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

10 In the Matter of the Accusation Against:

Case No. 2780

11 IRVING GARY EICH
P.O. Box 2448
12 Running Springs, CA 92382

OAH No. N-2005030709

13 Pharmacist License No. RPH 38094

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Respondent.

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled proceedings that the following matters are true:

18
19 PARTIES

20 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
21 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
22 by Bill Lockyer, Attorney General of the State of California, by Jana L. Tuton, Deputy Attorney
23 General.

24 2. Respondent IRVING GARY EICH (Respondent) is represented in this
25 proceeding by attorney Steven L. Simas, whose address is Kuykendall & Simas, LLP, 1201 K
26 Street, Suite 1950, Sacramento, CA 95814.

27 3. On or about September 14, 1983, the Board of Pharmacy issued
28 Pharmacist License No. RPH 38094 to IRVING GARY EICH (Respondent). The License was in

1 full force and effect at all times relevant to the charges brought in Accusation No. 2780 and will
2 expire on July 31, 2005, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2780 was filed before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on November
7 17, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2780 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and
11 understands the charges and allegations in Accusation No. 2780. Respondent has also carefully
12 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

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

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation No. 2780.

26 9. Respondent agrees that his Pharmacist License is subject to discipline and
27 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
28 Order below.

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RESERVATION

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

CONTINGENCY

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

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 38094 issued to Respondent IRVING GARY EICH is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Actual Suspension - Pharmacist.** License number RPH 38094, issued to Respondent IRVING GARY EICH is suspended for ninety (90) days. Respondent shall be

1 credited with time in which he has not practiced while enrolled in the Pharmacist Recovery
2 Program.

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

11 Respondent shall not engage in any activity that requires the professional
12 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
13 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for
14 any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to
15 own or hold an interest in any pharmacy in which he holds an interest at the time this decision
16 becomes effective unless otherwise specified in this order.

17
18 1. **Obey All Laws.** Respondent shall obey all state and federal laws and
19 regulations substantially related to or governing the practice of pharmacy.

20 Respondent shall report any of the following occurrences to the Board, in writing,
21 within 72 hours of such occurrence:

- 22 • an arrest or issuance of a criminal complaint for violation of any provision
23 of the Pharmacy Law, state and federal food and drug laws, or state and
24 federal controlled substances laws
- 25 • a plea of guilty or nolo contendere in any state or federal criminal
26 proceeding to any criminal complaint, information or indictment
- 27 • a conviction of any crime
- 28 • discipline, citation, or other administrative action filed by any state and

1 federal agency which involves Respondent's license or which is related
2 to the practice of pharmacy or the manufacturing, obtaining, handling or
3 distribution or billing or charging for any drug, device or controlled
4 substance.

5 **2. Reporting to the Board.** Respondent shall report to the Board
6 quarterly. The report shall be made either in person or in writing, as directed. Respondent
7 shall state under penalty of perjury whether there has been compliance with all the terms and
8 conditions of probation. If the final probation report **is not** made as directed, probation shall
9 be extended automatically until such time as the final report is made and accepted by the
10 Board.

11 **3. Interview with the Board.** Upon receipt of reasonable notice,
12 Respondent shall appear in person for interviews with the Board upon request at various
13 intervals at a location to be determined by the Board. Failure to appear for a scheduled
14 interview without prior notification to Board staff shall be considered a violation of probation.

15 **4. Cooperation with Board Staff.** Respondent shall cooperate with the
16 Board's inspection program and in the Board's monitoring and investigation of Respondent's
17 compliance with the terms and conditions of his probation. Failure to comply shall be
18 considered a violation of probation.

19 **5. Continuing Education.** Respondent shall provide evidence of efforts
20 to maintain skill and knowledge as a pharmacist as directed by the Board.

21 **6. Notice to Employers.** Respondent shall notify all present and
22 prospective employers of the decision in case number 2780 and the terms, conditions and
23 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
24 this decision, and within 15 days of Respondent undertaking new employment, Respondent
25 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
26 writing acknowledging the employer has read the decision in case number 2780.

27 If Respondent works for or is employed by or through a pharmacy employment
28 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at

1 every pharmacy of the and terms conditions of the decision in case number 2780 in advance of
2 the Respondent commencing work at each pharmacy.

3 "Employment" within the meaning of this provision shall include any full-time, part-
4 time, temporary, relief or pharmacy management service as a pharmacist, whether the
5 Respondent is considered an employee or independent contractor.

6 7. **No Preceptorship, Supervision of Interns, Being Pharmacist-in-**
7 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
8 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
9 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
10 order.

11 8. **Reimbursement of Board Costs.** Respondent shall pay to the Board
12 its costs of investigation and prosecution in the amount of \$5,550.00. Respondent shall make
13 quarterly payments.

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

16 9. **Probation Monitoring Costs.** Respondent shall pay the costs
17 associated with probation monitoring as determined by the Board each and every year of
18 probation. Such costs shall be payable to the Board at the end of each year of probation.
19 Failure to pay such costs shall be considered a violation of probation.

20 10. **Status of License.** Respondent shall, at all times while on probation,
21 maintain an active current license with the Board, including any period during which
22 suspension or probation is tolled.

23 If Respondent's license expires or is canceled by operation of law or otherwise,
24 upon renewal or re-application, Respondent's license shall be subject to all terms and
25 conditions of this probation not previously satisfied.

26 11. **License Surrender while on Probation/Suspension.** Following the
27 effective date of this decision, should Respondent cease practice due to retirement or health, or
28 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender

1 his license to the Board for surrender. The Board shall have the discretion whether to grant
2 the request for surrender or take any other action it deems appropriate and reasonable. Upon
3 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
4 terms and conditions of probation.

5 Upon acceptance of the surrender, Respondent shall relinquish his pocket
6 license to the Board within 10 days of notification by the Board that the surrender is accepted.
7 Respondent may not reapply for any license from the Board for three years from the effective
8 date of the surrender. Respondent shall meet all requirements applicable to the license sought
9 as of the date the application for that license is submitted to the Board.

10 **12. Notification of Employment/Mailing Address Change.** Respondent
11 shall notify the Board in writing within 10 days of any change of employment. Said
12 notification shall include the reasons for leaving and/or the address of the new employer,
13 supervisor or owner and work schedule if known. Respondent shall notify the Board in
14 writing within 10 days of a change in name, mailing address or phone number.

15 **13. Tolling of Probation.** Should Respondent, regardless of residency, for
16 any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
17 California, Respondent must notify the Board in writing within 10 days of cessation of the
18 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
19 shall not apply to the reduction of the probation period. It is a violation of probation for
20 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
21 period exceeding three years.

22 "Cessation of practice" means any period of time exceeding 30 days in which
23 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of
24 the Business and Professions Code.

25 **14. Violation of Probation.** If Respondent violates probation in any
26 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
27 probation and carry out the disciplinary order which was stayed. If a petition to revoke
28 probation or an accusation is filed against Respondent during probation, the Board shall have

1 continuing jurisdiction and the period of probation shall be extended, until the petition to
2 revoke probation or accusation is heard and decided.

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

8 **15. Completion of Probation.** Upon successful completion of probation,
9 Respondent's license will be fully restored.

10 **16. Rehabilitation Program - Pharmacists Recovery Program (PRP).**
11 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists
12 Recovery Program for evaluation and shall successfully participate in and complete the
13 treatment contract and any subsequent addendums as recommended and provided by the PRP
14 and as approved by the Board. The costs for PRP participation shall be borne by the
15 Respondent.

16 If Respondent is currently enrolled in the PRP, said participation is now
17 mandatory and is no longer considered a self-referral under Business and Professions Code
18 section 4363, as of the effective date of this decision. Respondent shall successfully
19 participate in and complete his current contract and any subsequent addendums with the PRP.
20 Probation shall be automatically extended until Respondent successfully completes his
21 treatment contract. Any person terminated from the program shall be automatically suspended
22 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified
23 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate
24 probation for any violation of this term.

25 **17. Random Drug Screening.** Respondent, at his own expense, shall
26 participate in random testing, including but not limited to biological fluid testing (urine,
27 blood), Breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
28 The length of time shall be for the entire probation period and the frequency of testing will be

1 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
2 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,
3 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
4 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
5 in the immediate revocation of license number RPH 38094.

6 18. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
7 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
8 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
9 practitioner as part of a documented medical treatment. Upon request of the Board,
10 Respondent shall provide documentation from the licensed practitioner that the prescription
11 was legitimately issued and is a necessary part of the treatment of the Respondent.

12 19. **Supervised Practice.** Respondent shall practice only under the
13 supervision of a pharmacist not on probation with the Board. Respondent shall not practice
14 until the supervisor is approved by the Board. The supervision shall be, as determined by the
15 PRP, either:

- 16 • Continuous - 75% to 100% of a work week
- 17 • Substantial - At least 50% of a work week
- 18 • Partial - At least 25% of a work week
- 19 • Daily Review - Supervisor's review of probationer's daily activities
20 within 24 hours

21 Within 30 days of the effective date of this decision, Respondent shall have his
22 supervisor submit notification to the Board in writing stating the supervisor has read the
23 decision in case number 2730 and is familiar with the level of supervision as determined by
24 the Board.

25 If Respondent changes employment, Respondent shall have his new supervisor,
26 within 15 days after employment commences, submit notification to the Board in writing
27 stating the direct supervisor and pharmacist-in-charge have read the decision in case number
28 2730 and is familiar with the level of supervision as determined by the Board.

1 Within 10, days of leaving employment, Respondent shall notify the Board in
2 writing.

3 • **No Ownership of Premises.** Respondent shall not own, have any legal
4 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
5 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
6 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
7 entity licensed by the Board within 90 days following the effective date of this decision and
8 shall immediately thereafter provide written proof thereof to the Board.

9 ACCEPTANCE

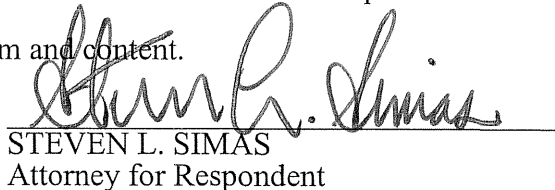
10 I have carefully read the above Stipulated Settlement and Disciplinary Order
11 and have fully discussed it with my attorney, Steven L. Simas. I understand the stipulation
12 and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement
13 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the Board of Pharmacy.

15 DATED: 7-25-2005

15 
16 IRVING GARY EICH
16 Respondent

17 I have read and fully discussed with Respondent IRVING GARY EICH the
18 terms and conditions and other matters contained in the above Stipulated Settlement and
19 Disciplinary Order. I approve its form and content.

20 DATED: 7-28-2005

20 
21 STEVEN L. SIMAS
21 Attorney for Respondent

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ENDORSEMENT

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

DATED: 8-1-05

BILL LOCKYER, Attorney General
of the State of California



JANA L. TUTON
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03583110-SA2004102080
10180779.wpd

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

In the Matter of the Accusation Against:

IRVING GARY EICH
P.O. Box 2448
Running Springs, CA 92382

Pharmacist License No. RPH 38094

Respondent.

Case No. 2780

OAH No. N-2005030709

DECISION AND ORDER

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

This Decision shall become effective on October 6, 2005.

It is so ORDERED September 6, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2780

1 BILL LOCKYER, Attorney General
of the State of California
2 JANA L. TUTON, State Bar No. 78206
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-5342
Facsimile: (916) 327-8643
6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 IRVING GARY EICH
13 P.O. Box 2448
Running Springs, CA 92382
14 Pharmacist License No. RPH 38094
15 Respondent.

Case No. 2780

ACCUSATION

17 Complainant alleges:

18 PARTIES

- 19 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs.
22 2. On or about September 14, 1983, the Board of Pharmacy issued
23 Pharmacist License Number RPH 38094 to IRVING GARY EICH (Respondent). The
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on July 31, 2005, unless renewed.

26 JURISDICTION

- 27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 ///

1 Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 4301 of the Code states in pertinent part:

4 "The board shall take action against any holder of a license who is guilty of
5 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
6 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
7 following:

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

11 "(j) The violation of any of the statutes of this state or of the United States
12 regulating controlled substances and dangerous drugs.

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

17 6. Section 4060 of the Code states:

18 "No person shall possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
20 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
21 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
22 section shall not apply to the possession of any controlled substance by a manufacturer,
23 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
24 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
25 and address of the supplier or producer.

26 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
27 or a physician assistant to order his or her own stock of dangerous drugs and devices."

28 ///

1 7. Section 11170 of the Health and Safety Code provides that no one may
2 prescribe, administer or furnish a controlled substance for himself.

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

7 FIRST CAUSE FOR DISCIPLINE

8 (Acts of Dishonesty)

9 9 Respondent is subject to disciplinary action under section 4301(f) in that
10 Respondent took controlled substances from his employer, Sonora Community Hospital, for his
11 own use. The circumstances are as follows:

12 10. On or about October, 2003, Respondent took a broken ampule of Talwin
13 from the trash at Sonora Community Hospital while he was at work. After he left work, he
14 administered the Talwin to himself. Talwin is a controlled substance pursuant to Health and
15 Safety Code section 11058(g).

16 11. On or about November 17, 2003, Respondent took a discarded syringe of
17 Demerol from the sharps container while at work at Sonora Community Hospital and
18 administered the Demerol to himself. Demerol is a controlled substance pursuant to Health and
19 Safety Code section 11055(c)(17).

20 SECOND CAUSE FOR DISCIPLINE

21 (Unlawful Use and Possession of a Controlled Substance)

22 12. Respondent is subject to disciplinary action under section 4301 (j) in
23 conjunction with section 4060 and with Health and Safety Code section 11170 in that
24 Respondent possessed and administered to himself controlled substances as set forth in
25 Paragraphs 9-11, supra.

26 PRAYER

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


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A. Revoking or suspending Pharmacist License Number RPH 38094, issued to IRVING GARY EICH;

B. Ordering IRVING GARY EICH 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;

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

DATED: 11/1/04



PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant