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Attorneys for Complainant

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

In the Matter of the Accusation Against: JAMES JAY ELSER 27873 Chipiona Mission Viejo, CA 92692 Pharmacist License No. RPH 30486 Respondent.	Case No. 2843 OAH No. 2006070342 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Interim Executive Officer of the California State Board of Pharmacy (Board).[1] She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Anne Hunter, Deputy Attorney General.

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[1] Patricia F. Harris (Complainant's predecessor in interest) was the Executive Officer of the California State Board of Pharmacy when this action was initially brought against respondent.

2. James Jay Elser (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about August 10, 1976, the Board of Pharmacy issued Pharmacist License No. RPH 30486 to respondent. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2843 and will expire on February 28, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2843 was filed before the Board of Pharmacy, Department of Consumer Affairs, State of California, and is currently pending against respondent. The Accusation and all other statutorily required documents were properly served on respondent on January 30, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2843 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2843. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in

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Accusation No. 2843, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 30486 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board of Pharmacy to issue an order accepting the surrender of his Pharmacist License without further process.

CONTINGENCY

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

11. Respondent understands that, in deciding whether to adopt this stipulation, the Board may receive oral and written communication from its staff and the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board or other persons from future participation in this or any other matter affecting respondent. In the event this settlement is not adopted by the Board, the stipulation will not become effective and may not be used for any purpose, except this paragraph, which shall remain in effect.

12. 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 Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 30486, issued to Respondent James Jay Elser, is surrendered and accepted by the Board of Pharmacy, Department of Consumer Affairs, State of California.

1. The surrender of respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against respondent. This stipulation constitutes a record of the discipline and shall become a part of respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a registered pharmacist in California as of the effective date of the Board of Pharmacy's Decision and Order.

3. Respondent shall relinquish his wall license and pocket renewal license to the Board within ten (10) days of the effective date of the Decision and Order.

4. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of this decision. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the Accusation shall be deemed to be true. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to taking and passing the California Pharmacist Licensure Examination prior to the issuance of a new license. Respondent is obligated to report this surrender as disciplinary action.

5. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, the investigation and prosecution costs in the amount of $5,600.00 shall be paid to the Board prior to issuance of the new license.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy, Department of Consumer Affairs.

DATED: _____.

_____
James Jay Elser
Respondent

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3. Respondent shall relinquish his wall license and pocket renewal license to the Board within ten (10) days of the effective date of the Decision and Order.

4. Respondent may not reapply for any license, permit, or registration from the Board for three years from the effective date of this decision. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the Accusation shall be deemed to be true. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to taking and passing the California Pharmacist Licensure Examination prior to the issuance of a new license. Respondent is obligated to report this surrender as disciplinary action.

5. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, the investigation and prosecution costs in the amount of $5,600.00 shall be paid to the Board prior to issuance of the new license.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy, Department of Consumer Affairs.

DATED: 10/12/06

James Jay Elser
Respondent

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ENDORSEMENT

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

DATED: Nov. 16, 2006

BILL LOCKYER, Attorney General
of the State of California

MARC D. GREENBAUM
Supervising Deputy Attorney General

ANNE HUNTER
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005700071
60177180.wpd

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

In the Matter of the Accusation Against: JAMES JAY ELSER 27873 Chipiona Mission Viejo, CA 92692 Pharmacist License No. RPH 30486 Respondent.	Case No. 2843 OAH No. 2006070342

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California State Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on February 1, 2007.

It is so ORDERED January 2, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2843

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Attorneys for Complainant

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

In the Matter of the Accusation Against: JAMES JAY ELSER 27873 Chipona Mission Viejo, CA 92692 Pharmacist License No. RPH 30486 Respondent.	Case No. 2843 **ACCUSATION**

The Complainant, Patricia F. Harris, for cause of accusation against JAMES JAY ELSER, alleges as follows:

PARTIES

1. The Complainant, Patricia F. Harris, is the Executive Officer of the California State Board of Pharmacy (hereinafter the "Board"), and makes this Accusation solely in her official capacity.

2. On or about August 10, 1976, the Board issued Original Pharmacist License Number RPH 30486 to respondent JAMES JAY ELSER (hereinafter respondent "ELSER"). At all times material herein, respondent ELSER was and currently is licensed by the Board as a registered pharmacist. The license will expire on February 28, 2007, unless renewed.

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JURISDICTION

3. Complainant brings this Accusation under the power vested in the Board in Business and Professions Code section 4300, subdivision (a), to suspend or revoke licenses issued by the Board pursuant to the California Pharmacy Act, Chapter 9, Division 2, section 4000 et seq., of the Business and Professions Code.

3. Business and Professions Code section 4370, subdivision (c), provides that "participation in a [diversion] program shall not be a defense to any disciplinary action that may be taken by the board." It also provides that the Board is not precluded "from commencing disciplinary action against a licensee who is terminated from a [diversion] program."

FACTS

4. In February, 2000, respondent ELSER was employed as a pharmacist at Palomar Medical Center located in Escondido, California. On or about February 10, 2000, respondent reported to work under the influence of alcohol. For such conduct, respondent was suspended and later terminated from employment at Palomar Medical Center.

5. On or about March 18, 2000, respondent voluntarily entered the Pharmacist Recovery Program which is currently administered by Maximus Diversion Program.

6. On October 12, 2001, Complainant, acting on behalf of the Board, referred respondent ELSER to the Pharmacist Recovery Program under the authority of Business and Professions Code section 4362.

7. On or about December 7, 2004, Maximus notified the Board that respondent ELSER had been terminated from the Pharmacist Recovery Program. The notice was provided under the authority of Business and Professions Code section 4369, subdivision (b). Respondent was terminated from the diversion program, in part, due to testing positive for Ethylglucuronide (alcohol) twice in July, 2004, and his admission that he had five or six alcohol "binges" while participating in the Pharmacist Recovery Program.

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FIRST CAUSE FOR DISCIPLINE

(Dangerous Use of Alcoholic Beverages)

8. Complainant incorporates herein by this reference the preamble and each of the allegations set forth in paragraphs 1 through 7 hereinabove.

9. Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct.

10. Business and Professions Code section 4301, subdivision (h), provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct for a licensed pharmacist includes:

> The administering to oneself, of any controlled substance, or the use of any dangerous drug or 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.

11. Business and Professions Code section 4370, subdivision (b), provides that the Board shall be informed of the pharmacist's noncompliance with the Pharmacist Recovery Program if the program determines that the pharmacist's resuming the practice of pharmacy would pose a threat to the health and safety of the public. Section 4370, subdivision (b), further provides that the Board shall be informed of the basis for the pharmacist's termination from the Pharmacist Recovery Program and of the determination that the pharmacist's resuming the practice of pharmacy would pose a threat to the health and safety of the public.

12. The pharmacist license of respondent ELSER is subject to discipline under Business and Professions Code sections 4300 and 4301, for committing unprofessional conduct within the meaning of Business and Professions Code section 4301, subdivision (h), in that, respondent used alcoholic beverages to the extent and in a manner that was dangerous to himself, and to the extent that such use impaired his ability to practice with safety to the public the profession of pharmacy within the meaning of both Business and Professions Code sections 4301, subdivision (h), and 4370, subdivision (b), as described in paragraphs 4 and 7 above.

SECOND CAUSE FOR DISCIPLINE

(Operation Under Influence of Alcohol)

13. Complainant incorporates herein by this reference the preamble and each of the allegations set forth in paragraphs 1 through 4 and 9 hereinabove.

14. Business and Professions Code section 4301, subdivision (o), provides that unprofessional conduct for a registered pharmacist includes violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of the California Pharmacy Law, or of the applicable federal and state laws and regulations governing pharmacy.

15. Business and Professions Code section 4327 provides that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

16. The pharmacist license of respondent ELSER is subject to discipline under Business and Professions Code sections 4300 and 4301, for committing unprofessional conduct within the meaning of Business and Professions Code section 4301, subdivision (o), in that, by reporting to work to Palomar Medical Center under the influence of alcohol, as described in paragraph 4 above, respondent violated Business and Professions Code section 4327.

OWNERSHIP PROHIBITION

17. Business and Professions Code section 4307, subdivision (a), provides, in pertinent part, that any person whose license has been revoked or is under suspension shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee.

18. Pursuant to Business and Professions Code section 4307, subdivision (a), in the event that the license issued to respondent ELSER is revoked or placed on suspension, respondent shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of any licensee with rights issued by the Board.

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COST RECOVERY

19. Business and Professions Code section 125.3 provides that, in any order issued in resolution of a disciplinary proceeding before any board within the Department of Consumer Affairs, the board may request the Administrative Law Judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20. Under Business and Professions Code section 101, subdivision (d), the California State Board of Pharmacy was and is a board within the Department of Consumer Affairs of the State of California. Pursuant to Business and Professions Code section 125.3, the Board hereby requests the Administrative Law Judge who issues a Proposed Decision in this matter to include an Order which provides for the recovery by the Board of the costs of investigation and enforcement of this case against respondent ELSER, according to proof.

WHEREFORE, Complainant prays that a hearing be had and that the Board of Pharmacy make its Order:

1. Revoking or suspending Pharmacist License Number RPH 30486 issued to respondent JAMES JAY ELSER;

2. Prohibiting respondent JAMES JAY ELSER from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee, pursuant to the provisions of Business and Professions Code section 4307(a);

3. Directing respondent JAMES JAY ELSER to pay the California State Board of Pharmacy the reasonable costs of the investigation and prosecution of this matter

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pursuant to Business and Professions Code section 125.3, according to proof; and

4. Taking such further action as is deemed necessary and proper.

DATED: 1/23/06

P. F. Harris

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

Attorneys for Complainant

SD2005700071
Elser, R.P.H. - Accusation