

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

In the Matter of the Accusation Against:

Case No. 3412

WILLIAM ANDREW ALLEN

P.O. Box 5421
San Diego, CA 92165

Pharmacist License No. RPH 30899

Respondent.

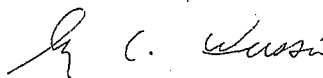
DECISION AND ORDER

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 December 31, 2010.

It is so ORDERED on December 1, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

11 In the Matter of the Accusation Against:

Case No. 3412

12 **WILLIAM ANDREW ALLEN**
13 **P.O. Box 5421**
14 **San Diego, CA 92165**

OAH No. 2010061419
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacist License No. RPH 54535**

16 Respondent.

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 Sherry L. Ledakis, Deputy Attorney
23 General.

24 2. Respondent William Andrew Allen (Respondent) is represented in this proceeding by
25 attorney Patrick Kearns, Esq., whose address is Wilson, Elser, Moskowitz, Edelman & Dicker,
26 LLP, 655 West Broadway, Ste. 900, San Diego, CA 92101-8509.

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1 3. On or about May 12, 2003, the Board of Pharmacy issued Pharmacist License No.
2 RPH 54535 to William Andrew Allen (Respondent). The Pharmacist License was in full force
3 and effect at all times relevant to the charges brought in Accusation No. 3412 and will expire on
4 April 30, 2011, unless renewed.

5 JURISDICTION

6 4. Accusation No. 3412 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on November 5, 2009.
9 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
10 No. 3412 is attached as exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 3412. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

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

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 3412.

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

3 RESERVATION

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

8 CONTINGENCY

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

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

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

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacist License No. RPH 54535 issued to
6 Respondent William Andrew Allen is revoked. However, the revocation is stayed and
7 Respondent is placed on probation for five (5) years on the following terms and conditions.

8 **1. Obey All Laws**

9 Respondent shall obey all state and federal laws and regulations.

10 Respondent shall report any of the following occurrences to the board, in writing, within
11 seventy-two (72) hours of such occurrence:

- 12 • an arrest or issuance of a criminal complaint for violation of any provision of the
13 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
14 substances laws
- 15 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
16 criminal complaint, information or indictment
- 17 • a conviction of any crime
- 18 • discipline, citation, or other administrative action filed by any state or federal agency
19 which involves respondent's pharmacy license or which is related to the practice of
20 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
21 for any drug, device or controlled substance.

22 Failure to timely report such occurrence shall be considered a violation of probation.

23 **2. Report to the Board**

24 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
25 designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, respondent shall state in each report under penalty of perjury whether there has
27 been compliance with all the terms and conditions of probation. Failure to submit timely reports
28 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency

1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

5 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
6 with the board or its designee, at such intervals and locations as are determined by the board or its
7 designee. Failure to appear for any scheduled interview without prior notification to board staff,
8 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
9 the period of probation, shall be considered a violation of probation.

10 **4. Cooperate with Board Staff**

11 Respondent shall cooperate with the board's inspection program and with the board's
12 monitoring and investigation of respondent's compliance with the terms and conditions of his
13 probation. Failure to cooperate shall be considered a violation of probation.

14 **5. Continuing Education**

15 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
16 pharmacist as directed by the board or its designee.

17 **6. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 3412 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause his direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 3412, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

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1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 3412 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 3412
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

12 Failure to timely notify present or prospective employer(s) or to cause that/those
13 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
14 probation.

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

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

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

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of \$4,342.00. Respondent shall
28 make said payments as approved by the Board.

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

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

6 **9. Probation Monitoring Costs**

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

11 **10. Status of License**

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

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

19 **11. License Surrender While on Probation/Suspension**

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

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

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

5 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
6 **Employment**

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

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

14 **13. Pharmacists Recovery Program (PRP)**

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

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

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

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

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

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

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

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

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

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

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

24 Respondent shall work in a pharmacy setting with access to controlled substances for six
25 (6) consecutive months before successfully completing probation. If respondent fails to do so,
26 probation shall be automatically extended until this condition has been met. Failure to satisfy this
27 condition within six (6) months beyond the original date of expiration of the term of probation
28 shall be considered a violation of probation.

1 14. **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 professional
27 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of

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

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

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

7 **15. Abstain from Drugs and Alcohol Use**

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

19 **16. Prescription Coordination and Monitoring of Prescription Use**

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

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

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

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

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

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

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

5 **17. Supervised Practice**

6 During the period of probation, respondent shall practice only under the supervision of a
7 licensed pharmacist not on probation with the board. Upon and after the effective date of this
8 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
9 until a supervisor is approved by the board or its designee. The supervision shall be, as required
10 by the board or its designee, either:

11 Continuous – At least 75% of a work week

12 Substantial - At least 50% of a work week

13 Partial - At least 25% of a work week

14 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

15 Within thirty (30) days of the effective date of this decision, respondent shall have his
16 supervisor submit notification to the board in writing stating that the supervisor has read the
17 decision in case number 3412 and is familiar with the required level of supervision as determined
18 by the board or its designee. It shall be the respondent's responsibility to ensure that his
19 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
20 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
21 acknowledgements to the board shall be considered a violation of probation.

22 If respondent changes employment, it shall be the respondent's responsibility to ensure that
23 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
24 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
25 commences, submit notification to the board in writing stating the direct supervisor and
26 pharmacist-in-charge have read the decision in case number 3412 and is familiar with the level of
27 supervision as determined by the board. Respondent shall not practice pharmacy and his license
28 shall be automatically suspended until the board or its designee approves a new supervisor.

1 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 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

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

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

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

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

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

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

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1 **19. Community Services Program**

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

11 **20. Tolling of Probation**

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

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

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

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

1 month during which respondent is practicing as a pharmacist for at least 40 hours as a
2 pharmacist as defined by Business and Professions Code section 4000 et seq.

3 **21. 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 **22. 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 ACCEPTANCE

20 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
21 discussed it with my attorney, Patrick Kearns, Esq. I understand the stipulation and the effect it
22 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
23 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
24 of the Board of Pharmacy.

25
26 DATED: 9-14-2012

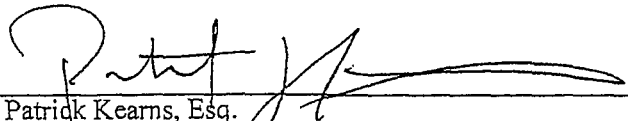


WILLIAM ANDREW ALLEN
Respondent

28

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

4 DATED: 9/23/10

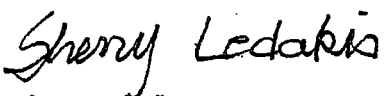

Patrick Kearns, Esq.
Attorney for Respondent

7 ENDORSEMENT

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

10 Dated: 9/27/10

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


SHERRY L. LEDAKIS
Deputy Attorney General
Attorneys for Complainant

18 SD2009804619

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Exhibit A

Accusation No. 3412.

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Legal Analyst
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3412

13 **WILLIAM ANDREW ALLEN, RPH**
2748 Villas Way
14 San Diego, CA 92108

A C C U S A T I O N

15 **Pharmacist License No. RPH 54535**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about May 12, 2003, the Board of Pharmacy issued Pharmacist License
23 Number RPH 54535 to William Andrew Allen (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on April 30,
25 2011, unless renewed.

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JURISDICTION

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

15 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
16 suspended or revoked."

17 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
18 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
19 disciplinary action during the period within which the license may be renewed, restored, reissued
20 or reinstated.

STATUTORY PROVISIONS

21 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
22 revoke a license on the ground that the licensee has been convicted of a crime substantially
23 related to the qualifications, functions, or duties of the business or profession for which the
24 license was issued.

25 7. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to
28 suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

8. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

///

1 (b) Any device that bears the statement: "Caution: federal law restricts this
2 device to sale by or on the order of a _____," "Rx only," or words of similar
3 import, the blank to be filled in with the designation of the practitioner licensed to use
4 or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

5 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any
6 controlled substance, except that furnished to a person upon the prescription of a physician,
7 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

8 10. Section 4301 of the Code states:

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

.....

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

.....

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

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

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of a
22 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction shall
26 be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
28 fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment.

3 **REGULATORY PROVISIONS**

4 11. California Code of Regulations, title 16, section 1669 states:

5

6 (b) When considering the suspension or revocation of a facility or a personal
7 license on the ground that the licensee or the registrant has been convicted of a crime,
8 the board, in evaluating the rehabilitation of such person and his present eligibility for
9 a license will consider the following criteria:

10 (1) Nature and severity of the act(s) or offense(s).

11 (2) Total criminal record.

12 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

17 For the purpose of denial, suspension, or revocation of a personal or facility
18 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
19 Professions Code, a crime or act shall be considered substantially related to the
20 qualifications, functions or duties of a licensee or registrant if to a substantial degree
21 it evidences present or potential unfitness of a licensee or registrant to perform the
22 functions authorized by his license or registration in a manner consistent with the
23 public health, safety, or welfare.

24 **COST RECOVERY**

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

DRUGS

14. Dextroamphetamine, sold under the brand name Dexedrine, is a Schedule II
controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(1),
and is a dangerous drug pursuant to Business and Professions Code section 4022.

1 a. On or about January 27, 2009, in a criminal proceeding entitled *People of*
2 *the State of California v. William Andrew Allen*, in San Diego County Superior Court, case
3 number M064687, Respondent entered a plea of no contest, which the court accepted as a plea of
4 guilty, and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under
5 the combined influence of alcohol and drugs, a misdemeanor.

6 b. As a result of the conviction, on or about January 27, 2009, Respondent
7 was sentenced to five years summary probation, standard alcohol conditions, completion of a
8 MADD impact panel, and payment of fines, fees, and restitution in the amount of \$1,842. On or
9 about March 4, 2009, Respondent was ordered to complete a Multiple Conviction Program.

10 c. The circumstances that led to the conviction were that on or about the
11 evening of April 6, 2008, patrol officers with the San Diego Police Department conducted a
12 traffic stop on Respondent after he was observed driving his SUV in downtown San Diego
13 without the headlights on, failing to come to a complete stop at an intersection, and making an
14 illegal U-turn. As the officer activated his emergency lights, Respondent side-swiped a parked
15 vehicle as it yielded to the right. Respondent immediately got out of his vehicle and began
16 making statements about being in violation of his DUI probation. The officers noted that
17 Respondent spoke rapidly and appeared hyper, but his speech was slurred. His gait was unsteady,
18 his eyes were watery and glassy and he had the odor of an alcoholic beverage on his breath.
19 Respondent told the officer he was also taking the prescription medications Nasinex and Lexapro,
20 as well as Claritin. Respondent insisted several times that he knew he was over the limit and did
21 not want to be tested. Respondent failed the horizontal gaze nystagmus test. Based on
22 Respondent's poor driving, his objective symptoms of intoxication, and his statements,
23 Respondent was placed under arrest for driving under the influence. In a search of Respondent's
24 vehicle incident to his arrest, the officers found 1.4 grams of marijuana wrapped in foil, a pipe
25 used for smoking marijuana, and two Dexedrine pills. Respondent told the officer that the pills
26 did not belong to him and that they must have fallen out of a prescription bottle he had delivered
27 to a customer. Respondent was arrested and taken to police headquarters for booking.
28 Respondent requested a breath test and gave two samples that measured with a blood alcohol

1 content (BAC) of 0.05%. Because Respondent appeared too impaired for a 0.05 percent BAC,
2 the officer obtained two samples of Respondent's blood. The blood samples subsequently tested
3 positive for cannabinoids (marijuana).

4 18. On November 19, 2008, an investigator with the Board spoke to Respondent via
5 telephone. When the investigator asked Respondent about the marijuana found in his car,
6 Respondent stated that the marijuana belonged to him and that he smoked it every now and then.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Multiple Misdemeanor Convictions Involving Alcohol)**

9 19. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the
10 Code in that on or about June 8, 2005, and January 27, 2009, in San Diego County Superior
11 Court, Respondent was twice convicted of driving under the influence of alcohol and/or drugs, in
12 violation of Vehicle Code section 23152, subdivision (a) as described in paragraphs 16-18, above.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Self-Administration of a Controlled Substance)**

15 20. Respondent is subject to disciplinary action under section 4301, subdivision (h) of
16 the Code in that on or about April 6, 2008, Respondent tested positive for cannabinoids/Delta-9-
17 THC (marijuana) as detailed in paragraph 17, above. Respondent further admitted to a Board
18 investigator on or about November 19, 2008, that the marijuana found in his vehicle belonged to
19 him and that he smoked it now and then. The self-administration of an illegal controlled
20 substance constitutes unprofessional conduct and is substantially related to the qualifications,
21 duties, and functions of a pharmacist.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Violation of California Statutes Regulating
24 Controlled Substances & Dangerous Drugs)**

25 21. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
26 Code in that on or about on or about April 6, 2008, Respondent possessed dextroamphetamine
27 and marijuana without a prescription in violation of Business and Professions Code sections 4022
28 and 4060 regulating controlled substances and dangerous drugs, as detailed in paragraphs 17-18,

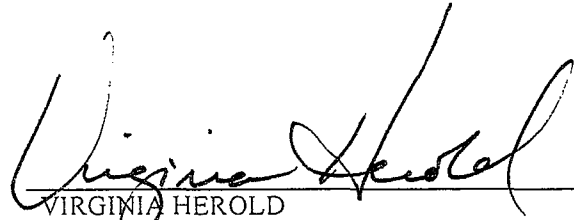
1 above. Such conduct is substantially related to the qualifications, duties, and functions of a
2 pharmacist.

3 PRAYER

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

- 6 1. Revoking or suspending Pharmacist License Number RPH 54535, issued to William
7 Andrew Allen;
- 8 2. Ordering William Andrew Allen to pay the Board of Pharmacy the reasonable costs
9 of the investigation and enforcement of this case, pursuant to Business and Professions Code
10 section 125.3;
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 10/27/09



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

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