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

In the Matter of the Accusation Against:

Case No. 5165

OAH No. 2014070550

DOROTHY A. NEELY

915 Cerritos Road Palm Springs, CA 92262

Pharmacy Technician Registration No. RPH 23354

Respondent.

# **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 November 19, 2014.

It is so ORDERED on November 14, 2014.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STAN C. WEISSER Board President

1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California JAMES M. LEDAKIS Supervising Deputy Attorney General ADRIAN R. CONTRERAS Deputy Attorney General State Bar No. 267200 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2634 Facsimile: (619) 645-2061 E-mail: Adrian.Contreras@doj.ca.gov Attorneys for Complainant	
9		RE THE
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
11		CALIFORNIA
12	In the Matter of the Accusation Against:	Case No. 5165
13	DOROTHY A. NEELY	OAH No. 2014070550
14	915 Cerritos Road Palm Springs, CA 92262	
15	Pharmacist License No. RPH 23354	STIPULATED SURRENDER OF LICENSE AND ORDER
16	Respondent.	
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17		
17 18	In the interest of a prompt and speedy settle	ement of this matter, consistent with the public
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18		armacy of the Department of Consumer Affairs,
18 19	interest and the responsibility of the Board of Ph	armacy of the Department of Consumer Affairs, ted Surrender and Disciplinary Order which will
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18   19   20   21   22   23   24	interest and the responsibility of the Board of Photose the parties hereby agree to the following Stipular be submitted to the Board for approval and adopose PAR  1. Virginia Herold (Complainant) is the She brought this action solely in her official capa	armacy of the Department of Consumer Affairs, ted Surrender and Disciplinary Order which will tion as the final disposition of the Accusation.  ETIES  Executive Officer of the Board of Pharmacy.  acity and is represented in this matter by Kamala
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- 2. Respondent Dorothy A. Neely ("Respondent") is represented in this proceeding by attorney Charlotte A. Graham, Esq., of Horton Knox Carter & Foote, LLP, whose address is: 195 South 2nd Street, P.O. Box 1439, Brawley, CA 92227.
- 3. On or about February 4, 1964, the Board of Pharmacy issued Pharmacist License No. RPH 23354 to Dorothy A. Neely (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5165 and will expire on March 31, 2015, unless renewed.

## **JURISDICTION**

4. Accusation No. 5165 was filed before the Board of Pharmacy (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 June 30, 2014.

Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 5165 is attached as Exhibit A and incorporated by reference.

# **ADVISEMENT AND WAIVERS**

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5165. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

# **CULPABILITY**

- 8. Respondent understands and agrees that the charges and allegations in Accusation No. 5165, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacist License No. RPH 23354.
- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.
- 10. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacist License without further process.

#### CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of License and 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 Surrender of License and 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.

14. 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 Order:

# **ORDER**

IT IS HEREBY ORDERED that Pharmacist License No. RPH 23354, issued to Respondent Dorothy A. Neely, 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 her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure.
- 5. 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 she 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 before the issuance of a new license. Respondent is required to report this surrender as disciplinary action.
- 6. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$3,579.00 before issuance of a new or reinstated license.

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## ACCEPTANCE

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

I have read and fully discussed with Respondent Dorothy A. Neely the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 10/13/2014

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.

[0/17/2014

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California JAMES M. LEDAKIS

Supervising Deputy Attorney General

ADRIAN R. CONTRERAS **Deputy Attorney General** Attorneys for Complainant

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Exhibit A

Accusation No. 5165

1	Kamala D. Harris	
2	Attorney General of California JAMES M. LEDAKIS	
3	Supervising Deputy Attorney General ADRIAN R. CONTRERAS	
4	Deputy Attorney General State Bar No. 267200	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2634 Facsimile: (619) 645-2061	
8	E-mail: Adrian.Contreras@doj.ca.gov Attorneys for Complainant	
9	BEFORE THE	
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
11		CALIFORNIA
12	In the Matter of the Accusation Against:	Case No. 5165
13	DOROTHY A. NEELY	
14	915 Cerritos Road Palm Springs, CA 92262	ACCUSATION
15	Pharmacist License No. RPH 23354	
16	Respondent.	
17		
18	Complainant alleges:	
19	PAR	TIES
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 February 4, 1964, the Board of Pharmacy issued Pharmacist License	
23	Number RPH 23354 to Dorothy A. Neely (Respondent). The Pharmacist License was in full	
24	force and effect at all times relevant to the charges brought herein and will expire on March 31,	
25	2015, 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:
  - "(a) Every license issued may be suspended or revoked.
- "(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
  - "(1) Suspending judgment.
  - "(2) Placing him or her upon probation.
  - "(3) Suspending his or her right to practice for a period not exceeding one year.
  - "(4) Revoking his or her license.
- "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
- "(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.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

- "(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."
  - 5. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

#### STATUTORY PROVISIONS

- 6. Section 480 of the Code states:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- "(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

- "(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.
- "(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.
- "(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.
- "(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."
  - 7. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

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

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"(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.

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"(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.

"...

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

1	""		
2	8. Section 4022 of the Code states		
3	"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in		
4	humans or animals, and includes the following:		
5	"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without		
6	prescription," "Rx only," or words of similar import.		
7	"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale		
8	by or on the order of a," "Rx only," or words of similar import, the blank to be filled		
9	in with the designation of the practitioner licensed to use or order use of the device.		
10	"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on		
11	prescription or furnished pursuant to Section 4006."		
12	9. Section 4059 of the Code states:		
13	"(a) A person may not furnish any dangerous drug, except upon the prescription of a		
14	physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section		
15	3640.7. A person may not furnish any dangerous device, except upon the prescription of a		
16	physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section		
17	3640.7		
18	11 11		
19	DRUGS		
20	10. Benazepril is also known by the brand name Lotensin®. It is a dangerous drug under		
21	Code section 4022. It is used to treat hypertension.		
22	COSTS		
23	11. Section 125.3 of the Code states, in pertinent part, that the Board may request the		
24	administrative law judge to direct a licentiate found to have committed a violation or violations		
25	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and		
26	enforcement of the case.		
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# FIRST CAUSE FOR DISCIPLINE

### (Unprofessional Conduct - Act of Moral Turpitude or Dishonesty)

- 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (f) in that Respondent committed theft, an act of moral turpitude or dishonesty. The circumstances are:
- 13. On or about February 22, 2013, Respondent worked as a pharmacist at a CVS Pharmacy in Cathedral City. She unlawfully diverted from the pharmacy benazepril for her own use.

#### **SECOND CAUSE FOR DISCIPLINE**

# (Unprofessional Conduct - Violation of Laws Regulating Controlled Substances and Dangerous Drugs)

- 14. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 12-13.
- 15. Respondent is subject to disciplinary action under Code sections 4301, subdivision (j) in that Respondent violated laws regulating controlled substances and dangerous drugs. The laws include the following:
- a. <u>Code section 4059, subd. (a)</u>: failure to furnish a dangerous drug upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

#### THIRD CAUSE FOR DISCIPLINE

# (Unprofessional Conduct - Act Warranting Denial of Licensure)

- 16. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 12-15.
- 17. Respondent is subject to disciplinary action under section 4301, subdivision (p), in that she committed an act that would have warranted denial of a license by stealing the dangerous drug benazepril from her place of employment, an act enumerated in Code section 480, subdivision (a)(2), which is cause for denial of a license to an applicant who committed an act of dishonesty with the intent to substantially benefit herself or another.

# PRAYER 1 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 2 and that following the hearing, the Board of Pharmacy issue a decision: 3 1. Revoking or suspending Pharmacist License Number RPH 23354, issued to Dorothy 4 A. Neely; 5 Ordering Dorothy A. Neely to pay the Board of Pharmacy the reasonable costs of the 2. 6 investigation and enforcement of this case, pursuant to Business and Professions Code section 7 8 125.3; and Taking such other and further action as deemed necessary and proper. 9 3. 10 6/16/14 DATED: 11 VIRGINIA HEROLD Executive Officer 12 Board of Pharmacy Department of Consumer Affairs 13 State of California Complainant 14 SD2014706969 70863390.doc 15 16 17 18 19 20 21 22 23 24 25 26 27 28