

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

In the Matter of the Statement of Issues
Against:

Case No. 5805

SHAWN PAUL REIDY

Pharmacist License Applicant

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 at 5:00 p.m. on January 11, 2017.

It is so ORDERED on December 12, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 ANTONETTE B. CINCOTTA
Supervising Deputy Attorney General
4 THEODORE S. DRGAR
Deputy Attorney General
5 State Bar No. 174951
6 600 West Broadway, Suite 1800
San Diego, CA 92101
7 P.O. Box 85266
San Diego, CA 92186-5266
8 Telephone: (619) 738-9517
Facsimile: (619) 645-2061
9 *Attorneys for Complainant*

10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Statement of Issues
15 Against:

16 **SHAWN PAUL REIDY**

17 **Pharmacist License Applicant**

Respondent.

Case No. 5805

**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 (Board). She brought this action solely in her official capacity and is represented in this matter by
23 Kamala D. Harris, Attorney General of the State of California, by Theodore Drcar, Supervising
24 Deputy Attorney General.

25 2. Respondent Shawn Paul Reidy (Respondent) is representing himself in this
26 proceeding, and has chosen not to exercise his right to be represented by counsel.

27 // // // //

28 // // // //

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 and Order in Case No. 5805 and the terms, conditions and restrictions
13 imposed 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 and Order in Case No. 5805, and terms and conditions
19 imposed 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 and Order in Case No. 5805 in
24 advance of the Respondent commencing work at each licensed entity. A record of this
25 notification must be provided to the Board upon request.

26 Furthermore, within thirty (30) days of the license being issued, and within fifteen (15) days
27 of Respondent undertaking any new employment by or through a pharmacy employment service,
28 Respondent shall cause his direct supervisor with the pharmacy employment service to report to

1 the Board in writing acknowledging that he has read the Decision and Order in Case No. 5805,
2 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure
3 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

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

17 **8. Probation Monitoring Costs**

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

22 **9. Status of License**

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

26 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
27 during the period of probation, including any extensions thereof due to tolling or otherwise, upon

28 / / / / /

1 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
2 probation not previously satisfied.

3 **10. License Surrender While on Probation/Suspension**

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

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

17 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
18 **Employment**

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

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

26 **12. Tolling of Probation**

27 Except during periods of suspension, Respondent shall, at all times while on probation, be
28 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any

1 month during which this minimum is not met shall toll the period of probation, i.e., the period of
2 probation shall be extended by one month for each month during which this minimum is not met.
3 During any such period of tolling of probation, Respondent must nonetheless comply with all
4 terms and conditions of probation.

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

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

13 "Cessation of practice" means any calendar month during which Respondent is not
14 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions
15 Code section 4000 et seq.

16 "Resumption of practice" means any calendar month during which Respondent is
17 practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and
18 Professions Code section 4000 et seq.

19 13. Violation of Probation

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

25 If Respondent violates probation in any respect, the Board, after giving Respondent notice
26 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
27 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
28 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If

1 a petition to revoke probation or an accusation is filed against Respondent during probation, the
2 Board shall have continuing jurisdiction and the period of probation shall be automatically
3 extended until the petition to revoke probation or accusation is heard and decided.

4 **14. Completion of Probation**

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

7 **15. Pharmacists Recovery Program (PRP)**

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

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

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

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

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

25 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

26 During suspension, respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
28 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
3 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
4 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
5 and controlled substances. Respondent shall not resume practice until notified by the Board.

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

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

11 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
12 timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid
13 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

14 **16. Random Drug Screening**

15 Respondent, at his own expense, shall participate in random testing, including but not
16 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
17 screening program as directed by the Board or its designee. Respondent may be required to
18 participate in testing for the entire probation period and the frequency of testing will be
19 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the
20 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
21 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
22 its designee may direct. Failure to timely submit to testing as directed shall be considered a
23 violation of probation. Upon request of the Board or its designee, Respondent shall provide
24 documentation from a licensed practitioner that the prescription for a detected drug was
25 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
26 provide such documentation shall be considered a violation of probation. Any confirmed positive
27 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
28 documented medical treatment shall be considered a violation of probation, and shall result in the

1 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the
2 practice of pharmacy until notified by the Board in writing.

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

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

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

16 **17. Abstain from Drugs and Alcohol Use**

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

28 /////

1 **18. Prescription Coordination and Monitoring of Prescription Use**

2 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
3 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
4 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the
5 Respondent's history with the use of controlled substances and/or dangerous drugs, and who will
6 coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled
7 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
8 the Board's Decision and Order in Case No. 5805. A record of this notification must be provided
9 to the Board upon request. Respondent shall sign a release authorizing the practitioner to
10 communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse
11 practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for
12 the duration of probation regarding Respondent's compliance with this condition. If any
13 substances considered addictive have been prescribed, the report shall identify a program for the
14 time limited use of any such substances. The Board may require that the single coordinating
15 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive
16 medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease
17 supervision by the approved practitioner, Respondent shall notify the Board immediately and,
18 within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse
19 practitioner, physician assistant, or psychiatrist of Respondent's choice to the Board or its
20 designee for its prior approval. Failure to timely submit the selected practitioner or replacement
21 practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly
22 reports, shall be considered a violation of probation.

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

28 / / / / /

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

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

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

14 19. **Supervised Practice**

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

- 20 • Continuous – At least 75% of a work week
- 21 • Substantial - At least 50% of a work week
- 22 • Partial - At least 25% of a work week
- 23 • Daily Review - Supervisor's review of probationer's daily activities within 24 hours

24 Within thirty (30) days of the effective date of this decision, Respondent shall have his
25 supervisor submit notification to the Board in writing stating that the supervisor has read the
26 Decision and Order in Case Number 5805, and is familiar with the required level of supervision
27 as determined by the Board or its designee. It shall be Respondent's responsibility to ensure that
28 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to

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

3 If Respondent changes employment, it shall be Respondent's responsibility to ensure that
4 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
5 the Board. Respondent shall have his new supervisor, within fifteen (15) days after employment
6 commences, submit notification to the Board in writing stating the direct supervisor and
7 pharmacist-in-charge have read the Decision and Order in Case Number 5805, and is familiar
8 with the level of supervision as determined by the Board. Respondent shall not practice
9 pharmacy and his license shall be automatically suspended until the Board or its designee
10 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
11 submit timely acknowledgements to the Board shall be considered a violation of probation.

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

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

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

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

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

27 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
28 administrator, member, officer, director, trustee, associate, or partner of any business, firm,

1 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
2 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)
3 days following the effective date of the Decision and Order, and shall immediately thereafter
4 provide written proof thereof to the Board. Failure to timely divest any legal or beneficial
5 interest(s) or provide documentation thereof shall be considered a violation of probation.

6 ACCEPTANCE

7 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
8 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
9 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
10 bound by the Decision and Order of the Board of Pharmacy.

11
12 DATED: 11/02/2016

Shawn Paul Reidy

13 SHAWN PAUL REIDY
14 *Respondent*

15 ENDORSEMENT

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

18 Dated: *11/2/2016*

Respectfully submitted,

19 KAMALA D. HARRIS
20 Attorney General of California
21 LINDA K. SCHNEIDER
22 Senior Assistant Attorney General
23 ANTOINETTE B. CINCOTTA
24 Supervising Deputy Attorney General

Theodore S. Drcar

25 THEODORE S. DR CAR
26 Deputy Attorney General
27 *Attorneys for Complainant*

28 SD2016700716
81493471.docx

Exhibit A

Statement of Issues No. 5805

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 GREGORY J. SALUTE
Supervising Deputy Attorney General
4 State Bar No. 164015
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:	Case No. 5805
13 SHAWN PAUL REIDY	STATEMENT OF ISSUES
14 Pharmacist License Applicant	
15 Respondent.	

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On August 4, 2015, the Board received an application for a Pharmacist License
23 from Shawn Paul Reidy (Respondent). On July 18, 2015, Respondent certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application. The
25 Board denied the application on January 29, 2016.

26 ///
27 ///
28 ///

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states:

6 The board may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

9 (a) Notwithstanding any other provisions of this code, the provisions
10 of this division shall govern the denial of licenses on the grounds of:

11 (1) Knowingly making a false statement of material fact, or
12 knowingly omitting to state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit
15 with the intent to substantially benefit himself or another, or substantially injure
16 another.

17 (4) Commission of any act which, if done by a licentiate of the
18 business or profession in question, would be grounds for suspension or revocation
19 of license.

20

21 6. Section 480 of the Code states:

22 (a) A board may deny a license regulated by this code on the grounds
23 that the applicant has one of the following:

24 (1) Been convicted of a crime. A conviction within the meaning of
25 this section means a plea or verdict of guilty or a conviction following a plea of
26 *nolo contendere*. Any action that a board is permitted to take following the
27 establishment of a conviction may be taken when the time for appeal has elapsed,
28 or the judgment of conviction has been affirmed on appeal, or when an order
granting probation is made suspending the imposition of sentence, irrespective of
a subsequent order under the provisions of section 1203.4 of the Penal Code.

... .

(3) (A) Done any act that if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

... .

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Section 482 of the Code states:

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

- (a) Considering the denial of a license by the board under section 480; or
- (b) Considering suspension or revocation of a license under section 490.

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been 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, 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."

9. 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:

...

(h) 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.

...

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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

///

1 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
2 States Code regulating controlled substances or of a violation of the statutes of
3 this state regulating controlled substances or dangerous drugs shall be conclusive
4 evidence of unprofessional conduct. In all other cases, the record of conviction
5 shall be conclusive evidence only of the fact that the conviction occurred. The
6 board may inquire into the circumstances surrounding the commission of the
7 crime, in order to fix the degree of discipline or, in the case of a conviction not
8 involving controlled substances or dangerous drugs, to determine if the conviction
9 is of an offense substantially related to the qualifications, functions, and duties of
10 a licensee under this chapter. A plea or verdict of guilty or a conviction following
11 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
12 provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting
14 probation is made suspending the imposition of sentence, irrespective of a
15 subsequent order under section 1203.4 of the Penal Code allowing the person to
16 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
17 the verdict of guilty, or dismissing the accusation, information, or indictment.

18 ...

19 (n) The revocation, suspension, or other discipline by another state of a
20 license to practice pharmacy, operate a pharmacy, or do any other act for which a
21 license is required by this chapter.

22

23 REGULATORY PROVISIONS

24 10. California Code of Regulations, title 16, section 1769 states:

25 (a) When considering the denial of a facility or personal license under
26 section 480 of the Business and Professions Code, the board, in evaluating the
27 rehabilitation of the applicant and his present eligibility for licensing or
28 registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under
consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or
crime(s) under consideration as grounds for denial under section 480 of the
Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or
crime(s) referred to in subdivision (1) or (2).

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

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

...
///

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

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

7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(December 13, 2006 Conviction for Driving Under the Influence on November 28, 2005)**

9 12. Respondent's application for a Pharmacist License is subject to denial under Code
10 section s 475, subdivision (a)(2) and 480, subdivisions (a)(1) and (a)(3)(A) in that she was
11 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
12 registered pharmacy technician, which would also be a ground for discipline for a licensed
13 pharmacist under Code section 4301, subdivision (l). The circumstances are as follows:

14 a. On December 13, 2006, in a criminal proceeding entitled *City of Leawood,*
15 *Plaintiff, vs. Shawn Paul Reidy, Defendant,* in the Municipal Court of the City of Leawood,
16 Kansas, Respondent was found guilty of violating Leawood City Code Chapter XIV, Traffic,
17 Article 1, Standard Traffic Ordinance (STO), section 14-101, subdivision 030A, driving under
18 the influence (DUI) (first offense), Case Number 2005-MD-016546, a misdemeanor; and
19 subdivisions 030.2, preliminary breath test, and 046, driving on roadways laned for traffic, in
20 Case Number 2005-MD-015709, both infractions. An infraction charge for operating a motor
21 vehicle with expired tags, in violation of STO section 14-101, subdivision 198 (a)(1), was
22 dismissed under a plea bargain.

23 b. As a result of the convictions, on May 16, 2007, Respondent was
24 sentenced to 90 days in jail, with two days to be served in custody, concurrent with service of
25 sentence in Case Number CR-2007-214853, detailed in paragraph 14, below, and the balance of
26 88 days suspended. Respondent was granted one-year probation under certain terms and
27 conditions. Respondent was ordered to pay fines and fees.

28 ///

1 c. The facts that led to the convictions are that on November 28, 2005,
2 Respondent drove a vehicle with expired tags. While driving southbound on State Line Road in
3 Leawood, Kansas, a law enforcement officer noticed Respondent's failure to maintain a single
4 lane. During an enforcement stop, Respondent refused to submit to a preliminary breath test.
5 Respondent was charged with DUI while having a blood alcohol concentration of .08 percent or
6 greater, as measured within two hours of the operation of a motor vehicle.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Unprofessional Conduct – 2007 Discipline by an Out of State Government Agency)**

9 13. Respondent's application for a Pharmacist License is subject to denial under Code
10 section 4301, subdivision (n), in that his Missouri pharmacist license was disciplined by the
11 Missouri State Board of Pharmacy (Missouri Board). The circumstances are as follows:

12 a. On March 19, 2007, the Administrative Hearing Commission of the
13 Missouri Board found cause to discipline Respondent under the provisions of title XXII
14 (Occupations and Professions) of the Missouri Revised Statutes (MRS), Chapter 338
15 (Pharmacists and Pharmacies), Section 338.055 (Denial, revocation or suspension of license,
16 grounds for--expedited procedure--additional discipline authorized, when) (MRS section
17 335.055), subdivisions (2)(6) and (2)(13). In Case Number 2006-003684-V1, entitled *Missouri*
18 *Board of Pharmacy, Petitioner, v. Shawn P. Reidy, R.Ph., Respondent*, the Missouri Board
19 revoked Respondent's pharmacist license, numbered 041667. Respondent may not apply for
20 reinstatement of his pharmacist license for seven years.

21 b. The facts that led to the discipline are that on October 21, 2002, while
22 employed as a pharmacist at Truman Medical Center Hospital Hill in Kansas City, Missouri,
23 Respondent reported to work while impaired. Respondent submitted to two breathalyzer tests,
24 which showed that Respondent was under the influence of alcohol. Respondent's conduct is a
25 ground for discipline under MRS section 335.055, subdivisions (2)(1), (2)(5), and (2)(13). On
26 July 7, 2003, the Missouri Board and Respondent executed an agreed Joint Settlement, placing
27 Respondent's pharmacist license on probation for five years.

28 ///

1 c. While on probation, Respondent failed to call in for testing services to
2 determine compliance with the required abstinence from alcohol. Respondent also tested positive
3 for alcohol in at least two urinalysis tests. On July 12, 2006, the Missouri Board found
4 Respondent subject to discipline under MRS section 338.055, subdivisions (2)(6), violation of, or
5 assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or
6 regulation adopted pursuant to this chapter, and (2)(13), violation of any professional trust or
7 confidence.

8 d. On August 31, 2006, In Case Number 2006-003684-V1, entitled *Missouri*
9 *Board of Pharmacy, Petitioner, v. Shawn P. Reidy, R.Ph., Respondent*, the Missouri Board
10 placed Respondent's pharmacist license, numbered 041667, on suspension for three months, to
11 be followed by probation for five years. While on probation, Respondent failed more than once
12 to call in for testing services to determine compliance with the required abstinence from alcohol.
13 Respondent also failed on more than one occasion to show up to give a specimen after being
14 informed he was required to do so. On March 7, 2007, the Missouri Board found Respondent
15 subject to discipline under MRS section 338.055, subdivisions (2)(6) and (2)(13).

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(April 12, 2007 Conviction for DUI with a BAC of .08% or More on December 31, 2006)**

18 14. Respondent's application for a Pharmacist License is subject to denial under Code
19 sections 475, subdivision (a)(2) and 480, subdivisions (a)(1) and (a)(3)(A) in that he was
20 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
21 licensed pharmacist, which would also be a ground for discipline for a licensed pharmacist under
22 Code section 4301, subdivision (l). The circumstances are as follows:

23 a. On April 12, 2007, in a criminal proceeding entitled *The City of Overland*
24 *Park v. Shawn P. Reidy*, in the Municipal Court of the City of Overland Park, Kansas, Case
25 Number CR-2007-0214853, Respondent pled guilty of violating Overland Park Municipal Code
26 (OPMC) section 12.04.030, DUI (second offense), a misdemeanor. Charges for violation of city
27 ordinances OPMC sections 12.04.033, subdivision (a), failure to control speed to avoid a
28 collision; 12.04.195.1, failure to provide proof of liability insurance; 12.04.119.1, failure to wear

1 seat belt; 12.04.024, leaving the scene of an accident; 12.04.027, duty to report an accident;
2 12.04.048, subdivision (a), driving on median; 12.04.090, blocking traffic; 12.04.046, failure to
3 maintain a single lane of traffic; and 12.04.191.2, failure to comply with driver's license
4 restrictions, were dismissed under a plea bargain.

5 b. As a result of the conviction, on May 10, 2007, Respondent was sentenced
6 to 180 days in jail, with two days to be served in custody, concurrent with service of sentence in
7 Case Number 2005-MD-016546 and Case Number 2005-MD-015709, detailed in paragraph 12,
8 above, three days on house arrest, and the balance of 185 days suspended. Respondent was
9 granted one-year probation under certain terms and conditions. Respondent was ordered to pay
10 fines, fees, and costs.

11 c. The facts that led to the convictions are that on December 31, 2006,
12 Respondent drove on the median of a roadway in Johnson County, Kansas. Respondent drove at
13 a speed he could not control resulting in a collision that blocked traffic. Respondent left the
14 scene and failed to report the accident. When apprehended, Respondent was found not to be
15 wearing a seatbelt and without corrective lenses as required in his driver's license. Respondent
16 also failed to provide proof of liability insurance, and was under the influence of alcohol to a
17 degree that rendered him incapable of safely driving a vehicle.

18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

19 **(Act If Done By Licentiate – Dangerous Use of Alcohol)**

20 15. Respondent's application for a Pharmacist License is subject to denial under Code
21 sections 475, subdivision (a)(4) and 480, subdivision (a)(3)(A) in that he used alcohol to the
22 extent and in a manner that was dangerous and injurious to himself and to the public, which
23 would also be a ground for discipline for a licensed pharmacist under Code section 4301,
24 subdivision (h) in that the extent of the use impaired the ability of the licensed person to conduct
25 with safety to the public the practice authorized by the license. The circumstances are that on
26 November 28, 2005, and December 31, 2006, Respondent drove a motor vehicle in Johnson
27 County, Kansas, in wanton disregard for the safety of persons and property, as detailed in
28 paragraphs 12 and 14, above, which are incorporated by reference.

1 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Act If Done By Licentiate – Multiple Convictions of Alcohol Related Offenses)**

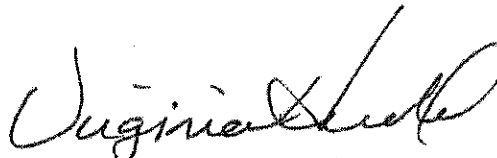
3 16. Respondent's application for a Pharmacist License is subject to denial under Code
4 sections 475, subdivision (a)(4) and 480, subdivision (a)(3)(A) in that on December 13, 2006,
5 and April 12, 2007, he was convicted of more than one misdemeanor involving the use or
6 consumption of alcohol, which would also be a ground for discipline for a licensed pharmacist
7 under Code section 4301, subdivision (k), as described in paragraphs 12 and 14, above, which
8 are incorporated by reference.

9 **PRAYER**

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

- 12 1. Denying the application of Shawn Paul Reidy for a Pharmacist License; and
13 2. Taking such other and further action as deemed necessary and proper.

14
15
16 DATED: 6/10/16



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

17
18
19
20 SD2016700716
81338821.doc