

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

In the Matter of the Accusation Against:

**CVS PHARMACY #6772
4987 N. Fresno Street
Fresno, California 93726**

Original Permit Number No. PHY 50119,

and

**KATHRYN MACY STOLTZ
247 Delmont Avenue
Louisville, KY 40206**

Original Pharmacist License No. RPH 68379

Case No. 5563

OAH No. 2016041039

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER [KATHRYN
MACY STOLTZ ONLY]**

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Repeval is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 28, 2016.

It is so ORDERED on September 28, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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Attorney General of California
2 KENT D. HARRIS
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 5563

12 **CVS PHARMACY #6772**
13 **4987 N. Fresno Street**
14 **Fresno, California 93726**

OAH No. 2016041039

15 **Original Permit Number No. PHY 50119,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL [KATHRYN MACY
STOLTZ ONLY]

16 and

17 **KATHRYN MACY STOLTZ**
18 **247 Delmont Avenue**
Louisville, KY 40206

[Bus. & Prof. Code § 495]

19 **Original Pharmacist License No. RPH 68379**

20 Respondents.

21
22 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
26 She brought this action solely in her official capacity and is represented in this matter by Kamala
27 D. Harris, Attorney General of the State of California, by Phillip L. Arthur, Deputy Attorney
28 General.

1 2. Respondent Kathryn Macy Stoltz (Respondent Stoltz) is represented in this
2 proceeding by attorney Ivan Petrzelka, whose address is: Ivan Petrzelka, PharmD, JD, MBA,
3 Attorney at Law, Gemini Law, P.O. Box 552, Red Bluff, CA 95080.

4 JURISDICTION

5 3. On or about September 24, 2009, the Board of Pharmacy issued Original Permit
6 Number PHY 50119 to CVS Pharmacy #6772 (Respondent CVS). The Original Permit Number
7 was in full force and effect at all times relevant to the charges brought in Accusation No. 5563,
8 and will expire on June 1, 2017, unless renewed.

9 4. On or about October 22, 2012, the Board of Pharmacy issued Original Pharmacist
10 License Number RPH 68379 to Kathryn Macy Stoltz (Respondent Stoltz). The Original
11 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
12 and will expire on April 30, 2018, unless renewed.

13 5. Accusation No. 5563 was filed before the Board of Pharmacy (Board), Department of
14 Consumer Affairs and is currently pending against Respondents. The Accusation and all other
15 statutorily required documents were properly served on Respondents on April 6, 2016.
16 Respondents timely filed their Notices of Defense contesting the Accusation. A copy of
17 Accusation No. 5563 is attached as Exhibit A and incorporated herein by reference.

18 ADVISEMENT AND WAIVERS

19 6. Respondent Stoltz has carefully read, fully discussed with counsel, and understands
20 the charges and allegations in Accusation No. 5563. Respondent Stoltz has also carefully read,
21 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
22 Disciplinary Order for Public Reproval.

23 7. Respondent Stoltz is fully aware of her legal rights in this matter, including the right
24 to a hearing on the charges and allegations in the Accusation; the right to be represented by
25 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
26 right to present evidence and testify on her own behalf; the right to the issuance of subpoenas to
27 compel the attendance of witnesses and the production of documents; the right to reconsideration
28

1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 8. Respondent Stoltz voluntarily, knowingly, and intelligently waives and gives up each
4 and every right set forth above.

5 CULPABILITY

6 9. Respondent Stoltz admits that at hearing Complainant could establish a factual basis
7 for the charges and allegations in Accusation No. 5563, and that those charges and allegations are
8 cause for discipline. Respondent Stoltz gives up her right to contest those charges and
9 allegations.

10 10. Respondent Stoltz agrees that her Original Pharmacist License is subject to discipline
11 and she agrees to be bound by the Disciplinary Order below.

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
14 Stoltz understands and agrees that counsel for Complainant and the staff of the Board of
15 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
16 without notice to or participation by Respondent Stoltz or her counsel. By signing the stipulation,
17 Respondent Stoltz understands and agrees that she may not withdraw her agreement or seek to
18 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to
19 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
20 for Public Repeval shall be of no force or effect, except for this paragraph, it shall be
21 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
22 further action by having considered this matter.

23 12. The parties understand and agree that Portable Document Format (PDF), electronic,
24 and facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Repeval,
25 including Portable Document Format (PDF), electronic, and facsimile signatures thereto, shall
26 have the same force and effect as the originals.

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1 13. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
2 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
3 of their agreement. It supersedes any and all prior or contemporaneous agreements,
4 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
5 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
6 supplemented, or otherwise changed except by a writing executed by an authorized representative
7 of each of the parties.

8 14. In consideration of the foregoing admissions and stipulations, the parties agree that
9 the Board may, without further notice or formal proceeding, issue and enter the following
10 Disciplinary Order:

DISCIPLINARY ORDER

11 IT IS HEREBY ORDERED that Original Pharmacist License Number RPH 68379 issued
12 to Respondent Kathryn Macy Stoltz (Respondent Stoltz) shall be publicly reprovred by the Board
13 of Pharmacy under Business and Professions Code section 495 in resolution of Accusation No.
14 5563, attached as Exhibit A.

15 **Cost Recovery.** Respondent Stoltz shall pay \$909.00 to the Board for its costs associated
16 with the investigation and enforcement of this matter. Respondent Stoltz shall be permitted to
17 pay these costs in a payment plan approved by the Board. If Respondent Stoltz fails to pay the
18 Board costs as ordered, Respondent Stoltz shall not be allowed to renew her Original Pharmacist
19 License until Respondent Stoltz pays costs in full.

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ACCEPTANCE

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

DATED: 8/4/16 
KATHRYN MACY STOLTZ
Respondent

I have read and fully discussed with Respondent Kathryn Macy Stoltz the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.


DATED: August 5, 2016 
IVAN PETRZELKA
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Repeval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 8/8/16

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General


PHILLIP L. ARTHUR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5563

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Attorneys for Complainant
8

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

11 In the Matter of the Accusation Against:

Case No. 5563

12 **CVS PHARMACY #6772**
13 4987 N. Fresno Street
14 Fresno, California 93726

A C C U S A T I O N

15 **Original Permit Number No. PHY 50119,**

16 **and**

17 **KATHRYN MACY STOLTZ**
2917 English Ave.
18 Louisville, KY 40206

19 **Original Pharmacist License No. RPH 68379**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about September 24, 2009, the Board of Pharmacy issued Original Permit
27 Number PHY 50119 to CVS Pharmacy #6772 (Respondent CVS). The Original Permit Number
28

1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 June 1, 2016, unless renewed.

3 3. On or about October 22, 2012, the Board of Pharmacy issued Original Pharmacist
4 License Number RPH 68379 to Kathryn Macy Stoltz (Respondent Stoltz). The Original
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
6 and will expire on April 30, 2016, unless renewed.

7 **JURISDICTION**

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

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

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

13 6. Section 4300.1 of the Code states:

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

19 **BUSINESS AND PROFESSIONS CODE**

20 7. Section 4022 of the Code states:

21 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in
22 humans or animals, and includes the following:

23 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
24 prescription," "Rx only," or words of similar import.

25 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
26 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
27 in with the designation of the practitioner licensed to use or order use of the device.

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1 **COST RECOVERY**

2 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **CONTROLLED SUBSTANCE**

7 11. "Hydrocodone w/APAP" (hydrocodone with acetaminophen tablets) is a
8 semisynthetic narcotic analgesic, a dangerous drug as defined in Code section 4022, a Schedule II
9 controlled substance and narcotic as defined by section 11055(b)(1)(I) of the Health and Safety
10 Code, and a Schedule II controlled substance as defined by section 1308.12(b)(1)(vii) of Title 21
11 of the Code of Federal Regulations.

12 **BACKGROUND**

13 **Controlled Substance Losses**

14 12. From May 1 through September 19, 2013, Respondent CVS reported a loss of 15,360
15 tablets of hydrocodone/apap 10/325mg. This audit was conducted on September 19, 2013.

16 13. From May 1 through October 17, 2013, Respondent CVS reported a loss of 16,675
17 tablets of hydrocodone/apap 10/325mg, resulting in an increase in loss of 1,315 tablets between
18 September 19 and October 17, 2013. There was no explanation provided for the loss. This audit
19 was conducted on October 17, 2013.

20 14. On or about October 25, 2013, the Board received notification from Respondent CVS
21 of a loss of 11,945 tablets of hydrocodone/apap 10/325mg. The notification indicated the loss
22 occurred on September 26, 2013.

23 **Pharmacists-in-Charge**

24 15. On or about October 23, 2014, Inspectors J. F. and K. R-P. inspected Respondent
25 CVS. The Inspectors discovered that CVS had no active pharmacist-in-charge. Former
26 Pharmacist-in-Charge Inouye dissociated on June 27, 2014. Later that day, Inspector K. R-P.
27 received a change of pharmacist-in-charge form, indicating that an individual named Dodd would
28 replace Inouye as pharmacist-in-charge at CVS.

1 16. The Board's records for Respondent CVS reflect that Inouye dissociated as
2 pharmacist-in-charge on June 27, 2014, and Dodd became pharmacist-in-charge on October 23,
3 2014.

4 17. The Board's records for Respondent CVS also reflect that Respondent Stoltz was the
5 pharmacist-in-charge from April 14 through August 23, 2013.

6 **RESPONDENT CVS**

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Failure to Safely Secure Facilities, Space, Fixtures, and Equipment)**

9 18. Respondent CVS is subject to disciplinary action under California Code of
10 Regulations, title 16, section 1714(b), in that from on or about May 1 through October 25, 2013,
11 CVS' facilities, space, fixtures, and equipment were not maintained so that drugs were safely and
12 properly maintained, secured, and distributed. The circumstances are described with more
13 particularity in paragraphs 12-14, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Notify the Board of Change in Pharmacist-in-Charge)**

16 19. Respondent CVS is subject to disciplinary action under section 4113(a) and (d) of the
17 Code in that from June 27 through October 23, 2014, CVS operated without a designated
18 pharmacist-in-charge. The circumstances are described with more particularity in paragraphs 15-
19 17, above.

20 **RESPONDENT STOLTZ**

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Ensure Security of the Prescription Department)**

23 20. Respondent Stoltz is subject to disciplinary action under California Code of
24 Regulations, title 16, section 1714(d), in that while serving as the pharmacist-in-charge for
25 Respondent CVS, from April 14 through August 23, 2013, Stoltz failed to provide for effective
26 control against theft or diversion of dangerous drugs and devices. The circumstances are
27 described with more particularity in paragraphs 15-17, above.

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1 DISCIPLINE CONSIDERATIONS

2 21. To determine the degree of discipline, if any, to be imposed on Respondent CVS,
3 Complainant alleges that on or about May 13, 2014, in a prior action, the Board of Pharmacy
4 issued Citation Number CI 2013 58716 based upon CVS' violation of California Code of
5 Regulations, title 16, section 1716 (variation from prescription), when CVS dispensed prednisone
6 50mg tablets in a bottle labeled and prescribed as primidone 50mg without prior consent of the
7 prescriber. That Citation is now final and is incorporated by reference as if fully set forth.

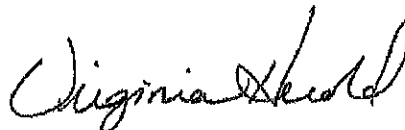
8 PRAYER

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

- 11 1. Revoking or suspending Original Permit Number PHY 50119, issued to CVS
12 Pharmacy #6772;
- 13 2. Revoking or suspending Original Pharmacist License Number RPH 68379, issued to
14 Kathryn Macy Stoltz;
- 15 3. Ordering CVS Pharmacy #6722 and Kathryn Macy Stoltz to pay the Board of
16 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3; and
- 18 4. Taking such other and further action as deemed necessary and proper.
- 19
20

21
22 DATED: _____

3/18/16



23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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