drug Phentermine without a lawful prescription.

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. Denying the application of Donny James Weinberger for a Pharmacists License;
13 2. Taking such other and further action as deemed necessary and proper.

14
15
16 DATED: 12/12/13


Virginia Herold
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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