

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

In the Matter of the Accusation Against:

Case No. 3423

**UPAS PHARMACY, INC., dba UPAS  
PHARMACY; BRIAN WILLIAM MCKILLIP,  
President, Treasurer / Financial Officer,  
Pharmacist-in-Charge**  
3332 Third Avenue  
San Diego, CA 92103  
Pharmacy Permit No. PHY 36112

and

**BRIAN MCKILLIP**  
3541 Ingraham Street  
San Diego, CA 92109  
Pharmacist License No. RPH 32896

Respondent.

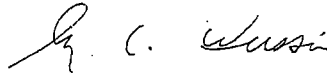
**DECISION AND ORDER**

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 June 22, 2011.

It is so ORDERED on May 23, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 G. MICHAEL GERMAN  
Deputy Attorney General  
4 State Bar No. 103312  
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6 San Diego, CA 92186-5266  
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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3423

12 **UPAS PHARMACY, INC., dba UPAS**  
13 **PHARMACY; BRIAN WILLIAM**  
14 **McKILLIP, President, Treasurer / Financial**  
15 **Officer, Pharmacist-in-Charge**  
16 **3332 Third Avenue**  
17 **San Diego, CA 92103**

OAH No. 2010070665

18 **STIPULATED SETTLEMENT**  
19 **AND DISCIPLINARY ORDER**

20 **Pharmacy Permit No. PHY 36112**

21 **BRIAN WILLIAM McKILLIP,**  
22 **3541 Ingraham Street**  
23 **San Diego, CA 92109**

24 **Pharmacist License No. RPH 32896**

25 Respondents.

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

28 PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy Attorney General.



1 documents; the right to reconsideration and court review of an adverse decision; and all other  
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 8. Respondent McKillip voluntarily, knowingly, and intelligently waives and gives up  
4 each and every right set forth above.

5 CULPABILITY

6 9. Respondent McKillip admits the truth of each and every charge and allegation in  
7 Accusation No. 3423.

8 10. Respondent McKillip agrees that his Pharmacist License and Pharmacy Permit are  
9 subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the  
10 Disciplinary Order below.

11 CONTINGENCY

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

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

24 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
27 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
28

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Pharmacist License No. RPH 32896 issued to Respondent  
8 Brian William McKillip, and Pharmacy Permit No. PHY 36112 issued to Respondent Upas  
9 Pharmacy, Inc. are revoked. However, the revocations are stayed and both Respondents are each  
10 placed on probation for five years on the following terms and conditions:

11 **1. Suspension – Respondent McKillip Only**

12 As part of probation, Respondent McKillip is suspended from the practice of pharmacy for  
13 90 days beginning the effective date of this decision.

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

22 Respondent McKillip shall not engage in any activity that requires the professional  
23 judgment of a pharmacist. Respondent McKillip shall not direct or control any aspect of the  
24 practice of pharmacy. Respondent McKillip shall not perform the duties of a pharmacy  
25 technician or a designated representative for any entity licensed by the Board.

26 Subject to the above restrictions, Respondent McKillip may continue to own or hold an  
27 interest in any licensed premises in which he holds an interest at the time this decision becomes  
28 effective unless otherwise specified in this order.

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

2 **2. Tolling of Suspension – Respondent McKillip Only**

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

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

15 **3. Obey All Laws – Respondents Upas & McKillip**

16 Respondents shall obey all state and federal laws and regulations.

17 Respondent McKillip shall report any of the following occurrences to the Board, in writing,  
18 within 72 hours of such occurrence:

- 19 • an arrest or issuance of a criminal complaint for violation of any provision of the  
20 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
21 substances laws
- 22 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
23 criminal complaint, information or indictment
- 24 • a conviction of any crime
- 25 • discipline, citation, or other administrative action filed by any state or federal agency  
26 which involves Respondent’s Pharmacist license and Pharmacy Permit or which is  
27 related to the practice of pharmacy or the manufacturing, obtaining, handling,  
28 distributing, billing, or charging for any drug, device or controlled substance.

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

2 **4. Report to the Board – Respondents Upas & McKillip**

3 Respondents shall report to the Board quarterly, on a schedule as directed by the Board or  
4 its designee. The report shall be made either in person or in writing, as directed. Among other  
5 requirements, Respondents shall state in each report under penalty of perjury whether there has  
6 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
7 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
8 in submission of reports as directed may be added to the total period of probation. Moreover, if  
9 the final probation report is not made as directed, probation shall be automatically extended until  
10 such time as the final report is made and accepted by the Board.

11 **5. Interview with the Board – Respondent McKillip Only**

12 Upon receipt of reasonable prior notice, Respondent McKillip shall appear in person for  
13 interviews with the Board or its designee, at such intervals and locations as are determined by the  
14 Board or its designee. Failure to appear for any scheduled interview without prior notification to  
15 Board staff, or failure to appear for two or more scheduled interviews with the Board or its  
16 designee during the period of probation, shall be considered a violation of probation.

17 **6. Cooperate with Board Staff – Respondents Upas & McKillip**

18 Respondents shall cooperate with the Board's inspection program and with the Board's  
19 monitoring and investigation of Respondents' compliance with the terms and conditions of his  
20 probation. Failure to cooperate shall be considered a violation of probation.

21 **7. Continuing Education – Respondent McKillip Only**

22 Respondent McKillip shall provide evidence of efforts to maintain skill and knowledge as a  
23 pharmacist as directed by the Board or its designee.

24 **8. Notice to Employers – Respondent McKillip Only**

25 During the period of probation, Respondent McKillip shall notify all present and  
26 prospective employers of the decision in case number 3423 and the terms, conditions and  
27 restrictions imposed on Respondent by the decision, as follows:  
28

1           Within 30 days of the effective date of this decision, and within 15 days of Respondent  
2 McKillip's undertaking any new employment, Respondent McKillip shall cause his direct  
3 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during  
4 Respondent McKillip's tenure of employment) and owner to report to the Board in writing  
5 acknowledging that the listed individual(s) has/have read the decision in case number 3423, and  
6 terms and conditions imposed thereby. It shall be Respondent McKillip's responsibility to ensure  
7 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

8           If Respondent McKillip works for or is employed by or through a pharmacy employment  
9 service, Respondent McKillip must notify his direct supervisor, pharmacist-in-charge, and owner  
10 at every entity licensed by the Board of the terms and conditions of the decision in case number  
11 3423 in advance of the Respondent commencing work at each licensed entity. A record of this  
12 notification must be provided to the Board upon request.

13           Furthermore, within 30 days of the effective date of this decision, and within 15 days of  
14 Respondent McKillip's undertaking any new employment by or through a pharmacy employment  
15 service, Respondent McKillip shall cause his direct supervisor with the pharmacy employment  
16 service to report to the Board in writing acknowledging that he has read the decision in case  
17 number 3423 and the terms and conditions imposed thereby. It shall be Respondent McKillip's  
18 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
19 acknowledgment(s) to the Board.

20           Failure to timely notify present or prospective employer(s) or to cause that/those  
21 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of  
22 probation.

23           "Employment" within the meaning of this provision shall include any full-time,  
24 part-time, temporary, relief or pharmacy management service as a pharmacist or any  
25 position for which a pharmacist license is a requirement or criterion for employment,  
26 whether the Respondent is an employee, independent contractor or volunteer.  
27  
28



1           **9. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
2           **Designated Representative-in-Charge, or Serving as a Consultant – Respondent McKillip**  
3           **Only**

4           During the period of probation, Respondent McKillip may supervise any intern pharmacist,  
5           be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the  
6           Board and serve as a consultant only if he subjects himself to monthly review by a Board-  
7           approved consultant. Assumption of any such supervision responsibilities absent such monthly  
8           review shall be considered a violation of probation.

9           **10. Reimbursement of Board Costs – Respondents Upas & McKillip**

10          As a condition precedent to successful completion of probation, Respondents shall pay,  
11          jointly and severally, to the Board its costs of investigation and prosecution in the amount of  
12          \$30,579.50. Respondents shall be permitted to make said payments in a scheduled payment plan  
13          approved by the Board.

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

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

19           **11. Probation Monitoring Costs – Respondents Upas & McKillip**

20          Respondents shall pay, jointly and severally, any costs associated with probation  
21          monitoring as determined by the Board each and every year of probation. Such costs shall be  
22          payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such  
23          costs by the deadline(s) as directed shall be considered a violation of probation.

24           **12. Status of License – Respondents Upas & McKillip**

25          Respondents shall, at all times while on probation, maintain an active, current license and  
26          permit with the Board, including any period during which suspension or probation is tolled.  
27          Failure to maintain an active, current license and permit shall be considered a violation of  
28          probation.

1 If either Respondent's license or permit expires or is cancelled by operation of law or  
2 otherwise at any time during the period of probation, including any extensions thereof due to  
3 tolling or otherwise, upon renewal or reapplication Respondent's license and permit shall be  
4 subject to all terms and conditions of this probation not previously satisfied.

5 **13. License Surrender While on Probation/Suspension – Respondents Upas &**  
6 **McKillip**

7 Following the effective date of this decision, should Respondent McKillip cease practice  
8 due to retirement or health, or be otherwise unable to satisfy the terms and conditions of  
9 probation, Respondents may tender their license and permit to the Board for surrender. The  
10 Board or its designee shall have the discretion whether to grant the request for surrender or take  
11 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
12 the license and permit, Respondents will no longer be subject to the terms and conditions of  
13 probation. This surrender constitutes a record of discipline and shall become a part of the  
14 Respondents' license history with the Board.

15 Upon acceptance of the surrender, Respondents shall relinquish their pocket and/or wall  
16 license and permit to the Board within ten days of notification by the Board that the surrender is  
17 accepted. Respondents may not reapply for any license or permit from the Board for three years  
18 from the effective date of the surrender. Respondents shall meet all requirements applicable to  
19 the license sought as of the date the application for that license is submitted to the Board,  
20 including any outstanding costs.

21 **14. Notification of a Change in Name, Residence Address, Mailing Address or**  
22 **Employment – Respondent McKillip Only**

23 Respondent McKillip shall notify the Board in writing within ten days of any change of  
24 employment. Said notification shall include the reasons for leaving, the address of the new  
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
26 McKillip shall further notify the Board in writing within ten days of a change in name, residence  
27 address, mailing address, or phone number.

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

3 **15. Tolling of Probation – Respondent McKillip Only**

4 Except during periods of suspension, Respondent McKillip shall, at all times while on  
5 probation, be employed as a pharmacist in California for a minimum of 40 hours per calendar  
6 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,  
7 the period of probation shall be extended by one month for each month during which this  
8 minimum is not met. During any such period of tolling of probation, Respondent McKillip must  
9 nonetheless comply with all terms and conditions of probation.

10 Should Respondent McKillip, regardless of residency, for any reason (including vacation)  
11 cease practicing as a pharmacist for a minimum of 40 hours per calendar month in California,  
12 Respondent McKillip must notify the Board in writing within ten days of the cessation of  
13 practice, and must further notify the Board in writing within ten days of the resumption of  
14 practice. Any failure to provide such notification(s) shall be considered a violation of probation.

15 It is a violation of probation for Respondent McKillip's probation to remain tolled pursuant  
16 to the provisions of this condition for a total period, counting consecutive and non-consecutive  
17 months, exceeding 36 months.

18 "Cessation of practice" means any calendar month during which Respondent is  
19 not practicing as a pharmacist for at least 40 hours, as defined by Business and  
20 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
21 month during which Respondent is practicing as a pharmacist for at least 40 hours as  
22 a pharmacist as defined by Business and Professions Code section 4000 et seq.

23 **16. Posted Notice of Probation – Respondent Upas**

24 Respondent Upas shall prominently post a probation notice provided by the board in a place  
25 conspicuous and readable to the public. The probation notice shall remain posted during the  
26 entire period of probation.

27 Respondent Upas shall not, directly or indirectly, engage in any conduct or make any  
28 statement which is intended to mislead or is likely to have the effect of misleading any patient,

1 customer, member of the public, or other person(s) as to the nature of and reason for the probation  
2 of the licensed entity.

3 Failure to post such notice shall be considered a violation of probation.

4 **17. Violation of Probation – Respondents Upas & McKillip**

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

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

18 **18. Completion of Probation – Respondents Upas & McKillip**

19 Upon written notice by the Board or its designee indicating successful completion of  
20 probation, Respondents' license and permit will be fully restored.

21 **19. Community Services Program – Respondents Upas & McKillip**

22 Within 60 days of the effective date of this decision, Respondents shall submit to the Board  
23 or its designee, for prior approval, a community service program in which Respondent McKillip  
24 shall provide free health-care related services on a regular basis to a community or charitable  
25 facility or agency for at least 100 hours per year for each of his five years of probation.  
26 Respondent Upas shall provide free health-care related services on a regular basis to a community  
27 or charitable facility or agency for at least 100 hours per year for the first three years of probation,  
28 or a like alternative subject to Board approval. Within 30 days of Board approval thereof,

1 Respondent McKillip shall submit documentation to the Board demonstrating commencement of  
2 the community service programs. A record of this notification must be provided to the Board  
3 upon request. Respondent McKillip shall report on progress with the community service  
4 programs in the quarterly reports. Failure to timely submit, commence, or comply with the  
5 programs shall be considered a violation of probation.

6 **20. Remedial Education – Respondent McKillip Only**

7 Within 60 days of the effective date of this decision, Respondent McKillip shall submit to  
8 the Board or its designee, for prior approval, an appropriate program of remedial education  
9 related to the grounds for discipline. The program of remedial education shall consist of at least  
10 15 hours, which shall be completed within one year at Respondent McKillip's own expense. All  
11 remedial education shall be in addition to, and shall not be credited toward, continuing education  
12 (CE) courses used for license renewal purposes.

13 Failure to timely submit or complete the approved remedial education shall be considered a  
14 violation of probation. The period of probation will be automatically extended until such  
15 remedial education is successfully completed and written proof, in a form acceptable to the  
16 Board, is provided to the Board or its designee.

17 Following the completion of each course, the Board or its designee may require Respondent  
18 McKillip, at his own expense, to take an approved examination to test the Respondent's  
19 knowledge of the course. If Respondent McKillip does not achieve a passing score on the  
20 examination, this failure shall be considered a violation of probation. Any such examination  
21 failure shall require Respondent McKillip to take another course approved by the Board in the  
22 same subject area.

23 **21. Pharmacist-in-Charge Self-Assessment – Respondent McKillip Only**

24 Respondent McKillip shall perform a self- assessment of the pharmacy operations every  
25 three months by completing a Community Pharmacy Self Assessment Form (17M-39). The  
26 consultant shall countersign each of these completed self assessment forms.

27 **22. No Ownership of Licensed Premises – Respondent McKillip**

28 Respondent McKillip shall not acquire any new ownership, legal or beneficial interest nor

1 serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any  
2 additional business, firm, partnership, or corporation licensed by the Board. If Respondent  
3 currently own or has any legal or beneficial interest in, or serve as a manager, administrator,  
4 member, officer, director, trustee, associate, or partner of any business, firm, partnership, or  
5 corporation currently or hereinafter licensed by the Board, Respondent may continue to serve in  
6 such capacity or hold that interest, but only to the extent of that position or interest as of the  
7 effective date of this decision. Violation of this restriction shall be considered a violation of  
8 probation.

9 **23. Separate File of Records – Respondents Upas & McKillip**

10 Respondents shall maintain and make available for inspection a separate file of all records  
11 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such  
12 file or make it available for inspection shall be considered a violation of probation.

13 **24. Consultant for Owner or Pharmacist-In-Charge – Respondent McKillip**

14  
15 During the period of probation, Respondent McKillip shall not supervise any intern  
16 pharmacist or serve as a consultant to any entity licensed by the Board. Respondent McKillip  
17 may be a pharmacist-in-charge. However, if during the period of probation Respondent McKillip  
18 serves as a pharmacist-in-charge, Respondents shall retain an independent consultant at their own  
19 expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for  
20 compliance by Respondents with state and federal laws and regulations governing the practice of  
21 pharmacy and for compliance by Respondent McKillip with the obligations of a pharmacist-in-  
22 charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and  
23 whose name shall be submitted to the Board or its designee, for prior approval, within 30 days of  
24 the effective date of this decision. Respondent McKillip shall not be a pharmacist-in-charge at  
25 more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely  
26 retain, seek approval of, or ensure timely reporting by the consultant shall be considered a  
27 violation of probation.  
28

1 25. Ethics Course – Respondent McKillip Only


2 Within 60 calendar days of the effective date of this decision, Respondent McKillip shall  
3 enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its  
4 designee. Failure to initiate the course during the first year of probation, and complete it within  
5 the second year of probation, is a violation of probation.

6 Respondent McKillip shall submit a certificate of completion to the Board or its designee  
7 within five days after completing the course.

8 ACCEPTANCE


9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
0 discussed it with my attorney, David M. Balfour. I understand the stipulation and the effect it  
1 will have on my Pharmacist License and Pharmacy Permit. I enter into this Stipulated Settlement  
2 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
3 Decision and Order of the Board of Pharmacy.

4 DATED: 3/4/2011

  
BRIAN WILLIAM MCKILLIP; UPAS PHARMACY,  
INC., Respondents  
By Brian William McKillip, Individually and as  
President/Treasurer/Financial Officer and  
Pharmacist-in-Charge of Upas Pharmacy, Inc.

8 I have read and fully discussed with Respondent Brian McKillip; Upas Pharmacy the terms  
9 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
0 Order. I approve its form and content.

1 DATED: March 4, 2011

  
DICARO, COPPO & POPCKE,  
DAVID M. BALFOUR, ESQ.  
Attorneys for Respondents

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: March 4, 2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General



G. MICHAEL GERMAN  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

Accusation No. 3243

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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*Attorneys for Complainant*

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15 **Officer, Pharmacist-in-Charge**  
3332 Third Avenue  
16 San Diego, CA 92103

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

17 Pharmacy Permit No. PHY 36112

18 **BRIAN WILLIAM McKILLIP,**  
3541 Ingraham Street  
19 San Diego, CA 92109

20 Pharmacist License No. RPH 32896

21 Respondents.

22 Complainant alleges:

23 **PARTIES**

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

26 2. On August 9, 1979, the Board issued Pharmacist License Number RPH 32896 to  
27 Respondent Brian William McKillip. The license was in full force and effect at all times relevant  
28 to the charges brought herein and will expire on October 31, 2010, unless renewed. Effective

1 April 28, 2002, the license was revoked, but the revocation was stayed for three years while  
2 Respondent McKillip was placed and remained on probation.

3 3. On January 26, 1990, the Board issued Pharmacy Permit Number PHY 36112 to  
4 Respondent Upas Pharmacy, Inc. (Upas), to do business as Upas Pharmacy, with Respondent  
5 Brian William McKillip as President, Treasurer / Financial Officer, and Pharmacist-in-Charge.  
6 The permit was in full force and effect at all times relevant to the charges brought herein and will  
7 expire on January 1, 2011, unless renewed.

### 8 JURISDICTION

9 4. This Accusation is brought before the Board, Department of Consumer Affairs, under  
10 the authority of the following laws. All section references are to the Business and Professions  
11 Code unless otherwise indicated.

12 5. Section 4300, subdivision (a) of the Business and Professions Code (Code) provides,  
13 in pertinent part, that every license issued may be suspended or revoked.

14 6. Section 4302 of the Code provides that the board may revoke any license of a  
15 corporation where conditions exist in relation to any person holding 10 percent or more of the  
16 corporate stock of the corporation, or where conditions exist in relation to any officer or director  
17 of the corporation that would constitute grounds for disciplinary action against a licensee.

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

### 22 STATUTORY PROVISIONS

23 8. Section 4022 of the Code states:

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

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

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

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.

9. Section 4059, subsection (a), of the Code states:

A person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10. Section 4063 of the Code states:

No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

11. Section 4081 of the Code states in pertinent part:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every . . . pharmacy . . . holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

12. Section 4301 of the Code states, in pertinent part:

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

.....  
(b) Incompetence.

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

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

1  
2 13. Section 4332 of the Code states:

3 Any person who fails, neglects, or refuses to maintain the records required by  
4 Section 4081 or who, when called upon by an authorized officer or a member of the  
5 board, fails, neglects, or refuses to provide the records within a reasonable time, or  
6 who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

7  
8 14. Section 11153 of the Health and Safety (H&S) Code states in pertinent part:

9 (a) A prescription for a controlled substance shall only be issued for a  
10 legitimate medical purpose by an individual practitioner acting in the usual course of  
11 his or her professional practice. The responsibility for the proper prescribing and  
12 dispensing of controlled substances is upon the prescribing practitioner, but a  
13 corresponding responsibility rests with the pharmacist who fills the prescription.  
14 Except as authorized by this division, the following are not legal prescriptions: (1) an  
15 order purporting to be a prescription which is issued not in the usual course of  
16 professional treatment or in legitimate and authorized research; or (2) an order for an  
17 addict or habitual user of controlled substances, which is issued not in the course of  
18 professional treatment or as part of an authorized narcotic treatment program, for the  
19 purpose of providing the user with controlled substances, sufficient to keep him or her  
20 comfortable by maintaining customary use.

21  
22 15. Section 11158 of the H&S Code states in pertinent part:

23 (a) Except as provided in Section 11159 or in subdivision (b) of this section,  
24 no controlled substance classified in Schedule II shall be dispensed without a  
25 prescription meeting the requirements of this chapter. Except as provided in Section  
26 11159 or when dispensed directly to an ultimate user by a practitioner, other than a  
27 pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V  
28 may be dispensed without a prescription meeting the requirements of this chapter.

(b) A practitioner specified in Section 11150 may dispense directly to an  
ultimate user a controlled substance classified in Schedule II in an amount not to  
exceed a 72-hour supply for the patient in accordance with directions for use given by  
the dispensing practitioner only where the patient is not expected to require any  
additional amount of the controlled substance beyond the 72 hours. Practitioners  
dispensing drugs pursuant to this subdivision shall meet the requirements of  
subdivision (f) of Section 11164.

23 16. Section 11159.2 of the H&S Code states in pertinent part:

24 (a) Notwithstanding any other provision of law, a prescription for a controlled  
25 substance for use by a patient who has a terminal illness may be written on a  
26 prescription form that does not meet the requirements of Section 11162.1 if the  
27 prescription meets the following requirements:

28 (1) Contain the information specified in subdivision (a) of Section 11164.

(2) Indicate that the prescriber has certified that the patient is terminally ill by  
the words "11159.2 exemption."

1 (b) A pharmacist may fill a prescription pursuant to this section when there is a  
2 technical error in the certification required by paragraph (2) of subdivision (a),  
3 provided that he or she has personal knowledge of the patient's terminal illness, and  
4 subsequently returns the prescription to the prescriber for correction within 72 hours.

5 17. Section 11162.1 of the H&S Code states:

6 (a) The prescription forms for controlled substances shall be printed with the  
7 following features:

8 (1) A latent, repetitive "void" pattern shall be printed across the entire  
9 front of the prescription blank; if a prescription is scanned or photocopied, the word  
10 "void" shall appear in a pattern across the entire front of the prescription.

11 (2) A watermark shall be printed on the backside of the prescription  
12 blank; the watermark shall consist of the words "California Security Prescription."

13 (3) A chemical void protection that prevents alteration by chemical  
14 washing.

15 (4) A feature printed in thermochromic ink.

16 (5) An area of opaque writing so that the writing disappears if the  
17 prescription is lightened.

18 (6) A description of the security features included on each prescription  
19 form.

20 (7) (A) Six quantity check off boxes shall be printed on the form and the  
21 following quantities shall appear:

22 1-24

23 25-49

24 50-74

25 75-100

26 101-150

27 151 and over.

28 (B) In conjunction with the quantity boxes, a space shall be provided to  
designate the units referenced in the quantity boxes when the drug is not in tablet or  
capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of  
the prescription blank that the "Prescription is void if the number of drugs prescribed  
is not noted."

(9) The preprinted name, category of licensure, license number, federal  
controlled substance registration number of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may  
indicate the number of refills ordered.

1 (11) The date of origin of the prescription.

2 (12) A check box indicating the prescriber's order not to substitute.

3 (13) An identifying number assigned to the approved security printer by  
4 the Department of Justice.

5 (14)(A) A check box by the name of each prescriber when a prescription  
6 form lists multiple prescribers.

7 (B) Each prescriber who signs the prescription form shall identify himself  
8 or herself as the prescriber by checking the box by his or her name.

9 (b) Each batch of controlled substance prescription forms shall have the lot  
10 number printed on the form and each form within that batch shall be numbered  
11 sequentially beginning with the numeral one.

12 (c)(1) A prescriber designated by a licensed health care facility, a clinic  
13 specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that  
14 has 25 or more physicians or surgeons may order controlled substance prescription  
15 forms for use by prescribers when treating patients in that facility without the  
16 information required in paragraph (9) of subdivision (a) or paragraph (3) of this  
17 subdivision.

18 (2) Forms ordered pursuant to this subdivision shall have the name,  
19 category of licensure, license number, and federal controlled substance registration  
20 number of the designated prescriber and the name, address, category of licensure, and  
21 license number of the licensed health care facility the clinic specified in Section 1200,  
22 or the clinic specified in subdivision (a) of Section 1206 that has 25 or more  
23 physicians or surgeons preprinted on the form.

24 (3) Forms ordered pursuant to this section shall not be valid prescriptions  
25 without the name, category of licensure, license number, and federal controlled  
26 substance registration number of the prescriber on the form.

27 (4)(A) Except as provided in subparagraph (B), the designated prescriber  
28 shall maintain a record of the prescribers to whom the controlled substance  
prescription forms are issued, that shall include the name, category of licensure,  
license number, federal controlled substance registration number, and quantity of  
controlled substance prescription forms issued to each prescriber. The record shall be  
maintained in the health facility for three years.

(B) Forms ordered pursuant to this subdivision that are printed by a  
computerized prescription generation system shall not be subject to subparagraph (A)  
or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are  
printed by a computerized prescription generation system may contain the prescriber's  
name, category of professional licensure, license number, federal controlled substance  
registration number, and the date of the prescription.

(d) This section shall become operative on July 1, 2004.

18. Section 11164 of the H&S Code states:

Except as provided in Section 11167, no person shall prescribe a controlled  
substance, nor shall any person fill, compound, or dispense a prescription for a  
controlled substance, unless it complies with the requirements of this section.

1 (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,  
2 except as authorized by subdivision (b), shall be made on a controlled substance  
3 prescription form as specified in Section 11162.1 and shall meet the following  
4 requirements:

5 (1) The prescription shall be signed and dated by the prescriber in ink and shall  
6 contain the prescriber's address and telephone number; the name of the ultimate user  
7 or research subject, or contact information as determined by the Secretary of the  
8 United States Department of Health and Human Services; refill information, such as  
9 the number of refills ordered and whether the prescription is a first-time request or a  
10 refill; and the name, quantity, strength, and directions for use of the controlled  
11 substance prescribed.

12 (2) The prescription shall also contain the address of the person for whom the  
13 controlled substance is prescribed. If the prescriber does not specify this address on  
14 the prescription, the pharmacist filling the prescription or an employee acting under  
15 the direction of the pharmacist shall write or type the address on the prescription or  
16 maintain this information in a readily retrievable form in the pharmacy.

17 (b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any  
18 controlled substance classified in Schedule III, IV, or V may be dispensed upon an  
19 oral or electronically transmitted prescription, which shall be produced in hard copy  
20 form and signed and dated by the pharmacist filling the prescription or by any other  
21 person expressly authorized by provisions of the Business and Professions Code. Any  
22 person who transmits, maintains, or receives any electronically transmitted  
23 prescription shall ensure the security, integrity, authority, and confidentiality of the  
24 prescription.

25 (2) The date of issue of the prescription and all the information required for a written  
26 prescription by subdivision (a) shall be included in the written record of the  
27 prescription; the pharmacist need not include the address, telephone number, license  
28 classification, or federal registry number of the prescriber or the address of the patient  
on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on  
behalf of the prescriber may orally or electronically transmit a prescription for a  
controlled substance classified in Schedule III, IV, or V, if in these cases the written  
record of the prescription required by this subdivision specifies the name of the agent  
of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise  
valid prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for  
a controlled substance classified in Schedule V may be for more than one person in  
the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

19. Section 11167.5 of the H&S Code states in pertinent part:

(a) An order for a controlled substance classified in Schedule II for a patient of  
a licensed skilled nursing facility, a licensed intermediate care facility, a licensed  
home health agency, or a licensed hospice may be dispensed upon an oral or  
electronically transmitted prescription. If the prescription is transmitted orally, the  
pharmacist shall, prior to filling the prescription, reduce the prescription to writing in



1 ink in the handwriting of the pharmacist on a form developed by the pharmacy for  
2 this purpose. If the prescription is transmitted electronically, the pharmacist shall,  
3 prior to filling the prescription, produce, sign, and date a hard copy prescription. The  
4 prescriptions shall contain the date the prescription was orally or electronically  
5 transmitted by the prescriber, the name of the person for whom the prescription was  
6 authorized, the name and address of the licensed skilled nursing facility, licensed  
7 intermediate care facility, licensed home health agency, or licensed hospice in which  
8 that person is a patient, the name and quantity of the controlled substance prescribed,  
9 the directions for use, and the name, address, category of professional licensure,  
10 license number, and federal controlled substance registration number of the  
11 prescriber. The original shall be properly endorsed by the pharmacist with the  
12 pharmacy's state license number, the name and address of the pharmacy, and the  
13 signature of the person who received the controlled substances for the licensed skilled  
14 nursing facility, licensed intermediate care facility, licensed home health agency, or  
15 licensed hospice. A licensed skilled nursing facility, a licensed intermediate care  
16 facility, a licensed home health agency, or a licensed hospice shall forward to the  
17 dispensing pharmacist a copy of any signed telephone orders, chart orders, or related  
18 documentation substantiating each oral or electronically transmitted prescription  
19 transaction under this section.

## 20 REGULATORY PROVISIONS

21 20. California Code of Regulations, title 16 (Regulations), section 1718 states:

22 "Current Inventory" as used in Sections 4081 and 4332 of the Business and  
23 Professions Code shall be considered to include complete accountability for all  
24 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.  
25 The controlled substances inventories required by Title 21, CFR, Section 1304 shall  
26 be available for inspection upon request for at least 3 years after the date of the  
27 inventory.

## 28 COST RECOVERY

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

## 33 DRUG

34 22. Ontak, generic name Denileukin Diftitox, is an anticancer drug classified as a  
35 dangerous drug by Code section 4022.

## 36 FACTUAL ALLEGATIONS PERTAINING TO JULY 6, 2007 COMPLAINT

37 23. On July 6, 2007, the Board received a written complaint from the Department of  
38 Healthcare Services (DHS). The DHS alleged Upas was filling prescriptions without a written  
order, in violation of H&S Code, sections 11153 and 11158, and that the filling of the

1 prescriptions without a written order did not fall within the exceptions under H&S Code, sections  
2 11159.2 and 11167.5. The Board investigated the written complaint and found as follows.

3 24. The Board's Inspector examined the prescription files of the Schedule II drugs and  
4 discovered that Upas was filling faxed and oral prescriptions for Schedule II drugs and the  
5 pharmacists at Upas were writing in the exemption under H&S Code, section 11159.2. A  
6 pharmacist and pharmacy technician employed by Upas informed the Inspector that the  
7 prescriptions were faxed and telephoned into Upas from a cancer center, that Upas filled and  
8 delivered the prescriptions to the patients, and later obtained the prescriptions from the cancer  
9 center office once weekly. The pharmacist told the Inspector that Respondent McKillip had told  
10 him that the Drug Enforcement Administration (DEA) had given him permission to follow this  
11 less formal procedure because these were cancer patients, even though the pharmacist had  
12 informed Respondent McKillip that this was wrong.

13 25. On June 18, 2008, the Inspector requested and received from DHS a printout of the  
14 Medi-Cal billing for the drug, Ontak, for Upas for the period from June 1, 2006, through August  
15 31, 2006. The printout showed that during this period Upas billed and was paid for 84 ml of  
16 Ontak, which is 7 boxes, each containing 6 vials x 2ml Ontak 150.

17 26. On June 20, 2008, the Inspector received a written statement he had requested from  
18 Respondent McKillip regarding an audit and unauthorized prescriptions for patients of a Dr. S. In  
19 it, McKillip stated he was told by a physician that the H&S Code section 11159.2 exemption  
20 could be used for terminally ill patients, but during the audit realized that three to four patients  
21 did not meet the requirements of this provision. McKillip stated Upas was now picking up the  
22 prescriptions daily, and that he did not fully comprehend the law regarding section 11159.2.

23 27. On June 15, 2008, the Inspector received the patient profiles produced by Upas  
24 showing that patient Myrtle G. had received 12ml (or 1 box of 6 x 2ml) of Ontak on 8/8/06,  
25 8/3/06, 8/1/06, 7/11/06 7/31/06, 7/10/06 and 7/6/06, which were billed to Medi-Cal, and 6 ml on  
26 6/29/06 and 6/26/06, which were billed to CMS (County Medical Services) for a total of 8 vials.  
27 The Inspector also received a copy of DHS' July 31, 2007 letter to Upas, which showed Medi-Cal  
28 was billed for 7 boxes of Ontak; and three invoices from Cardinal Health to Upas for Ontak

1 purchases. However, comparison of the invoices to the Medi-Cal billing and to Myrtle G.'s  
2 patient profile revealed that Upas was shorted and overbilled for 2 boxes of Ontak, in violation of  
3 the record and inventory requirements of Code section 4081 and Regulations, section 1718.

4 28. On July 3, 2008, the Inspector entered the prescriptions for Schedule II drugs  
5 obtained from Upas into a spread sheet. Analysis of that data shows that out of 194 prescriptions:

6 a. 62 schedule II controlled substances prescriptions were faxed to  
7 Upas and dispensed in violation of H&S Code, section 11167.5, subdivision (a), 47  
of which were processed by RPH McKillip, 4 by RPH Perry, and 11 by RPH Frank;

8 b. Upas dispensed 117 schedule II controlled substance prescriptions by  
9 adding the wording "11159.2 exemption," in violation of H&S Code, section 11159.2  
10 subdivision (a)(2), 66 of which were processed by RPH McKillip, 24 by RPH Perry,  
and 27 by RPH Frank; and

11 c. Upas dispensed 128 oral prescriptions of Schedule II drugs, of which  
12 74 were processed by RPH McKillip, 32 by RPH Perry, and 21 by RPH Frank.

13 29. On July 29, 2008, the Inspector sent a Written Notice of violations charged to  
14 Respondents Upas and McKillip. On August 20, 2008, McKillip's counsel faxed a reply to the  
15 Written Notice to the Inspector, which the Board received on August 22, 2008. Though the reply  
16 was a statement signed by McKillip under penalty of perjury, it was substantively only a repeat of  
his June 20, 2008 statement, described in paragraph 26, above.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct – Furnishing Without A Prescription)**

19 30. Respondents Upas Pharmacy and McKillip are subject to disciplinary action under  
20 section 4301, subdivisions (j) and (o) of the Code for violation of the Pharmacy Act and laws  
21 regulating drugs in that they furnished prescription medications without prescriptions therefor, or  
22 without proper exemptions from the prescription requirement, in violation of Code section 4059,  
23 and H&S Code section 11167.5, subdivision (a), and as detailed in paragraphs 23-29, above.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct: Incompetence)**

26 32. Respondent McKillip's pharmacist license is subject to disciplinary action for  
27 unprofessional conduct under Code section 4301, subdivision (b) for incompetence, because in  
28 managing the operations of Upas, and in filling prescriptions, he demonstrated that he lacked the

1 requisite knowledge, ability, or skill of a competent PIC to practice pharmacy within the standard  
2 of care governing pharmacists, as detailed in paragraphs 23-29, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Dangerous Drugs Acquisition Records and Current Inventory)**

5 33. Respondents Upas and McKillip are subject to disciplinary action under section 4301,  
6 subdivision (o) of the Code for violation of the Pharmacy Act and Regulations, in that they failed  
7 to maintain purchase records for two vials of Ontak, 150 mcg, resulting in an inaccurate inventory  
8 in violation of Regulations, section 1718, and Code section 4081, subdivision (a), as detailed in  
9 paragraphs 23-29, above.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Failure to Produce or Provide Pharmacy Records)**

12 34. Respondents Upas and McKillip are subject to disciplinary action under section 4301,  
13 subdivision (o) of the Code for violation of the Pharmacy Act in that they failed, neglected, or  
14 refused to provide invoices to the Pharmacy Inspector for two vials of Ontak 150mcg, in violation  
15 of Code, sections 4081, subdivision (a), and 4332, as detailed in paragraphs 23-29, above.

16 **FACTUAL ALLEGATIONS PERTAINING TO DECEMBER 12, 2007 COMPLAINT**

17 35. On December 12, 2007, the Board received an on-line complaint from the office of  
18 Dr. S., a physician with offices located up the street from Respondent Upas. Dr. S. alleged that  
19 Respondents Upas and McKillip were filling prescriptions without authorization from his office.  
20 Dr. S.'s office staff stated some of their patients receiving prescriptions without authorization  
21 were Joanne C., Cheryl T., Jennifer A., and Carl H.

22 36. During his May 30, 2008, visit to Upas, the Inspector completed an Inspection Report  
23 and asked to see the Doctor's Utilization Report (DUR) for Dr. S. for all patients for the last two  
24 years, and patient profiles for Joanne C., Cheryl T., Jennifer A., Carl H., Ronald F., Theresa H.,  
25 and Marizel P., including prescription numbers, dates, drugs, third party insurance, and patient  
26 addresses information.

27 37. On June 15, 2008, the Inspector received the patient profiles for Ronald F., Marizel  
28 P., Theresa H., Carl H., Joanne C., Jennifer A., and Cheryl T.; and the DUR for Dr. S. On June

1 18, 2008, the Inspector sent a letter to Dr. S. with the patient profiles of Carl H., Joanne C.,  
2 Cheryl T., and Jennifer A., asking him to determine if the prescription refills allegedly authorized  
3 by him were in fact authorized by him. On July 17, 2008, the Inspector received Dr. S.'s reply,  
4 which included the patient profiles for Carl H. Jennifer A., Cheryl T., and Joanne C. The  
5 Inspector's review of these documents showed that:

- 6 a. Upas filled seven unauthorized prescriptions for Carl H.;
- 7 b. Upas filled seven unauthorized prescriptions for Jennifer A.;
- 8 c. Upas filled eleven unauthorized prescriptions for Cheryl T.; and
- 9 d. Upas filled two unauthorized prescriptions for Joanne C.

10 38. On July 29, 2008, the Inspector sent a Written Notice of violations charged to  
11 Respondents Upas and McKillip. On August 20, 2008, McKillip's counsel faxed a reply to the  
12 Written Notice to the Inspector, which the Board received on August 22, 2008. Though the reply  
13 was a statement signed by McKillip under penalty of perjury, it was substantively only a repeat of  
14 his June 20, 2008 statement, described in paragraph 26, above.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct – Violating Pharmacy Laws)**

17 39. Respondents Upas Pharmacy and McKillip are subject to disciplinary action under  
18 section 4301, subdivision (o) of the Code for violation of the Pharmacy Act, in that they furnished  
19 prescription medications without prescriptions therefor, in violation of Code section 4059,  
20 subdivision (a), as detailed in paragraphs 35—38, above.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(Filing of Non-Compliant Schedule II Prescriptions)**

23 40. Respondents Upas and McKillip are subject to disciplinary action under section 4301,  
24 subdivisions (j) and (o) of the Code for violation of the Pharmacy Act and laws regulating drugs  
25 in that they filled 25 prescriptions for controlled substances and dangerous drugs without the  
26 authorization of the prescriber, in violation of Code section 4063, and H&S Code, sections 11158  
27 and 11167.5, subdivision (a), as detailed in paragraphs 35—38, above.

1 DISCIPLINARY CONSIDERATIONS

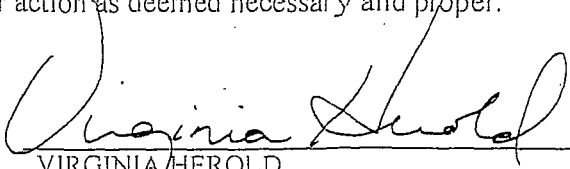
2 41. To determine the degree of discipline, if any, to be imposed on Respondents,  
3 Complainant alleges that on April 28, 2002, in a prior proceeding on Accusation Case No. 2396,  
4 Respondents Upas and McKillip admitted the truth of the allegations pled against them in  
5 Accusation Case No. 2396, and agreed that their Pharmacy Permit and Pharmacist License were  
6 subject to discipline and to be bound by the Board's revoking Respondents' permit and pharmacy  
7 license, stayed for three years; suspending Respondent McKillip's license for 120 days; ordering  
8 Respondents to pay the Board \$4,152 as costs; and additional terms of probation as set forth in  
9 the Disciplinary Order of that date, a true and correct copy of which is attached as Exhibit A.

10 PRAYER

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

- 13 1. Revoking or suspending Pharmacy Permit Number PRY 32896 issued to Upas  
14 Pharmacy, Inc., dba Upas Pharmacy, Brian William McKillip, President, Treasurer / Financial  
15 Officer, Pharmacist-in-Charge;
- 16 2. Revoking or suspending Pharmacist License Number RPH 36112, issued to Brian W.  
17 McKillip, RPH;
- 18 3. Ordering Brian W. McKillip, RPH and/or Upas Pharmacy, Inc., dba Upas Pharmacy,  
19 Brian William McKillip, President, Treasurer / Financial Officer, Pharmacist-in-Charge to pay  
20 the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,  
21 pursuant to Business and Professions Code section 125.3;
- 22 4. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: 6/9/00

  
25 VIRGINIA HEROLD,  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant