

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

In the Matter of the Accusation Against:

KYLE BERTRAND ROOTSAERT
16834 Train Station Court
Lathrop, CA 95330

Pharmacist License No. RPH 49390

Respondent.

Case No. 4806

OAH No. 2013120783

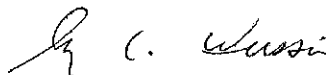
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 19, 2014.

It is so ORDERED on November 12, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

KYLE BERTRAND ROOTSAERT
Lathrop, California, 95330

Original Pharmacist License No. RPH 49390

Respondent.

Case No. 4806

OAH No. 2013120783

PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on September 15, 2014, in Sacramento, California.

Phillip Arthur, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Kyle Bertrand Rootsart (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 15, 2014.

FACTUAL FINDINGS

Procedural Background and License History

1. On April 1, 1997, the Board issued Original Pharmacist License Number RPH 49390 to respondent to practice pharmacy in California. Respondent's license was in full force and effect at all times relevant to this matter. Respondent's license will expire on June 30, 2016, unless renewed or revoked.

2. On November 4, 2013, complainant, acting in her official capacity, filed the Accusation against respondent. The Board seeks to discipline respondent's license based upon discipline imposed against respondent's Utah Pharmacist license, by the Utah Division of Occupational and Professional Licensing (Utah Division or Division).

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Out-of-State Disciplinary Action

4. On March 29, 2012, respondent entered into a Stipulation and Order (Stipulation) with the Utah Division in Case No. DOPL 2009-219, which was approved and adopted by the Director of the Utah Division, on April 11, 2012. By the terms of the Stipulation, respondent agreed that the following relevant facts as set forth in the Stipulation, were true and correct:

- a. On or about September 22, 2005, respondent submitted an application to the Division for Roots Pharmaceuticals, Inc., ("RPI"), doing business as a class "A" retail pharmacy. Respondent subsequently withdrew this application.
- b. On or about October 31, 2005, Respondent submitted a second application for licensure for RPI to conduct business as a class "A" retail pharmacy. This application listed Respondent as the pharmacist-in-charge and listed Respondent as the owner of RPI.
- c. On or about December 13, 2005, RPI was issued a license as a class "A" retail pharmacy. The Division inspected the pharmacy on the second floor of an office building and issued a class "A" retail pharmacy license. However, Respondent should have applied for and been issued a license as a class "B" closed door pharmacy license because RPI has not and does not operate as a retail pharmacy open for the public to enter.
- d. As part of Respondent's application for RPI submitted to the Division, Respondent, acknowledged in a "Controlled Substance Database Questionnaire" dated October 27, 2005, that he was the pharmacist-in-charge and that he had read and understood the Utah Controlled Substance Act and that he agreed to submit all required data regarding every prescription for a controlled substance dispensed in accordance with Sections 58-37-7.5 of the Utah Controlled Substance Act.

- e. On or about March 1, 2007, a Division Investigator completed an on-line medical questionnaire from the internet website www.real-medical.com. The investigator never met with, or talked to, a prescribing practitioner. The order submitted by the investigator requested thirty (30) 50 mg. Tramadol tablets.
- f. On or about March 5, 2007, the Division Investigator received a shipment that appeared to be thirty (30), 50 mg. Tramadol tablets and the package indicated it had been shipped from the RPI... The prescription medication further identified Alan Saltzman as the prescribing practitioner. Alan Saltzman is not licensed as a medical practitioner within the State of Utah and is not licensed to prescribe medicine within the State of Utah.
- g. On or about March 7, 2007, the Division Investigator interviewed Respondent at RPI. During this interview, Respondent acknowledged that he had entered into a business relationship with several on-line interment facilitator companies ("IFC")... Respondent acknowledged that these IFC's contracted with various prescribing practitioners who received each patient's on-line questionnaires and then issued prescriptions for requested medications... Respondent acknowledged that Roots Pharmaceuticals was only licensed in Utah as a retail pharmacy, but that Respondent would dispense and ship medications to other states once RPI received a prescription from IFC.

[¶...¶]

- i. On or about March 7, 2007, the Division Investigator observed an employee of RPI retrieving electronic prescriptions from an IFC. This employee logged into a secure portal website of the IFC where she retrieved and printed out prescriptions and prescriptions labels that had been reviewed, approved and transmitted by the contracted physician and further transmitted by the IFC. At the same time, Respondent's spouse accessed the Respondent's front door by inputting an access code into the electronic front door lock. Mrs. Rootsart entered through an open door leading directly into the pharmacy... Both Mrs. Rootsart and the employee who was retrieving the electronic prescriptions were unlicensed.

- j. Respondent, acknowledged that Fioricet was dispensed from RPI and that he believed it was not a controlled substance.¹ Respondent did not maintain records of Fioricet as part of a controlled substance inventory... Respondent was also questioned about an order received for Adderall (a scheduled II controlled substance). He explained that this medication had been ordered and dispensed pursuant to a valid written description for a friend. However, no information for this prescription was submitted to the Utah Controlled Substance Database.
- k. During the years of 2006, 2007, and 2008, the Division received at least four complaints from other state licensing agencies alleging RPI had shipped prescription medications into their jurisdictions without having the proper pharmacy license.
- l. On or about April 4, 2007, the Division obtained copies of 27 different prescriptions for Utah residents which had been dispensed by RPI from on or about November 22, 2006, through March 6, 2007. Six of these prescriptions were for Fioricet.
- m. The above described prescriptions dispensed by the RPI were issued by practitioners who were not licensed to practice medicine in the State of Utah. Respondent did not verify whether those prescribing practitioners were licensed in the State of Utah.
- n. On or about December 10, 2007, Respondent, as the pharmacist-in-charge for RPI, submitted a completed "Pharmacy Self Inspection Report" which had initially been sent to Respondent by the Division pursuant to Utah Code Ann. § 58-17b-103. In his report, Respondent declared that on behalf of RPI he had submitted all required information to the Controlled Substance Database with proper documentation kept on site. Further, Respondent answered "Not Applicable" when asked whether "The facility is not

¹ A footnote in the Stipulation reads: "Fioricet is the brand name for the combination drug produce containing acetaminophen, butalbital, and caffeine. There are also generic versions of the same combination. The term 'Fioricet' as used in this Stipulation includes generic versions of the same combination containing acetaminophen, butalbital, and caffeine."

affiliated with and does not dispense prescription medications for internet pharmacy sites or third party processor unless authorized to do so.”

5. The Utah Division determined that respondent’s conduct constituted unprofessional conduct as defined in Utah Code Annotated, sections 58-1-501(1)(f); (2)(g); (m) and (4) and 58-37-8(8)(a)(i) and Utah Administrative Code sections R156-1-(601)(1) and R156-17b-502(11). As a result of the facts set forth in the Stipulation, respondent’s license to practice pharmacy and to dispense controlled substances in the State of Utah was suspended. The suspension was stayed and respondent was placed on five years of probation, subject to various terms and conditions.

Evidence of Mitigation or Rehabilitation

6. There was no evidence of mitigation or rehabilitation offered by respondent. At hearing, respondent stated that he could not discuss the circumstances which resulted in the Stipulation due to a “gag order.” There is no confidentiality provision in the Stipulation.

Discussion

7. Pursuant to California Code of Regulations Title 16, section 1760, the Board has adopted “Disciplinary Guidelines,” which are to be considered when determining the appropriate discipline to be imposed on a licensee. When determining the appropriate discipline to impose on a licensee based on disciplinary action taken by another jurisdiction, the Board evaluates the extent of the respondent’s compliance with the terms of that discipline, the nature of the conduct for which the discipline was imposed, and other relevant factors set forth in the Disciplinary Guidelines, which include the following:

1. Actual or potential harm to the public;
2. Actual or potential harm to any consumer;
3. Prior disciplinary record, including level of compliance with disciplinary order(s);
4. Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s);
5. Number and/or variety of current violations;
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration;
7. Aggravating evidence;
8. Mitigating evidence;
9. Rehabilitation evidence;
10. Compliance with terms of any criminal sentence, parole, or probation;
11. Time passed since the act(s) or offense(s);
12. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct

committed by another, the respondent had knowledge of or knowingly participated in such conduct;

15. Financial benefit to the respondent from the misconduct.

8. Applying the Board's criteria, respondent has been licensed since 1997, with no history of discipline prior to the 2012 Stipulation. The facts surrounding respondent's conduct as a pharmacist in Utah are troubling. As the owner and pharmacist-in-charge of RPI, respondent dispensed controlled substances to individuals based upon on-line questionnaires. The controlled substances were prescribed by practitioners who were not licensed to practice in Utah. Respondent employed an unlicensed pharmacy technician and allowed his wife, who was not licensed, to enter the pharmacy. Respondent also failed to maintain and submit the proper paperwork for the distribution of the controlled substances. The Utah Division concluded, and respondent admitted, that his conduct would have constituted unprofessional conduct, if the matter proceeded to hearing. Respondent was placed on probation for five years, subject to various terms and conditions. He has completed two years of his probation. Respondent offered no evidence of mitigation or rehabilitation.

The Board seeks revocation of respondent's license, stayed, with five years of probation subject to standard and optional terms of probation. When the evidence is considered, imposing a commensurate level of discipline on respondent's license to that imposed by the Utah Division is appropriate and will ensure the protection of the health, safety, and welfare of the public.

Costs

9. Complainant has requested reimbursement for costs incurred by the Board in connection with the investigation and prosecution of this matter, in the total amount of \$3,120. The costs were certified in the manner provided by Business and Professions Code section 125.3, subdivision (c), as set forth in the Certification of Prosecution Costs and Declaration of Phillip Arthur, dated August 14, 2014.

10. As set forth in Legal Conclusion 6, the Board's request that respondent reimburse \$3,120 for its investigation and prosecution costs is reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4300, the Board may suspend or revoke a license.

2. Pursuant to Business and Professions Code section 4301, subdivision (n), the Board may take disciplinary action against a licensee for unprofessional conduct, which includes "[t]he revocation, suspension, or other discipline by another state of a license to

practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.”

3. Cause for discipline of respondent’s pharmacist license was established by clear and convincing evidence to a reasonable certainty pursuant to Business and Professions Code section 4301, subdivision (n), by reason of Factual Findings 4 and 5.

4. Considering all the evidence, placing respondent’s license on probation for a period of five years, subject to various terms and conditions, will ensure the protection of the health, safety, and welfare of the public.

Costs

5. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. As set forth in Factual Findings 9 and 10, the Board seeks reimbursement for costs in the total amount of \$3,120. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee’s subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct.

Taking into account the above factors, the costs of the investigation and prosecution are appropriate. The time spent appears to be reasonable and the activities were necessary to the development and presentation of the case. Respondent offered no evidence regarding his ability to pay costs. Under all of the facts and circumstances, and considering the Board’s obligation to protect the public through licensing actions such as this one, assessment of costs in the amount of \$3,120 against respondent is reasonable and appropriate.

ORDER

License number RPH 49390, issued to respondent Kyle Bertrand Rootsart is **REVOKED**; however, the revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

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1. **Obey All Laws:** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Pharmacy license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.

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

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

4. **Cooperate with Board Staff:** Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

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

6. **Notice to Employers:** During the period of probation, respondent shall notify all present and prospective employers of this decision, OAH case number 2013120783 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read this decision in OAH case number 2013120783, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of this decision in OAH case number 2013120783, in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read this decision in OAH case number 2013120783 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

7. **No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant:** During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. **Reimbursement of Board Costs:** As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$3,120. Respondent shall pay the Board \$3,120 within 120 days of the effective date of this Decision. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline as directed shall be considered a violation of probation.

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

9. **Probation Monitoring Costs:** Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. **Status of License:** Respondent shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

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

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

12. **Notification of a Change in Name, Residence Address, Mailing Address or Employment:** Respondent shall notify the board in writing within ten (10) days of any

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

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

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

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

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

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

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

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed

against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. **Completion of Probation:** Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

16. **Remedial Education:** Within ninety (90) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to Pharmacy Law. The program of remedial education shall consist of at least 40 hours, which shall be completed within one year of the effective date of this decision. The cost will be at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

Failure to timely submit or complete the approved remedial education shall be considered a violation of probation. The period of probation will be automatically extended until such remedial education is successfully completed and written proof, in a form acceptable to the board, is provided to the board or its designee.

Following the completion of each course, the board or its designee may require the respondent, at his own expense, to take an approved examination to test the respondent's knowledge of the course. If the respondent does not achieve a passing score on the examination, this failure shall be considered a violation of probation. Any such examination failure shall require respondent to take another course approved by the board in the same subject area.

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

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

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

Within thirty (30) days of the effective date of this decision, respondent shall have his supervisor submit notification to the board in writing stating that the supervisor has read the decision in OAH case number 2013120783 and is familiar with the required level of supervision as determined by the board or its designee. It shall be the respondent's responsibility to ensure that his or her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause the direct

supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

If respondent changes employment, it shall be the respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read this decision in OAH case number 2013120783 and is familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and his license shall be automatically suspended until the board or its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

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

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

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

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he 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.

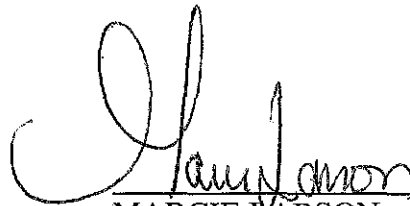
18. No Ownership of Licensed Premises: Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the

board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

19. **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.

DATED: October 14, 2014.

A handwritten signature in cursive script, appearing to read "Marcie Larson", written over a horizontal line.

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

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10 **BEFORE THE
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STATE OF CALIFORNIA**

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12 In the Matter of the Accusation Against:

Case No. 4806

13 **KYLE BERTRAND ROOTSAERT**
16834 Train Station Court
14 Lathrop, CA 95330

A C C U S A T I O N

15 **Original Pharmacist License No. RPH 49390**

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, Department of Consumer Affairs.

22 2. On or about April 1, 1997, the Board of Pharmacy issued Original Pharmacist License
23 Number RPH 49390 to Kyle Bertrand Rootsart (Respondent). The Original Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2014, unless renewed.

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1 **CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct—Discipline by Another State)**

3 10. Respondent is subject to disciplinary action under section 4301(n) of the Code in that
4 Respondent's Utah Pharmacist License has been disciplined by the Utah Division of Occupational
5 and Professional Licensing. The circumstances are as follows:

6 11. On or about March 29, 2012, Respondent, through counsel, entered into a Stipulation
7 and Order for the Division of Occupational and Professional Licensing, Department of
8 Commerce, State of Utah ("Division"), case no. DOPL 2009-219. Among the terms of the
9 settlement, Respondent's license was suspended, stayed, and placed on probation for five years,
10 and Respondent was required to pay an administrative fine of \$12,000.00. Within the stipulation,
11 Respondent admitted that his conduct (as described in the stipulation) would constitute
12 unprofessional conduct in that Respondent issued a prescription drug based on an online
13 questionnaire, aided in the unlicensed practice of medicine, employed an unlicensed pharmacy
14 technician and allowed an unauthorized person into the pharmacy, was grossly negligent in the
15 practice of pharmacy, and unlawfully dispensed a controlled substance.

16 **PRAYER**

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

- 19 1. Revoking or suspending Original Pharmacist License Number RPH 49390, issued to
20 Kyle Bertrand Rootsart.;
- 21 2. Ordering Kyle Bertrand Rootsart to pay the Board of Pharmacy the reasonable costs
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code
23 section 125.3; and

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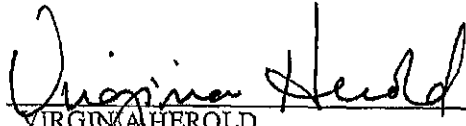
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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/13



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

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