

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

In the Matter of the Accusation Against:

**RYAN D. RACINO
4145 Iowa Street, Apt. 1
San Diego, CA 92104**

Pharmacist License No. RPH 63651

Respondent.

Case No. 5096

OAH No. 2014100782

DECISION AND ORDER

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

This Decision shall become effective on October 16, 2015.

It is so ORDERED on September 16, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KAREN L. GORDON
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Attorneys for Complainant

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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 **RYAN D. RACINO**
13 **4145 Iowa Street, Apt. 1**
14 **San Diego, CA 92104**

15 **Pharmacist License No. RPH 63651**

16 Respondent.

Case No. 5096

OAH No. 2014100782

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 **PARTIES**

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Karen L. Gordon, Deputy Attorney
24 General.

25 2. Ryan D. Racino (Respondent) is represented in this proceeding by attorney Art
26 Bunce, whose address is 101 State Place, Suite C, P.O. Box 1416, Escondido, CA 92033-1416.

27 3. On or about February 4, 2010, the Board of Pharmacy issued Pharmacist License No.
28 RPH 63651 to Ryan D. Racino (Respondent). The Pharmacist License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 5096 and will expire on
2 October 31, 2015, unless renewed.

3 JURISDICTION

4 4. Accusation No. 5096 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on August 26, 2014.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 5096 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 5096. Respondent also has carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
13 Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
16 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
17 to the issuance of subpoenas to compel the attendance of witnesses and the production of
18 documents; the right to reconsideration and court review of an adverse decision; and all other
19 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 5096, agrees that cause exists for discipline and hereby surrenders his Pharmacist License
25 No. RPH 63651 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Pharmacist License without further process.

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ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 63651, issued to Respondent Ryan D. Racino, is surrendered and accepted by the Board of Pharmacy.

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

2. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. Respondent understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent may not apply for any license, permit, or registration from the Board for three years from the effective date of this decision. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the accusation shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to taking and passing the California Pharmacist Licensure Examination prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.

5. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this Decision, the investigation and prosecution costs in the amount of \$6,324.50 shall be paid to the Board prior to issuance of a new or reinstated license, according to a payment schedule as directed by the Board.

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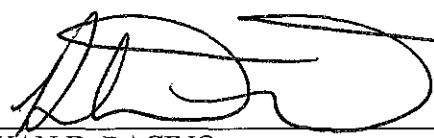
1 6. If Respondent should ever apply or reapply for a new license or certification, or
2 petition for reinstatement of a license, by any other health care licensing agency in the State of
3 California, all of the charges and allegations contained in Accusation, No. 5096 shall be deemed
4 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
5 other proceeding seeking to deny or restrict licensure.

6 **ACCEPTANCE**

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

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13 DATED:

8/12/2015




RYAN D. RACINO
Respondent

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18 **APPROVAL**

19 I have read and fully discussed with Respondent Ryan D. Racino the terms and conditions
20 and other matters contained in this Stipulated Surrender of License and Order. I approve its form
21 and content.

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23 DATED:

Aug. 18, 2015



ART BUNCE, Esq.
Attorney for Respondent

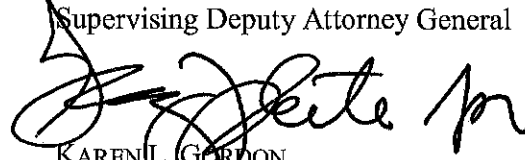
ENDORSEMENT

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

Dated: 8-12-15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5096

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 KAREN L. GORDON
Deputy Attorney General
4 State Bar No. 137969
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BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

Case No. 5096

12 **RYAN D. RACINO**
13 **4145 Iowa Street, Apt. 1**
14 **San Diego, CA 92104**

A C C U S A T I O N

15 **Pharmacist License No. RPH 63651**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 4, 2010, the Board of Pharmacy issued Pharmacist License
23 Number RPH 63651 to Ryan D. Racino (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on October 31, 2015,
25 unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states, in pertinent part:

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

5. Section 118 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Section 4059 of the Code provides, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

7. Section 4060 of the Code states, in pertinent part:

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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist . . .

8. Section 4301 of the Code states, in pertinent 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.

...

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

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

...

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

9. Section 4306 of the Code provides that it shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, . . . any provision or term of this article. . .

10. Section 4324 of the Code states, in pertinent part:

(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery . . .

11. Health and Safety Code section 11150 states, in pertinent part:

No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor, . . . or pharmacist, . . . a registered nurse, . . . a certified nurse-midwife, . . . a physician assistant, . . . a naturopathic doctor, . . . or an optometrist, . . . or an out-of-state prescriber, . . . shall write or issue a prescription.

12. Health and Safety Code section 11157 states:

No person shall issue a prescription that is false or fictitious in any respect.

13. Health and Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

14. Health and Safety Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

15. Health and Safety Code section 11350 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment . . .

1 **COST RECOVERY**

2 16 Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **DRUGS**

9 17. Lorazepam is a Schedule IV controlled substance as designated by Health and Safety
10 Code section 11057, subdivision (d)(16), and is a dangerous drug pursuant to Business and
11 Professions Code section 4022.

12 18. Phentermine is a Schedule IV controlled substance as designated by Health and Safety
13 Code section 11057, subdivision (f), and is a dangerous drug pursuant to Business and Professions
14 Code section 4022.

15 **FACTUAL BACKGROUND**

16 19. On or about January 17, 2011, Respondent began working as a Pharmacist at
17 Community Walgreens (Store Number 13434) located at 640 University Avenue, San Diego, CA
18 92103.

19 20. On or about February 14, 2011, while on duty working as a pharmacist at Walgreens,
20 Respondent received a facsimile of his own prescription for Phentermine 37.5 mg #30 with two
21 refills and processed it under RX 152835.

22 21. On or about February 19, 2011, Respondent, while on duty working as a pharmacist at
23 Walgreens, received an original copy of the same prescription for Phentermine 37.5 mg #30 with
24 two refills. Respondent then processed this prescription for Phentermine as a new prescription
25 under RX 156475 which enabled him to receive three more refills without a prescriber's
26 authorization.

27 22. On or about November 19, 2012, a refill request for Respondent's Lorazepam
28 prescription was sent to Dr. C, who denied the refill authorization for Respondent's prescription.

23. On or about November 26, 2012, Respondent, while on duty working as a pharmacist at Walgreens, added three refills (60 tablets each) to his own prescription for Lorazepam after it was denied by prescribing physician, Dr. C.

24. On or about November 29, 2012, Respondent was questioned by loss prevention personnel regarding his refilling of his Lorazepam prescription without authorization.

25. On or about December 4, 2012, Respondent was terminated from his employment with Walgreens for adding refills to his Lorazepam prescription himself after it was denied by the prescribing doctor.

FIRST CAUSE FOR DISCIPLINE

(Obtained Controlled Substances by Fraud)

26. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(f) in that on or about February 19, 2011, while on duty working as a pharmacist at Walgreens on University Avenue in San Diego, Respondent obtained controlled substances by fraud when he processed his own prescription for Phentermine twice; first under RX 152835 when he received the prescription by facsimile on or about February 14, 2011 and then again under RX 156475 when Respondent received the original prescription on or about February 19, 2011, which enabled him to receive three refills without a prescriber's authorization in violation of Health and Safety Code section 11173 as set forth in paragraphs 19 to 25, above.

27. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4301(f) in that on or about November 26, 2012, while on duty working as a pharmacist at Walgreens on University Avenue in San Diego, Respondent obtained controlled substances by fraud when he added three refills (60 tablets each) to his own prescription for Lorazepam after it was denied by prescribing physician, Dr. C in violation of Health and Safety Code section 11157 as set forth in paragraphs 19 to 25, above.

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2 **FORTH CAUSE FOR DISCIPLINE**

3 (Violated Pharmacy Laws)

4 32. Respondent is subject to disciplinary action for unprofessional conduct under Code
5 sections 4301 (o) and 4306 in that on or about February 19, 2011, while on duty working as a
6 pharmacist at Walgreens on University Avenue in San Diego, Respondent possessed the controlled
7 substance Phentermine in violation of laws and regulations governing pharmacy in violation of
8 Code section 4060 and Health and Safety Code section 11350 as set forth in paragraphs 19 to 25,
9 above.

10 33. Respondent is subject to disciplinary action for unprofessional conduct under Code
11 sections 4301 (o) and 4306 in that on or about November 26, 2012, while on duty working as a
12 pharmacist at Walgreens on University Avenue in San Diego, Respondent possessed the controlled
13 substance Lorazepam in violation of laws and regulations governing pharmacy in violation of Code
14 section 4060 and Health and Safety Code section 11350 as set forth in paragraphs 19 to 25, above.

15
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 Pharmacist License Number RPH 63651, issued to Ryan D.
20 Racino;

21 2. Ordering Ryan D. Racino to pay the Board of Pharmacy the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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

DATED: 8/12/14 Virginia Herold

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

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