

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

In the Matter of the Accusation Against:

Case No. 3430

JOHN MICHAEL PUCCINELLI
22477 Santa Paula Ave.
Cupertino, CA 95014

Pharmacist License No. RPH 26552

Respondent.

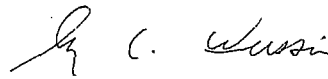
DECISION AND ORDER

The attached Stipulated Surrender of License and 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 August 25, 2010.

It is so ORDERED on July 26, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
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Attorneys for Complainant

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STATE OF CALIFORNIA

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Case No. 3430

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12 **22477 Santa Paula Ave.**
13 **Cupertino, CA 95014**
Pharmacist License No. RPH 26552

OAH No. 2010020464

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Respondent.

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
17 proceeding that the following matters are true:

18 PARTIES

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

23 2. John Michael Puccinelli (Respondent) is represented in this proceeding by attorney
24 Richard D. Spotswood, whose address is 200 Magee Ave., Mill Valley, CA 94941.

25 3. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist License No.
26 RPH 26552 to John Michael Puccinelli (Respondent). The was in full force and effect at all
27 times relevant to the charges brought in Accusation No. 3430 and will expire on March 31, 2011,
28 unless renewed.

CONTINGENCY

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

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

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

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

ORDER

23
24 IT IS HEREBY ORDERED that Pharmacist License No. RPH 26552, issued to Respondent
25 John Michael Puccinelli, is surrendered and accepted by the Board of Pharmacy.

26 14. The surrender of Respondent's Pharmacist License and the acceptance of the
27 surrendered license by the Board shall constitute the imposition of discipline against Respondent.

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board.

3 15. Respondent shall lose all rights and privileges as a pharmacist in California as of the
4 effective date of the Board's Decision and Order.

5 16. Respondent shall cause to be delivered to the Board both his wall license certificate
6 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

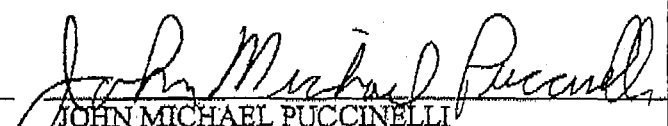
7 17. If he ever applies for licensure or petitions for reinstatement in the State of California,
8 the Board shall treat it as a new application for licensure. Respondent must comply with all the
9 laws, regulations and procedures for licensure in effect at the time the application or petition is
10 filed, and all of the charges and allegations contained in Accusation No. 3430 shall be deemed to
11 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
12 the application or petition. Respondent may not apply, reapply, or petition for any licensure or
13 registration of the Board for three (3) years from the effective date of the Decision and Order.

14 18. If Respondent should ever apply or reapply for a new license or certification, or
15 petition for reinstatement of a license, by any other health care licensing agency in the State of
16 California, all of the charges and allegations contained in Accusation, No. 3430 shall be deemed
17 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
18 other proceeding seeking to deny or restrict licensure.

19
20 ACCEPTANCE

21 I have carefully read the above Stipulated Surrender of License and Order and have fully
22 discussed it with my attorney, Richard D. Spotswood. I understand the stipulation and the effect
23 it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and
24 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
25 of the Board of Pharmacy.

26 DATED: 07 June 2010


27 JOHN MICHAEL PUCCINELLI
Respondent

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I have read and fully discussed with Respondent John Michael Puccinelli the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: June 7, 2010

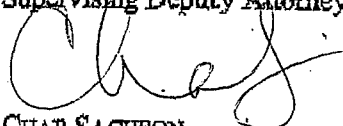

RICHARD D. SPOTSWOOD
Attorney for Respondent

ENDORSEMENT

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

Dated: June 7, 2010

Respectfully submitted,
EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


CHAR SACHSON
Deputy Attorney General
Attorneys for Complainant

SF2009404536

Exhibit A

Accusation No. 3430

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
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13 Cupertino, CA 95014
14 Pharmacist License No. RPH 26552

ACCUSATION

15 and

16 **SAVCO GENERIC DRUGS**
2101 Forest Avenue, No. 122
17 San Jose, CA 95128
18 Pharmacy Permit No. PHY 32506

Respondents.

19
20 Complainant alleges:

21 PARTIES

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

24 2. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist License
25 Number RPH 26552 to John Michael Puccinelli (Respondent Puccinelli). The Pharmacist
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on March 31, 2011, unless renewed.

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7. Section 4081 of the Code states:

"(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 . . . who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

"(c) The pharmacist-in-charge or representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or she did not knowingly participate."

8. Section 4104(b) of the Code states:

"Every pharmacy shall have written policies and procedures for addressing chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy."

9. Section 4105 of the Code states:

"(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

"(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

"(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

1 "(d) Any records that are maintained electronically shall be maintained so that the
2 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the
3 case of a veterinary food-animal drug retailer or wholesaler, the designated representative on
4 duty, shall, at all times during which the licensed premises are open for business, be able to
5 produce a hard copy and electronic copy of all records of acquisition or disposition or other drug
6 or dispensing-related records maintained electronically.

7 "(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request,
8 grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b),
9 and (c) be kept on the licensed premises.

10 (2) A waiver granted pursuant to this subdivision shall not affect the board's authority
11 under this section or any other provision of this chapter."

12 10. California Code of Regulations, title 16, section 1714, states, in pertinent part:

13 "(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
14 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
15 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
16 of pharmacy.

17 ...
18 "(d) Each pharmacist while on duty shall be responsible for the security of the prescription
19 department, including provisions for effective control against theft or diversion of dangerous
20 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
21 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist."

22 ...
23 11. California Code of Regulations, title 16, section 1715.6, states:

24 "The owner shall report to the Board within thirty (30) days of discovery of any loss of the
25 controlled substances, including their amounts and strengths."

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28 ///

1 12. California Code of Regulations, title 16, section 1718, states:

2 "Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
3 Code shall be considered to include complete accountability for all dangerous drugs handled by
4 every licensee enumerated in Sections 4081 and 4332.

5 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
6 available for inspection upon request for at least 3 years after the date of the inventory."

7 13. California Health and Safety Code section 11208 states:

8 "In a prosecution under this division, proof that a defendant received or has had in his
9 possession at any time a greater amount of controlled substances than is accounted for by any
10 record required by law or that the amount of controlled substances possessed by the defendant is a
11 lesser amount than is accounted for by any record required by law is prima facie evidence of
12 guilt."

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

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

20

21 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

22 16. Section 4022 of the Code states:

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

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

27

28

1 21. Respondent Savco did not have written policies and procedures on theft, diversion or
2 self-use in place at the time of the employee pilferage. Respondent Savco also failed to have in
3 place an effective control on the security of controlled substances, and failed to adequately
4 maintain inventory of controlled substances.

5
6 CAUSES FOR DISCIPLINE AS TO RESPONDENT PUCCINELLI

7 FIRST CAUSE FOR DISCIPLINE

8 (Failure to Maintain Security of Controlled Substances)

9 22. Respondent Puccinelli is subject to disciplinary action under sections 4301(j) and/or
10 (o) of the Code, section 11208 of the Health and Safety Code, and/or California Code of
11 Regulations, title 16, section 1714, subdivision (d), in that, as described in paragraphs 18-20
12 above, Respondent Puccinelli failed to maintain the security of the controlled substances
13 received, dispensed and/or otherwise handled therein.

14 SECOND CAUSE FOR DISCIPLINE

15 (Failure to Maintain Current Inventory of Controlled Substances)

16 23. Respondent Puccinelli is subject to disciplinary action under sections 4301(j) and/or
17 (o) of the Code, section 11208 of the Health and Safety Code, and/or California Code of
18 Regulations, title 16, section 1718, in that, as described in paragraphs 18-20 above, Respondent
19 Puccinelli failed to maintain an accurate and complete inventory of controlled substances
20 received, dispensed and/or otherwise handled therein.

21 THIRD CAUSE FOR DISCIPLINE

22 (Failure to Maintain Policies and Procedures)

23 24. Respondent Puccinelli is subject to disciplinary action under sections 4301(j) and/or
24 (o), and/or 4104(b) of the Code, in that, as described in paragraph 21 above, Respondent
25 Puccinelli failed to have written policies and procedures on theft/diversion or self-use in place.

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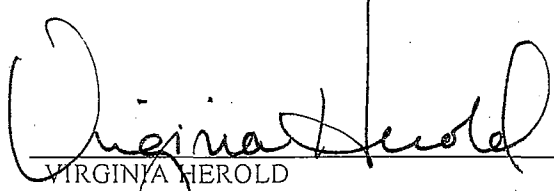
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PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 26552, issued to John Michael Puccinelli (Respondent Puccinelli);
2. Revoking or suspending Pharmacy Permit Number PHY 32506, issued to Respondent Savco Generic Drugs (Respondent Savco);
3. Forbidding Respondent Puccinelli and Savco owners and officers (James W. Junker, Lloyd Ando, and Ron Sakamoto) from serving as a manager, administrator, owner, member, officer, director, associate, or partner of Respondent Savco or of any other Board licensee, pursuant to Business and Professions Code section 4307;
4. Ordering John Michael Puccinelli and Savco Generic Drugs jointly and severally to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
5. Taking such other and further action as deemed necessary and proper.

DATED: 12/8/09



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

SF2009404536