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

11  
12 In the Matter of the Accusation Against:

13 **JEFFREY ALLEN KILLIAN**  
14 **425 West Beach Street, Unit 1258**  
**San Diego, CA 92101**

15 **Pharmacist License No. RPH 56456**

16 Respondent.  
17

Case No. 5411

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings 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 Nicole R. Trama, Deputy Attorney  
24 General.

25 2. Respondent Jeffrey Allen Killian ("Respondent") is represented in this proceeding by  
26 attorney Adam J. Richards, whose address is: 765 University Avenue, Sacramento, CA 95825.

27 3. On or about October 15, 2004, the Board of Pharmacy issued Pharmacist License No.  
28 RPH 56456 to Jeffrey Allen Killian (Respondent). The Pharmacist License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 5411 and will expire on  
2 September 30, 2016, unless renewed.

3 JURISDICTION

4 4. Accusation No. 5411 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 April 2, 2015.

7 Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 5411 is attached as exhibit A and incorporated herein by  
9 reference. Accusation No. 5411 contains the incorrect date that Respondent's pharmacist license  
10 was issued. The correct date that Respondent's pharmacist license was issued is October 15,  
11 2004, as set forth in this Stipulated Settlement and Disciplinary Order.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. 5411. Respondent has also carefully read, fully  
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
16 Order.

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

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

25 CULPABILITY

26 9. Respondent admits the truth of each and every charge and allegation in Accusation  
27 No. 5411.



1           **1. Obey All Laws**

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

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

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

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

16           **2. Report to the Board**

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

25           **3. Interview with the Board**

26          Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews  
27 with the Board or its designee, at such intervals and locations as are determined by the Board or  
28 its designee. Failure to appear for any scheduled interview without prior notification to Board

1 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee  
2 during the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

4 Respondent shall cooperate with the Board's inspection program and with the Board's  
5 monitoring and investigation of Respondent's compliance with the terms and conditions of his  
6 probation. Failure to cooperate shall be considered a violation of probation.

7 **5. Continuing Education**

8 Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
9 pharmacist as directed by the Board or its designee.

10 **6. Notice to Employers**

11 During the period of probation, Respondent shall notify all present and prospective  
12 employers of the decision in case number 5411 and the terms, conditions and restrictions imposed  
13 on Respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
15 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
17 tenure of employment) and owner to report to the Board in writing acknowledging that the listed  
18 individual(s) has/have read the decision in case number 5411, and terms and conditions imposed  
19 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
20 supervisor(s) submit timely acknowledgment(s) to the Board.

21 If Respondent works for or is employed by or through a pharmacy employment service,  
22 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
23 licensed by the Board of the terms and conditions of the decision in case number 5411 in advance  
24 of the Respondent commencing work at each licensed entity. A record of this notification must  
25 be provided to the Board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
27 (15) days of Respondent undertaking any new employment by or through a pharmacy  
28 employment service, Respondent shall cause his direct supervisor with the pharmacy employment

1 service to report to the Board in writing acknowledging that he has read the decision in case  
2 number 5411 and the terms and conditions imposed thereby. It shall be Respondent's  
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
4 acknowledgment(s) to the Board.

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

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

12 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
13 **Designated Representative-in-Charge, or Serving as a Consultant**

14 During the period of probation, Respondent shall not supervise any intern pharmacist, be  
15 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the  
16 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such  
17 unauthorized supervision responsibilities shall be considered a violation of probation.

18 **8. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, Respondent shall pay to the  
20 Board its costs of investigation and prosecution in the amount of \$1,972.50. Respondent shall  
21 make said payments as follows: Commencing on the effective date of this Decision and on the  
22 first of each month thereafter, Respondent shall pay to the Board \$50.00 per month until the costs  
23 are paid in full.

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

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

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**9. Probation Monitoring Costs**

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

**10. Status of License**

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

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

**11. License Surrender While on Probation/Suspension**

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

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

1           **12. Notification of a Change in Name, Residence Address, Mailing Address or**  
2           **Employment**

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

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

10           **13. Tolling of Probation**

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

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

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

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

1 hours as a pharmacist as defined by Business and Professions Code section 4000 et  
2 seq.

3 **14. Violation of Probation**

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

9 If Respondent violates probation in any respect, the Board, after giving Respondent notice  
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
13 a petition to revoke probation or an accusation is filed against Respondent during probation, the  
14 Board shall have continuing jurisdiction and the period of probation shall be automatically  
15 extended until the petition to revoke probation or accusation is heard and decided.

16 **15. Completion of Probation**

17 Upon written notice by the Board or its designee indicating successful completion of  
18 probation, Respondent's license will be fully restored.

19 **16. Pharmacists Recovery Program (PRP)**

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

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

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

3 Probation shall be automatically extended until Respondent successfully completes the  
4 PRP. Any person terminated from the PRP program shall be automatically suspended by the  
5 Board. Respondent may not resume the practice of pharmacy until notified by the Board in  
6 writing.

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

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

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

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

27 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
28 timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid

1 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

2 **17. Random Drug Screening**

3 Respondent, at his own expense, shall participate in random testing, including but not  
4 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
5 screening program as directed by the Board or its designee. Respondent may be required to  
6 participate in testing for the entire probation period and the frequency of testing will be  
7 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the  
8 Board or its designee, and shall, when directed, submit to such tests and samples for the detection  
9 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or  
10 its designee may direct. Failure to timely submit to testing as directed shall be considered a  
11 violation of probation. Upon request of the Board or its designee, Respondent shall provide  
12 documentation from a licensed practitioner that the prescription for a detected drug was  
13 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely  
14 provide such documentation shall be considered a violation of probation. Any confirmed positive  
15 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a  
16 documented medical treatment shall be considered a violation of probation and shall result in the  
17 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the  
18 practice of pharmacy until notified by the Board in writing.

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

27 During suspension, Respondent shall not engage in any activity that requires the  
28 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the

1 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
2 designated representative for any entity licensed by the Board.

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

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

7 **18. Abstain from Drugs and Alcohol Use**

8 Respondent shall completely abstain from the possession or use of alcohol, controlled  
9 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
10 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
11 request of the Board or its designee, Respondent shall provide documentation from the licensed  
12 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
13 treatment of the Respondent. Failure to timely provide such documentation shall be considered a  
14 violation of probation. Respondent shall ensure that he is not in the same physical location as  
15 individuals who are using illicit substances even if Respondent is not personally ingesting the  
16 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
17 not supported by the documentation timely provided, and/or any physical proximity to persons  
18 using illicit substances, shall be considered a violation of probation.

19 **19. Prescription Coordination and Monitoring of Prescription Use**

20 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
21 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
22 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the  
23 Respondent's history with the use of alcohol and drugs and who will coordinate and monitor any  
24 prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs.  
25 The approved practitioner shall be provided with a copy of the Board's Accusation and decision.  
26 A record of this notification must be provided to the Board upon request. Respondent shall sign a  
27 release authorizing the practitioner to communicate with the Board about Respondent's  
28 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist

1 shall report to the Board on a quarterly basis for the duration of probation regarding Respondent's  
2 compliance with this condition. If any substances considered addictive have been prescribed, the  
3 report shall identify a program for the time limited use of any such substances. The Board may  
4 require that the single coordinating physician, nurse practitioner, physician assistant or  
5 psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.  
6 Should Respondent, for any reason, cease supervision by the approved practitioner, Respondent  
7 shall notify the Board immediately and, within thirty (30) days of ceasing treatment, submit the  
8 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of  
9 Respondent's choice to the Board or its designee for its prior approval. Failure to timely submit  
10 the selected practitioner or replacement practitioner to the Board for approval, or to ensure the  
11 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

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

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

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

5 **20. Supervised Practice**

6 During the period of probation, Respondent shall practice only under the supervision of a  
7 licensed pharmacist not on probation with the Board. Upon and after the effective date of this  
8 decision, Respondent shall not practice pharmacy and his license shall be automatically  
9 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,  
10 as required by the Board or its designee, either:

11 Continuous – At least 75% of a work week

12 Substantial - At least 50% of a work week

13 Partial - At least 25% of a work week

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

15 Within thirty (30) days of the effective date of this decision, Respondent shall have his  
16 supervisor submit notification to the Board in writing stating that the supervisor has read the  
17 decision in case number 5411 and is familiar with the required level of supervision as determined  
18 by the Board or its designee. It shall be the Respondent's responsibility to ensure that his  
19 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
20 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
21 acknowledgements to the Board shall be considered a violation of probation.

22 If Respondent changes employment, it shall be the Respondent's responsibility to ensure  
23 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
24 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)  
25 days after employment commences, submit notification to the Board in writing stating the direct  
26 supervisor and pharmacist-in-charge have read the decision in case number 5411 and is familiar  
27 with the level of supervision as determined by the Board. Respondent shall not practice  
28 pharmacy and his license shall be automatically suspended until the Board or its designee

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

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

4       During suspension, Respondent shall not enter any pharmacy area or any portion of the  
5 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
6 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices  
7 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
8 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
9 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the  
10 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
11 and controlled substances. Respondent shall not resume practice until notified by the Board.

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

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

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

20       **21. No Ownership of Licensed Premises**

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

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ENDORSEMENT

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

Dated: 8/10/2015

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General



NICOLE R. TRAMA  
Deputy Attorney General  
*Attorneys for Complainant*

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81089869.doc

**Exhibit A**

**Accusation No. 5411**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 NICOLE R. TRAMA  
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11 In the Matter of the Accusation Against:

Case No. 5411

12 **JEFFREY ALLEN KILLIAN**  
13 **425 West Beach Street, Unit 1258**  
14 **San Diego, CA 92101**

**ACCUSATION**

15 **Pharmacist License No. RPH 56456**

16 **Respondent.**

17 **Complainant alleges:**

18 **PARTIES**

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

21 2. On or about October 4, 2004, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 56456 to Jeffrey Allen Killian (Respondent). The Pharmacist License was in full  
23 force and effect at all times relevant to the charges brought herein and will expire on September  
24 30, 2016, unless renewed.

25 **JURISDICTION**

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

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 states:

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

#### 11                   **STATUTORY PROVISIONS & REGULATORY PROVISIONS**

12           7.    Section 482 of the Code states:

13                   Each board under the provisions of this code shall develop criteria to evaluate  
14 the rehabilitation of a person when:

15                   (a) Considering the denial of a license by the board under Section 480; or

16                   (b) Considering suspension or revocation of a license under Section 490.

17                   Each board shall take into account all competent evidence of rehabilitation  
18 furnished by the applicant or licensee.

19           8.    Section 490 of the Code provides, in pertinent part, that a board may suspend or  
20 revoke a license on the ground that the licensee has been convicted of a crime substantially related  
21 to the qualifications, functions, or duties of the business or profession for which the license was  
22 issued.

23           9.    Section 493 of the Code states:

24                   Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or  
26 to suspend or revoke a license or otherwise take disciplinary action against a person  
27 who holds a license, upon the ground that the applicant or the licensee has been  
28 convicted of a crime substantially related to the qualifications, functions, and duties  
of the licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact,

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and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

10. 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:

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

6 11. Section 4327 of the Code states:

7 Any person who, while on duty, sells, dispenses or compounds any drug  
8 while under the influence of any dangerous drug or alcoholic beverages shall be  
9 guilty of a misdemeanor.

### 10 REGULATORY PROVISIONS

11 12. California Code of Regulations, title 16, section 1769, states:

12 (b) When considering the suspension or revocation of a facility or a personal  
13 license on the ground that the licensee or the registrant has been convicted of a  
14 crime, the board, in evaluating the rehabilitation of such person and his present  
15 eligibility for a license will consider the following criteria:

16 (1) Nature and severity of the act(s) or offense(s).

17 (2) Total criminal record.

18 (3) The time that has elapsed since commission of the act(s) or offense(s).

19 (4) Whether the licensee has complied with all terms of parole, probation,  
20 restitution or any other sanctions lawfully imposed against the licensee.

21 (5) Evidence, if any, of rehabilitation submitted by the licensee.

22 13. California Code of Regulations, title 16, section 1770, states:

23 For the purpose of denial, suspension, or revocation of a personal or facility  
24 license pursuant to Division 1.5 (commencing with Section 475) of the Business  
25 and Professions Code, a crime or act shall be considered substantially related to the  
26 qualifications, functions or duties of a licensee or registrant if to a substantial  
27 degree it evidences present or potential unfitness of a licensee or registrant to  
28 perform the functions authorized by his license or registration in a manner  
consistent with the public health, safety, or welfare.

### COST RECOVERY

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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
4 included in a stipulated settlement.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(December 22, 2014 Criminal Conviction for Operating a Vehicle Under the Influence)**

7 15. Respondent has subjected his license to discipline under sections 490 and 4301,  
8 subdivision (I) of the Code in that he was convicted of a crime that is substantially related to the  
9 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

10 a. On or about December 22, 2014, in a criminal proceeding entitled *People of the State*  
11 *of Iowa v. Jeffrey Allen Killian*, Court case number 05771 OWOM078573 (Polk), Respondent  
12 was convicted on his plea of guilty to violating Iowa Code Ann., section 321J.2(2)(a), operating a  
13 vehicle while under the influence of alcohol (First Offense).

14 b. As a result of the conviction, Respondent was ordered to serve time in jail, ordered to  
15 complete the OWI 1<sup>st</sup> Program, and required to pay fines.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

18 16. Respondent has subjected his license to disciplinary action under section 4301,  
19 subdivision (h) of the Code in that Respondent used alcoholic beverages in a manner dangerous or  
20 injurious to himself and the public in that Respondent drove a vehicle while under the influence of  
21 an alcoholic beverage, which posed a serious risk of injury and/or death to himself and to the  
22 public, as detailed in paragraph 15, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Functioning as a Pharmacist While Under the Influence of Alcohol)**

25 17. Respondent is subject to disciplinary action under section 4301, subdivision (h) and  
26 section 4301, subdivision (o), for violation of Business Professions Code section 4327, in that on  
27 December 2, 2014, Respondent worked as a pharmacist while he was under the influence of  
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1 alcohol to the extent that it impaired his ability to practice safely. The circumstances are as  
2 follows:

3 a. Respondent worked as a contract employee pharmacist for RPH On the Go at Marian  
4 Regional Medical Center in Santa Maria, California. On December 2, 2014, Respondent arrived  
5 for his shift at approximately 10:15 a.m. At approximately 11:15 a.m., the Pharmacy Manager  
6 engaged in a conversation with Respondent and observed objective signs and symptoms that  
7 Respondent was under the influence of alcohol. Respondent's speech was slurred, his eyes were  
8 half open and droopy, he appeared sleepy, and he smelled faintly of an alcoholic beverage.

9 b. After observing Respondent's behavior, the Pharmacy Manager contacted the HR  
10 department. Respondent voluntarily agreed to undergo testing for drugs and alcohol. Respondent  
11 was escorted out of the pharmacy and taken to the Industrial Medical Group, where the substance  
12 testing was performed. Respondent's blood alcohol content was .147.

#### 13 **DISCIPLINARY CONSIDERATIONS**

14 18. Respondent voluntarily entered the Board's Maximus diversion program on December  
15 16, 2014. During his intake interview, Respondent admitted to taking several prescribed  
16 controlled substances and having tested positive for alcohol during his shift as a pharmacist. Upon  
17 enrollment in the program, Respondent agreed to Recovery Terms and Conditions, which included  
18 submitting copies of all of his current prescriptions to Maximus. Respondent failed to provide  
19 copies of his prescriptions to Maximus and provided unreliable self reports about his use of  
20 controlled substances. As such, on February 5, 2015, Respondent was terminated from the  
21 Maximus program as a public safety risk for failing to cooperate with the program requirements.

#### 22 **PRAYER**

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

25 1. Revoking or suspending Pharmacist License Number RPH 56456, issued to Jeffrey  
26 Allen Killian;

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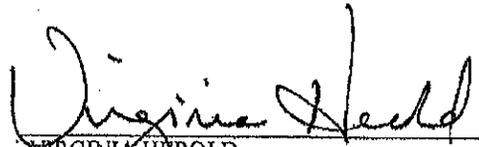
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2. Ordering Jeffrey Allen Killian to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

3/30/15



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

SD2015700358