

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

In the Matter of the Accusation Against:

Case No. 3178

THOMAS DIBENEDETTO

4224 Coronado Avenue
San Diego, CA 92107

Pharmacist License No. RPH 46169

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 on May 27, 2009.

It is so ORDERED on April 27, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD, State Bar No. 110639
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2025
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 THOMAS DIBENEDETTO
4224 Coronado Avenue
14 San Diego, CA 92107
15 Original Pharmacist License No. RPH 46169
16 Respondent.

Case No. 3178

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 **PARTIES**

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Edmund G. Brown Jr., Attorney General of the State of California, by David E. Hausfeld,
24 Deputy Attorney General.

25 2. Respondent Thomas DiBenedetto is represented in this proceeding by
26 attorney Michael Lipman, whose address is 501 West Broadway, Suite 400, San Diego, CA
27 92101.

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1 date of this order. Respondent will have a credit for the 39 days already served in the
2 Pharmacists Recovery 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 be
9 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 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
18 regulations substantially related to or governing the practice of pharmacy.

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

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

1 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
2 or charging for any drug, device or controlled substance.

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

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

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

17 **6. Continuing Education.** Respondent shall provide evidence of efforts
18 to maintain skill and knowledge as a pharmacist as directed by the Board.

19 **7. Notice to Employers.** Respondent shall notify all present and
20 prospective employers of the decision in Case No. 3178 and the terms, conditions and
21 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
22 this decision, and within 15 days of Respondent undertaking new employment, Respondent
23 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
24 writing acknowledging the employer has read the decision in Case No. 3178.

25 If Respondent works for or is employed by or through a pharmacy employment
26 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
27 every pharmacy of the and terms conditions of the decision in Case No. 3178 in advance of the
28 Respondent commencing work at each pharmacy.

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

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

9 **9. Reimbursement of Board Costs.** Respondent shall pay to the Board
10 its costs of investigation and prosecution in the amount of \$4,400.00. Respondent shall make
11 payments in equal amounts on a quarterly basis. The final payment is due no later than six
12 months before the end of the probationary term.

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

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

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

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

25 **12. License Surrender While on Probation/Suspension.** Following the
26 effective date of this decision, should Respondent cease practice due to retirement or health,
27 or be otherwise unable to satisfy the terms and conditions of probation, Respondent may
28 tender his license to the Board for surrender. The Board shall have the discretion whether to

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

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

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

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

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

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

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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 be
5 extended until all terms and conditions have been satisfied or the Board has taken other action
6 as deemed appropriate to treat the failure to comply as a violation of probation, to terminate
7 probation, and to impose the penalty which was stayed.

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

10 **17. 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 participate
19 in and complete his current contract and any subsequent addendums with the PRP. Probation
20 shall be automatically extended until Respondent successfully completes his treatment contract.
21 Any person terminated from the program shall be automatically suspended upon notice by the
22 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
23 writing. The Board shall retain jurisdiction to institute action to terminate probation for any
24 violation of this term.

25 **18. Random Drug Screening.** Respondent, at his own expense, shall
26 participate in random testing, including but not limited to biological fluid testing (urine, blood),
27 breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The
28 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 suspension of practice by Respondent. Respondent may not resume the
6 practice of pharmacy until notified by the Board in writing.

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

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

17 Continuous - 75% to 100% of a work week

18 Substantial - At least 50% of a work week

19 Partial - At least 25% of a work week


20 Daily - Supervisor's review of probationer's daily activities 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 No. 3178 and is familiar with the level of supervision as determined by the
24 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 No. 3178
28 and is familiar with the level of supervision as determined by the Board.

1 I have read and fully discussed with Respondent Thomas DiBenedetto the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4 DATED: 3/11/09

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7 MICHAEL LIPMAN
8 Attorney for Respondent

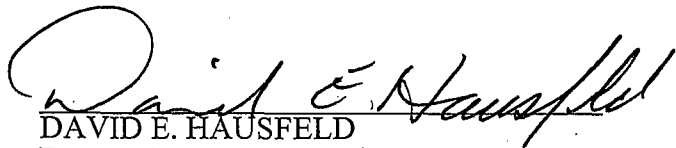
9
10 **ENDORSEMENT**

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

14
15 DATED: 3/12/09

16 EDMUND G. BROWN JR., Attorney General
17 of the State of California

18 LINDA K. SCHNEIDER
19 Supervising Deputy Attorney General

20 
21 DAVID E. HAUSFELD
22 Deputy Attorney General

23 Attorneys for Complainant

24 DOJ Matter ID: SD2008801201
25 80304673.wpd

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Exhibit A
Accusation No. 3178

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DAVID E. HAUSFELD, State Bar No. 110639
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5
6 P.O. Box 85266
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BOARD OF PHARMACY
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3178

13 THOMAS DIBENEDETTO
4224 Coronado Avenue
14 San Diego, CA 92107

A C C U S A T I O N

15 Original Pharmacist License No. RPH 46169

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 26, 1993, the Board of Pharmacy issued Original
22 Pharmacist License Number RPH 46169 to Thomas DiBenedetto (Respondent). The license was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 August 31, 2008, unless renewed.

25 **JURISDICTION**

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

1 COST RECOVERY

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

6 FACTS

7 10. Respondent was employed as a staff pharmacist at Rite Aid #5615 (Rite
8 Aid), located in Chula Vista, California, from on or about August 2, 2004 through on or about
9 December 5, 2006.

10 11. On or about December 5, 2006 at approximately 2:30 p.m. the Chula
11 Vista police responded to a report of a disoriented individual in the parking lot of the Valle Lindo
12 Elementary School. The Respondent was found asleep behind the wheel of his vehicle parked in
13 the school parking lot and blocking the school bus exit.

14 12. After the Respondent was awakened, a search of his vehicle was
15 conducted, with the permission of the Respondent. Four "baggies" containing a total of 4.73
16 grams of crystal methamphetamine were discovered.

17 13. The Respondent was arrested and charged with violations of Health and
18 Safety Code sections 11377(a), Possession of a Controlled Substance; 11380.1 (a)(2), Possession
19 of Methamphetamine on School Grounds; and 11550(a), Under the Influence of Controlled
20 Substances.

21 14. A felony criminal complaint was filed on January 17, 2007. Respondent
22 was charged with a felony violation of Health and Safety Code section 11377 (a), Possession of a
23 Controlled Substance; a misdemeanor violation of Health and Safety Code section 11550(a),
24 Under the Influence of a Controlled Substance; and a misdemeanor violation of Vehicle Code
25 section 23152(a), Driving Under the Influence of Drugs.

26 15. On or about March 2, 2007, Respondent entered a plea of guilty of
27 violating Health and Safety Code section 11377(a), Felony Possession of a Controlled
28 Substance, Methamphetamine. The two misdemeanor charges were dismissed. Pursuant to

1 Penal Code section 1000, et. seq., entry of judgment was deferred and Respondent was ordered to
2 comply with a criminal diversion program.

3 16. The Respondent completed a residential rehabilitation program in January
4 2007 pursuant to the terms of Penal Code section 1000, Deferred Entry of Judgment program
5 imposed by the court. He is scheduled to return to the court on November 20, 2008 for a Penal
6 Code section 1000 dismissal, if appropriate, upon satisfaction of all diversion requirements.

7 17. On or about June 13, 2007, during an interview with the Board's
8 Inspector, Respondent admitted to being an addict for at least the past ten years.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct - Self Administration of a Controlled Substance)

11 18. Paragraphs 1 through 17 are incorporated herein as though fully set forth.
12 Respondent is subject to discipline for unprofessional conduct pursuant to Business and
13 Professions Code section 4301(h) in that Respondent administered to himself a controlled
14 substance, methamphetamine. Specifically, Respondent was under the influence of
15 methamphetamine, arrested and charged with a misdemeanor violation of Health and Safety
16 Code section 11550 (a).

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Unprofessional Conduct - Violation of Statutes regulating Drugs)

19 19. Paragraphs 1 through 17 are incorporated herein as though fully set forth.
20 Respondent is subject to discipline for unprofessional conduct pursuant to Business and
21 Professions Code section 4301(j) in that he violated the statutes of the State regulating controlled
22 substances. Specifically, Respondent was in possession of methamphetamine, an illegal
23 controlled substance, in violation of 11377 (a) of the Health and Safety Code, and was also under
24 the influence, in violation of section 11550 of the Health and Safety Code.

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