

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

In the Matter of the Accusation Against:

Case No. 5273

**BRETT A. STARK
1433 Bay Street, Apt. #3
Eureka, CA 95501**

Pharmacist License No. RPH 44331

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 December 9, 2015.

It is so ORDERED November 9, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5273

11 **BRETT A. STARK**
12 **1433 Bay Street, Apt. # 3**
13 **Eureka, CA 95501**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Pharmacist License No. RPH 44331**

15 Respondent.

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

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 Joshua A. Room, Supervising Deputy
24 Attorney General.

25 2. Respondent Brett A. Stark ("Respondent") is represented in this proceeding by
26 attorney Robert F. Hahn, whose address is: Law Offices of Gould & Hahn, 2550 Ninth Street,
27 Suite 101, Berkeley, CA 94710 (telephone (510) 665-1800).

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1 RESERVATION

2 10. Admissions made by Respondent herein are only for the purposes of this proceeding,
3 or any other proceedings in which the Board of Pharmacy or other professional licensing agency
4 is involved, and shall not be admissible in any other criminal or civil proceeding.

5 CONTINGENCY

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

15 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
16 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
17 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 44331, issued to Brett A.
3 Stark (Respondent), is revoked. However, the revocation is stayed and Respondent is placed on
4 probation for five (5) years on the following terms and conditions.

5 **1. Suspension**

6 As part of probation, respondent is suspended from the practice of pharmacy as of the
7 effective date of this decision for at least ninety (90) days, and until such time as he is notified in
8 writing by the board or its designee that he has been deemed fit to practice pharmacy safely, and
9 the board or its designee has approved said recommendation.

10 During suspension, respondent shall not enter any pharmacy area or any portion of the
11 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
12 drugs licensed by the board, or any manufacturer, or any place where dangerous drugs and
13 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
14 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
15 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
16 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
17 drugs and controlled substances. Respondent shall not engage in any activity that requires the
18 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
19 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
20 designated representative for any entity licensed by the board.

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

22 **2. Tolling of Suspension**

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

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

6 **3. Pharmacists Recovery Program (PRP)**

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

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

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

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

24 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
25 licensed practitioner as part of a documented medical treatment shall result in the automatic
26 suspension of practice by respondent and shall be considered a violation of probation.

27 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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1 During any such suspension, respondent shall not enter any pharmacy area or any portion of
2 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
3 of drugs licensed by the board, or any manufacturer, or any place where dangerous drugs and
4 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
5 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
6 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
7 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
8 drugs and controlled substances. Respondent shall not engage in any activity that requires the
9 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
10 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
11 designated representative for any entity licensed by the board.

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

13 **4. Prescription Coordination and Monitoring of Prescription Use**

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

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

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

12 During any such suspension, respondent shall not enter any pharmacy area or any portion of
13 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
14 of drugs licensed by the board, or any manufacturer, or any place where dangerous drugs and
15 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
16 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
17 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
18 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
19 drugs and controlled substances. Respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
21 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
22 designated representative for any entity licensed by the board.

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

24 **5. Ethics Course**

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

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

3 **6. Obey All Laws**

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

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

- 7 • an arrest or issuance of a criminal complaint for violation of any provision of the
8 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
9 substances laws
- 10 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
11 criminal complaint, information or indictment
- 12 • a conviction of any crime
- 13 • discipline, citation, or other administrative action filed by any state or federal agency
14 which involves respondent's pharmacist license or which is related to the practice of
15 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
16 for any drug, device, or controlled substance.

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

18 **7. Random Drug Screening**

19 Respondent, at his own expense, shall participate in random testing, including but not
20 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
21 screening program as directed by the board or its designee. Respondent may be required to
22 participate in testing for the entire probation and the frequency of testing will be determined by
23 the board or its designee. At all times, respondent shall fully cooperate with the board or its
24 designee, and shall, when directed, submit to such tests and samples for the detection of alcohol,
25 narcotics, hypnotics, dangerous drugs or controlled substances as the board or its designee may
26 direct. Failure to timely submit to testing as directed shall be considered a violation of probation.

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1 Upon request of the board or its designee, respondent shall provide documentation from a
2 licensed practitioner that the prescription for a detected drug was legitimately issued and is a
3 necessary part of treatment of the respondent. Failure to timely provide such documentation shall
4 be considered a violation of probation. Any confirmed positive test for alcohol or for any drug
5 not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall
6 be considered a violation of probation and shall result in the automatic suspension of practice by
7 respondent. Respondent may not resume practice until notified by the board in writing.

8 During any such suspension, respondent shall not enter any pharmacy area or any portion of
9 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
10 of drugs licensed by the board, or any manufacturer, or any place where dangerous drugs and
11 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
12 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
13 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
14 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
15 drugs and controlled substances. Respondent shall not engage in any activity that requires the
16 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
17 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
18 designated representative for any entity licensed by the board.

19 Failure to comply with any such suspension shall be considered a violation of probation.

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

21 Respondent shall completely abstain from the possession or use of alcohol, controlled
22 substances, dangerous drugs or their associated paraphernalia except when the drugs are lawfully
23 prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of
24 the board or its designee, respondent shall provide documentation from the licensed practitioner
25 that the prescription for the drug was legitimately issued and is a necessary part of the treatment
26 of the respondent. Failure to timely provide such documentation shall be considered a violation
27 of probation. Respondent shall ensure that he is not in the same physical location as individuals
28 who are using illicit substances even if respondent is not personally ingesting the drugs.\

1 Any possession or use of alcohol, controlled substances, or their associated paraphernalia
2 not supported by the documentation timely provided, and/or any physical proximity to persons
3 using illicit substances, shall be considered a violation of probation.

4 **9. Reimbursement of Board Costs**

5 As a condition precedent to successful completion of probation, respondent shall pay to the
6 board its costs of investigation and prosecution in the amount of \$10,948.50. Respondent shall be
7 permitted to pay these costs in a payment plan approved by the board or its designee, so long as
8 payment is completed no later than four (4) years after the effective date of this decision. There
9 shall be no deviation from this schedule absent prior written approval by the board or its designee.
10 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

13 **10. Probation Monitoring Costs**

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

18 **11. Status of License**

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

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

26 **12. Continuing Education**

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

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

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

9 **14. Report to the Board**

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

18 **15. Interview with the Board**

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

24 **16. Cooperate with Board Staff**

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

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1 **17. Notification of a Change in Employment, Name, Address(es), or Telephone**

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

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

9 **18. Employment Requirement; Tolling of Probation**

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

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

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

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

19. **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.

20. **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 case number 5273 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 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 the decision in case number 5273 and is familiar with the level of supervision as determined by the board.

1 Respondent shall not practice pharmacy and his license shall be automatically suspended
2 until the board or its designee approves a new supervisor. Failure to cause the direct supervisor
3 and the pharmacist-in-charge to submit timely acknowledgements to the board shall be
4 considered a violation of probation.

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

6 During any such suspension, respondent shall not enter any pharmacy area or any portion of
7 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
8 of drugs licensed by the board, or any manufacturer, or any place where dangerous drugs and
9 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do
10 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or
11 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee
12 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous
13 drugs and controlled substances. Respondent shall not engage in any activity that requires the
14 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
15 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
16 designated representative for any entity licensed by the board.

17 Failure to comply with any such suspension shall be considered a violation of probation.

18 **21. Notice to Employers**

19 During the period of probation, respondent shall notify all present and prospective
20 employers of the decision in case number 5273 and the terms, conditions and restrictions imposed
21 on respondent by the decision, as follows:

22 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
23 respondent undertaking any new employment, respondent shall cause his direct supervisor,
24 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
25 tenure of employment) and owner to report to the board in writing acknowledging that the listed
26 individual(s) has/have read the decision in case number 5273, and terms and conditions imposed
27 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
28 submit timely acknowledgment(s) to the board.

1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 5273 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 5273
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

18 22. Violation of Probation

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

24 If respondent violates probation in any respect, the board, after giving respondent notice
25 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
26 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
27 probation, the board shall have continuing jurisdiction and the period of probation shall be
28 automatically extended until the petition to revoke probation or accusation is heard and decided.

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

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

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

14 **24. Completion of Probation**

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

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

18
19 ACCEPTANCE

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will
22 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
23 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
24 Board of Pharmacy.

25
26 DATED: _____
27 **BRETT A. STARK**
28 Respondent

09/01/2015 10:00 AM

Case 5273 - STARK P. 019
STIPULATED

23. 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 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.

24. Completion of Probation

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

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

ACCEPTANCE

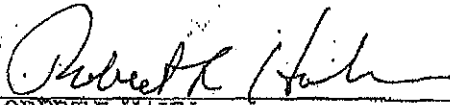
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,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

DATED: 9/09/15 
BRETT A. STARK
Respondent

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

DATED: 9-12-15


ROBERT F. HAHN
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

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1 I have read and fully discussed with Respondent Brett A. Stark the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: _____

ROBERT F. HAHN
Attorney for Respondent

7 ENDORSEMENT

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

10 Dated: 9/16/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

14 
15 JOSHUA A. ROOM
16 Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5273

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **BRETT A. STARK**
12 **1433 Bay St., Apt 3**
13 **Eureka, CA 95501**

14 **Pharmacist License No. RPH 44331**

15 Respondent.

Case No. 5273

QAH No. 2015031056

FIRST AMENDED ACCUSATION

16
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
20 official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about August 5, 1991, the Board of Pharmacy issued Pharmacist License No.
22 RPH 44331 to Brett A. Stark (Respondent). The License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on August 31, 2015, unless renewed.

24 JURISDICTION

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

28 ///

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 STATUTORY AND REGULATORY PROVISIONS

12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
13 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
14 not be limited to, any of the following:

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

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

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

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

1 8. California Code of Regulations, title 16, section 1770, states:

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

8 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
9 drug or dangerous device except upon the prescription of an authorized prescriber.

10 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
11 controlled substance, except that furnished upon a valid prescription/drug order.

12 11. Section 4327 of the Code, in pertinent part, makes it unlawful, while on duty, to sell,
13 dispense or compound any drug while under the influence of any dangerous drug.

14 12. Health and Safety Code section 11170 provides that no person shall prescribe,
15 administer, or furnish a controlled substance for himself or herself.

16 13. Health and Safety Code section 11173, subdivision (a), provides that no person shall
17 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
18 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
19 or subterfuge; or (2) by the concealment of a material fact.

20 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
21 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
22 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

23 COST RECOVERY

24 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation of the licensing
26 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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28 ///

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code states:

“Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

17. Section 4022 of the Code states, in pertinent part:

“Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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.

“(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.”

18. **Ambien** is a brand name for **zolpidem tartrate**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

19. **Vicoprofen** is a brand name for a compound of ibuprofen and **hydrocodone bitartrate**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as designated by Business and Professions Code section 4022. It is also known generically as **Hydrocodone with Ibuprofen**. It is a narcotic drug.

20. **Ativan** is a brand name for **lorazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

21. **Adderall** is a brand name for a compound containing **amphetamine** and/or **dextroamphetamine sulfate**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is also called **D-amphetamine salt combo**. It is a stimulant drug.

22. **OxyContin** and **Roxicodone** are among the brand names for **oxycodone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as designated by Business and Professions Code section 4022. It is an opioid.

1 31. On or about January 8, 2014, Respondent entered into what is called a Last Chance
2 Agreement with Walgreens, the terms of which included a requirement of regular drug testing.
3 On or about December 9, 2014, Respondent returned to work after a leave of absence.

4 32. On or about April 10, 2015, Respondent submitted a sample for drug testing. The
5 sample he submitted showed positive results for **hydrocodone, amphetamine, oxycodone,**
6 **oxymorphone, and hydromorphone.** Respondent had not been issued any prescriptions that
7 would account for the presence of **oxycodone, oxymorphone, or hydromorphone.**

8 33. On or about April 23, 2015, Respondent was deemed non-compliant with his Last
9 Chance Agreement. On or about May 7, 2015, his employment was terminated by Walgreens.

10
11 FIRST CAUSE FOR DISCIPLINE

12 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

13 34. Respondent is subject to discipline under section 4301(f) of the Code in that
14 Respondent, as described in paragraphs 25 to 32 above, committed acts involving moral
15 turpitude, dishonesty, fraud, deceit, or corruption.

16
17 SECOND CAUSE FOR DISCIPLINE

18 (Self-Administration of Controlled Substance)

19 35. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
20 and/or (o) of the Code and/or Health and Safety Code section 11170, in that Respondent, as
21 described in paragraphs 25 to 32 above, administered a controlled substance to himself.

22
23 THIRD CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance)

25 36. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
27 in paragraphs 25 to 32 above, furnished to himself, and/or conspired to furnish, and/or assisted or
28 abetted furnishing to himself of, a controlled substance.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 37. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
5 in paragraphs 25 to 32 above, possessed, conspired to possess, and/or assisted in or abetted
6 possession of, a controlled substance, without a prescription.

7
8 FIFTH CAUSE FOR DISCIPLINE

9 (Selling, Dispensing, or Compounding While Under the Influence)

10 38. Respondent is subject to disciplinary action under section 4301(j) and/or (o) and/or
11 section 4327 of the Code, in that Respondent, as described in paragraphs 25 to 32 above, sold,
12 dispensed or compounded drug(s) while under the influence of a dangerous drug, and/or directly
13 or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

14
15 SIXTH CAUSE FOR DISCIPLINE

16 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

17 39. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
18 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
19 25 to 32 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
20 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

21
22 SEVENTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 40. Respondent is subject to discipline under section 4301 of the Code in that
25 Respondent, as described in paragraphs 25 to 38 above, engaged in unprofessional conduct.

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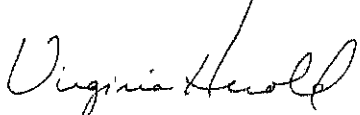
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PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 44331, issued to Brett A. Stark (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: August 12, 2015



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

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