



California State Board of Pharmacy  
1625 N. Market Blvd, N219, Sacramento, CA 95834  
Phone: (916) 574-7900  
Fax: (916) 574-8618  
www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
DEPARTMENT OF CONSUMER AFFAIRS  
GOVERNOR EDMUND G. BROWN JR.

RECEIVED BY CALIF  
BOARD OF PHARMACY

2015 JUL 27 AM 9:48

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST/INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Richard D. Montoya</u>	Case No. <u>AC3379</u>
Address of Record: <u>P.O. Box 130403</u> <u>Big Bear Lake CA 92315</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC3379, I hereby request to surrender my license, License No. CA 41140. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

RD Montoya  
Applicant's Signature

7-27-15  
Date

O. Herald  
Executive Officer's Approval

7/30/15  
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

Case No. 3379

**RICHARD D. MONTOYA**  
P.O. Box 130403  
Big Bear Lake, CA 92315

Pharmacist License No. RPH 41140

Respondent.

**DECISION AND ORDER**

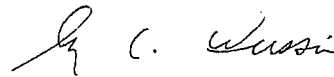
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 29, 2010.

It is so ORDERED on August 30, 2010.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



---

STANLEY C. WEISSER  
Board President

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 MICHAEL BROWN  
Deputy Attorney General  
4 State Bar No. 231237  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2095  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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. 3379

11 **RICHARD D. MONTOYA**  
12 **PO Box 130403**  
13 **734 Silvertip Dr.**  
14 **Big Bear Lake, CA 92315**  
15 **Pharmacist License No. RPH 41140**

OAH No. L-2009120442  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

Respondent.

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

19 PARTIES

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

24 2. Respondent Richard D. Montoya (Respondent) is representing himself in this  
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 19, 1987, the Board of Pharmacy issued Pharmacist License No.  
27 RPH 41140 to Richard D. Montoya (Respondent). The Pharmacist License was in full force and  
28

1 effect at all times relevant to the charges brought in Accusation No. 3379 and will expire on  
2 December 31, 2010, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3379 was filed before the Board of Pharmacy (Board), Department of  
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
6 statutorily required documents were properly served on Respondent on November 24, 2009.  
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation  
8 No. 3379 is attached as exhibit 1 and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in  
11 Accusation No. 3379. Respondent has also carefully read, and understands the effects of this  
12 Stipulated Settlement and Disciplinary Order.

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

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation  
24 No. 3379.

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

28 ///

CONTINGENCY

1  
2           10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
4 communicate directly with the Board regarding this stipulation and settlement, without notice to  
5 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
6 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the  
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
8 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
9 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
10 not be disqualified from further action by having considered this matter.

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

14           12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
17 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
18 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
19 writing executed by an authorized representative of each of the parties.

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

23    ///  
24    ///  
25    ///  
26    ///  
27    ///  
28    ///

**DISCIPLINARY ORDER**

1  
2  
3 IT IS HEREBY ORDERED that Pharmacist License No. RPH 41140 issued to Respondent  
4 Richard D. Montoya (Respondent) is revoked. However, the revocation is stayed and Respondent  
5 is placed on probation for five (5) years on the following terms and conditions.

6 1. **Suspension**

7 As part of probation, respondent is suspended from the practice of pharmacy for forty five  
8 (45) days beginning the effective date of this decision, with credit for suspension time already  
9 served.

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

18 Respondent shall not engage in any activity that requires the professional judgment of a  
19 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.

20 Respondent shall not perform the duties of a pharmacy technician or a designated representative  
21 for any entity licensed by the board.

22 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
23 licensed premises in which he holds an interest at the time this decision becomes effective unless  
24 otherwise specified in this order.

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

26 ///

27 ///

28 ///

1           **2. 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's 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           **3. 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           **4. 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 its  
28          designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
2 the period of probation, shall be considered a violation of probation.

3 **5. 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 **6. 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 **7. Notice to Employers**

11 During the period of probation, respondent shall notify all present and prospective  
12 employers of the decision in case number 3379 and the terms, conditions and restrictions imposed  
13 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 in case number 3379, and terms and conditions imposed  
19 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
20 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 in case number 3379 in advance  
24 of the respondent commencing work at each licensed entity. A record of this notification must be  
25 provided to the board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
27 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
28 service, respondent shall cause his direct supervisor with the pharmacy employment service to



1 report to the board in writing acknowledging that he has read the decision in case number 3379  
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 **8. 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 **9. Reimbursement of Board Costs**

18 As a condition precedent to successful completion of probation, respondent shall pay to the  
19 board its costs of investigation and prosecution in the amount of \$5,185.00. Respondent shall pay  
20 said sum to the Board within thirty days of the effective date of the decision, or with the prior  
21 approval of the Board, may pay said sum in quarterly installments such that the entire balance due  
22 is fully paid before the probationary period expires.

23 There shall be no deviation from this schedule absent prior written approval by the board or  
24 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
25 probation.

26 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to  
27 reimburse the board its costs of investigation and prosecution.

28 ///

1           **10. Probation Monitoring Costs**

2           Respondent shall pay any costs associated with probation monitoring as determined by the  
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
5 be considered a violation of probation.

6           **11. Status of License**

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

10           If respondent's license expires or is cancelled by operation of law or otherwise at any time  
11 during the period of probation, including any extensions thereof due to tolling or otherwise, upon  
12 renewal or reapplication respondent's license shall be subject to all terms and conditions of this  
13 probation not previously satisfied.

14           **12. License Surrender While on Probation/Suspension**

15           Following the effective date of this decision, should respondent cease practice due to  
16 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
17 respondent may tender his license to the board for surrender. The board or its designee shall have  
18 the discretion whether to grant the request for surrender or take any other action it deems  
19 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent  
20 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
21 record of discipline and shall become a part of the respondent's license history with the board.

22           Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to  
23 the board within ten (10) days of notification by the board that the surrender is accepted.

24           Respondent may not reapply for any license from the board for three (3) years from the effective  
25 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
26 of the date the application for that license is submitted to the board, including any outstanding  
27 costs.

28           ///

1           **13. Notification of a Change in Name, Residence Address, Mailing Address or**  
2           **Employment**

3           Respondent shall notify the board in writing within ten (10) days of any change of  
4           employment. Said notification shall include the reasons for leaving, the address of the new  
5           employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
6           shall further notify the board in writing within ten (10) days of a change in name, residence  
7           address, mailing address, or phone number.

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

10           **14. Tolling of Probation**

11           Except during periods of suspension, respondent shall, at all times while on probation, be  
12           employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.  
13           Any month during which this minimum is not met shall toll the period of probation, i.e., the  
14           period of probation shall be extended by one month for each month during which this minimum is  
15           not met. During any such period of tolling of probation, respondent must nonetheless comply  
16           with all terms and conditions of probation.

17           Should respondent, regardless of residency, for any reason (including vacation) cease  
18           practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,  
19           respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
20           must further notify the board in writing within ten (10) days of the resumption of practice. Any  
21           failure to provide such notification(s) shall be considered a violation of probation.

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

25           "Cessation of practice" means any calendar month during which respondent is  
26           not practicing as a pharmacist for at least forty (40) hours, as defined by Business and  
27           Professions Code section 4000 et seq . "Resumption of practice" means any calendar  
28           month during which respondent is practicing as a pharmacist for at least forty (40)

1 hours as a pharmacist as defined by Business and Professions Code section 4000 et  
2 seq.

3 **15. Violation of Probation**

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

9 If respondent violates probation in any respect, the board, after giving respondent notice  
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
13 a petition to revoke probation or an accusation is filed against respondent during probation, the  
14 board shall have continuing jurisdiction and the period of probation shall be automatically  
15 extended until the petition to revoke probation or accusation is heard and decided.

16 **16. Completion of Probation**

17 Upon written notice by the board or its designee indicating successful completion of  
18 probation, respondent's license will be fully restored.

19 **17. Pharmacists Recovery Program (PRP)**

20 Within thirty (30) days of the effective date of this decision, respondent shall contact the  
21 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,  
22 successfully participate in, and complete the treatment contract and any subsequent addendums as  
23 recommended and provided by the PRP and as approved by the board or its designee. The costs  
24 for PRP participation shall be borne by the respondent.

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

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

3 Probation shall be automatically extended until respondent successfully completes the PRP.  
4 Any person terminated from the PRP program shall be automatically suspended by the board.  
5 Respondent may not resume the practice of pharmacy until notified by the board in writing.

6 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
7 licensed practitioner as part of a documented medical treatment shall result in the automatic  
8 suspension of practice by respondent and shall be considered a violation of probation.

9 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

18 During suspension, respondent shall not engage in any activity that requires the  
19 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
20 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
21 designated representative for any entity licensed by the board.

22 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
23 licensed premises in which he holds an interest at the time this decision becomes effective unless  
24 otherwise specified in this order.

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

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

1           **18. Random Drug Screening**

2           Respondent, at his own expense, shall participate in random testing, including but not  
3 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
4 screening program as directed by the board or its designee. Respondent may be required to  
5 participate in testing for the entire probation period and the frequency of testing will be  
6 determined by the board or its designee. At all times, respondent shall fully cooperate with the  
7 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
8 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
9 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
10 of probation. Upon request of the board or its designee, respondent shall provide documentation  
11 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
12 a necessary part of the treatment of the respondent. Failure to timely provide such documentation  
13 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
14 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
15 shall be considered a violation of probation and shall result in the automatic suspension of  
16 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until  
17 notified by the board in writing.

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

26           During suspension, respondent shall not engage in any activity that requires the  
27 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
28 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a

1 designated representative for any entity licensed by the board.

2 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
3 licensed premises in which he holds an interest at the time this decision becomes effective unless  
4 otherwise specified in this order.

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

6 **19. Abstain from Drugs and Alcohol Use**

7 Respondent shall completely abstain from the possession or use of alcohol, controlled  
8 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
9 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
10 request of the board or its designee, respondent shall provide documentation from the licensed  
11 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
12 treatment of the respondent. Failure to timely provide such documentation shall be considered a  
13 violation of probation. Respondent shall ensure that he is not in the same physical location as  
14 individuals who are using illicit substances even if respondent is not personally ingesting the  
15 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
16 not supported by the documentation timely provided, and/or any physical proximity to persons  
17 using illicit substances, shall be considered a violation of probation.

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

19 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
20 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
21 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
22 history [with the use of controlled substances, and/or dangerous drugs.] and who will coordinate  
23 and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-  
24 altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation  
25 and decision. A record of this notification must be provided to the board upon request.

26 Respondent shall sign a release authorizing the practitioner to communicate with the board about  
27 respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or  
28 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding

1 respondent's compliance with this condition. If any substances considered addictive have been  
2 prescribed, the report shall identify a program for the time limited use of any such substances.  
3 The board may require that the single coordinating physician, nurse practitioner, physician  
4 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive  
5 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,  
6 respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment,  
7 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist  
8 of respondent's choice to the board or its designee for its prior approval. Failure to timely submit  
9 the selected practitioner or replacement practitioner to the board for approval, or to ensure the  
10 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

24 During suspension, respondent shall not engage in any activity that requires the  
25 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
26 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
27 designated representative for any entity licensed by the board.

28 Subject to the above restrictions, respondent may continue to own or hold an interest in any



1 licensed premises in which he holds an interest at the time this decision becomes effective unless  
2 otherwise specified in this order.

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

4 **21. Community Services Program**

5 Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
6 board or its designee, for prior approval, a community service program in which respondent shall  
7 provide free health-care related services on a regular basis to a community or charitable facility or  
8 agency for at least 150 hours for the first twenty months of his probation. Within thirty (30) days  
9 of board approval thereof, respondent shall submit documentation to the board demonstrating  
10 commencement of the community service program. A record of this notification must be  
11 provided to the board upon request. Respondent shall report on progress with the community  
12 service program in the quarterly reports. Failure to timely submit, commence, or comply with the  
13 program shall be considered a violation of probation.

14 **22. 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 suspended  
18 until a supervisor is approved by the board or its designee. The supervision shall be, as required  
19 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 in case number 3379 and is familiar with the required level of supervision as determined  
27 by the board or its designee. It shall be the respondent's responsibility to ensure that his  
28 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the

1 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 the 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 in case number 3379 and is familiar with the level of  
8 supervision as determined by the board. Respondent shall not practice pharmacy and his license  
9 shall be automatically suspended until the board or its designee approves a new supervisor.

10 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
11 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 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
26 licensed premises in which he holds an interest at the time this decision becomes effective unless  
27 otherwise specified in this order.

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

1           23.   **No Ownership of Licensed Premises**

2           Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
3 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
4 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
5 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
6 days following the effective date of this decision and shall immediately thereafter provide written  
7 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
8 documentation thereof shall be considered a violation of probation.

9           24.   **Tolling of Suspension**

10          During the period of suspension, respondent shall not leave California for any period  
11 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess  
12 of the (10) days during suspension shall be considered a violation of probation. Moreover, any  
13 absence from California during the period of suspension exceeding ten (10) days shall toll the  
14 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days  
15 respondent is absent from California. During any such period of tolling of suspension,  
16 respondent must nonetheless comply with all terms and conditions of probation.

17          Respondent must notify the board in writing within ten (10) days of departure, and must  
18 further notify the board in writing within ten (10) days of return. The failure to provide such  
19 notification(s) shall constitute a violation of probation. Upon such departure and return,  
20 respondent shall not resume the practice of pharmacy until notified by the board that the period of  
21 suspension has been satisfactorily completed.

22   ACCEPTANCE

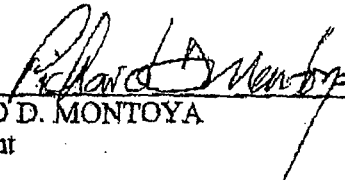
23           I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
24 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated  
25 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be 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

27           ///

28           ///

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

DATED: 6-28-2010


  
RICHARD D. MONTOYA  
Respondent

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: 6/28/2010

Respectfully Submitted,  
EDMUND G. BROWN JR.  
Attorney General of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General

  
MICHAEL BROWN  
Deputy Attorney General  
*Attorneys for Complainant*

LA2009603122  
50670074.doc

FAX 213 897-2809

**Exhibit 1**

Accusation No. 3379

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KRISTI GUDOSKI COOK  
Deputy Attorney General  
4 State Bar No. 185257  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-6343  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3379

13 **RICHARD D. MONTOYA**  
P.O. Box 130403  
14 **Big Bear Lake, CA 92315**  
Original Pharmacist License No. RPH 41140

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Virginia K. 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 August 19, 1987, the Board of Pharmacy (Board) issued Original  
22 Pharmacist License Number RPH 41140 to Richard D. Montoya (Respondent). The Pharmacist  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on December 31, 2010, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

1  
2 4. Section 4300, subdivision (a), states: "Every license issued may be suspended or  
3 revoked."

4 5. Section 4301 states, in pertinent part:

5 "The board shall take action against any holder of a license who is guilty of unprofessional  
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 . . . .

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

12 . . . .

13 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
14 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
15 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
16 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
17 practice authorized by the license.

18 . . . .

19 "(j) The violation of any of the statutes of this state, or any other state, or of the United  
20 States regulating controlled substances and dangerous drugs.

21 . . . .

22 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
24 federal and state laws and regulations governing pharmacy, including regulations established by  
25 the board or by any other state or federal regulatory agency."

26 6. Section 4060 states, in pertinent part:

27 "No person shall possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
2 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
3 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
4 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
5 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
6 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
7 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
8 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
9 labeled with the name and address of the supplier or producer.”

10 7. Section 4327 states: “Any person who, while on duty, sells, dispenses or compounds  
11 any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty  
12 of a misdemeanor.”

13 8. Health and Safety Code section 11170 states: “No person shall prescribe, administer,  
14 or furnish a controlled substance for himself.”

15 9. Health and Safety Code section 11173, subdivision (a), states: “No person shall  
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
18 or subterfuge; or (2) by the concealment of a material fact.”

19 10. Health and Safety Code section 11350, subdivision (a), states:

20 “Except as otherwise provided in this division, every person who possesses (1) any  
21 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
22 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
23 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
24 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
25 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
26 licensed to practice in this state, shall be punished by imprisonment in the state prison.

27 ///

28 ///





1 and administered to himself included Vicodin and Tussionex (hereafter, drugs). Respondent did  
2 not have a valid prescription for these drugs.

3 b. Respondent became physically dependent on these drugs, and worked as a pharmacist  
4 while under the influence of these drugs.

5 SECOND CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct/Possession of a Controlled Substance Without a Prescription)

7 16. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and  
8 (o), and 4060, in conjunction with Health and Safety Code section 11350, subdivision(a), for  
9 possessing a controlled substance without a prescription. Complainant refers to and incorporates  
10 all the allegations set forth in paragraph 15.a as though set forth fully.

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct/Administering Controlled Substances to Oneself)

13 17. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
14 conjunction with Health and Safety Code section 11170, for administering controlled substances  
15 to himself. Complainant refers to and incorporates all the allegations set forth in paragraphs 15.a  
16 and 15.b, inclusive, as though set forth fully.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Under the Influence of a Dangerous Drug While Working as a Pharmacist)

19 18. Respondent is subject to disciplinary action under section sections 4301, subdivisions  
20 (j) and (o), and 4327, for selling, dispensing or compounding a drug while under the influence of  
21 a dangerous drug. Complainant refers to and incorporates all the allegations set forth in  
22 paragraphs 15.a and 15.b, inclusive, as though set forth fully.

23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
25 and that following the hearing, the Board issue a decision:

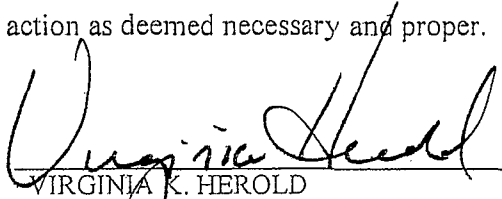
26 1. Revoking or suspending Pharmacist License Number RPH 41140, issued to Richard  
27 D. Montoya;

28 ///

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

- 2. Ordering Richard D. Montoya to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 11/17/09



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

LA2009603122  
60436681.doc