

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

In the Matter of the Accusation Against:

Case No. 3875

ANTHONY LOUIS RICCI
10919 Spicewood Court
San Diego, CA 92130

Pharmacist License No. RPH 43096

Respondent.

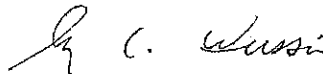
DECISION AND ORDER

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 July 25, 2013.

It is so ORDERED on June 25, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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8

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

11 In the Matter of the Accusation Against:
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13 **ANTHONY LOUIS RICCI**
10919 Spicewood Court
San Diego, CA 92130
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15 **Pharmacist License No. RPH 43096**
16
Respondents.

Case No. 3875
OAH No. 2012090644
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Diane de Kervor, Deputy Attorney
24 General.

25 2. Respondent Anthony Louis Ricci (Respondent) is represented in this proceeding by
26 attorney Stacie L. Patterson, Esq., whose address is: 110 West C St., Ste. 2200
27 San Diego, CA 92101.
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 16. 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 43096 issued to Respondent
8 Anthony Louis Ricci (Respondent) is revoked. However, the revocation is stayed and
9 Respondent is placed on probation for four (4) years on the following terms and conditions.

10 **I. Suspension**

11 As part of probation, respondent is suspended from the practice of pharmacy for 120 days
12 beginning the effective date of this decision. Respondent will be given credit for suspension time
13 already served as documented by the Pharmacist Recovery Program.

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

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

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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 **2. Obey All Laws**

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

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

9 II an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
11 substances laws

12 II a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
13 criminal complaint, information or indictment

14 II a conviction of any crime

15 II discipline, citation, or other administrative action filed by any state or federal agency
16 which involves respondent's pharmacist license or which is related to the practice of
17 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
18 for any drug, device or controlled substance.

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

20 **3. Report to the Board**

21 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
22 designee. The report shall be made either in person or in writing, as directed. Among other
23 requirements, respondent shall state in each report under penalty of perjury whether there has
24 been compliance with all the terms and conditions of probation. Failure to submit timely reports
25 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
26 in submission of reports as directed may be added to the total period of probation. Moreover, if
27 the final probation report is not made as directed, probation shall be automatically extended until
28 such time as the final report is made and accepted by the board.

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4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Continuing Education

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

7. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3875 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3875, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 3875 in advance

1 of the respondent commencing work at each licensed entity. A record of this notification must be
2 provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of respondent undertaking any new employment by or through a pharmacy employment
5 service, respondent shall cause his direct supervisor with the pharmacy employment service to
6 report to the board in writing acknowledging that he has read the decision in case number 3875
7 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
8 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

16 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
17 **Designated Representative-in-Charge, or Serving as a Consultant**

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

22 **9. Reimbursement of Board Costs**

23 As a condition precedent to successful completion of probation, respondent shall pay to the
24 board its costs of investigation and prosecution in the amount of \$10,000.00. Respondent may
25 make payments according to a Board approved payment plan.

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

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

3 **10. Probation Monitoring Costs**

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

8 **11. Status of License**

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

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

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

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

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

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

3 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
4 **Employment**

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

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

12 **14. Tolling of Probation**

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

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

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

27 "Cessation of practice" means any calendar month during which respondent is
28 not practicing as a pharmacist for at least _____ hours, as defined by Business

1 and Professions Code section 4000 et seq . "Resumption of practice" means any
2 calendar month during which respondent is practicing as a pharmacist for at least
3 _____ hours as a pharmacist as defined by Business and Professions Code
4 section 4000 et seq.

5 **15. Violation of Probation**

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

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

18 **16. Completion of Probation**

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

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

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

27 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
28 the effective date of this decision is no longer considered a self-referral under Business and

1 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
2 his current contract and any subsequent addendums with the PRP.

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

5 Probation shall be automatically extended until respondent successfully completes the PRP.

6 Any person terminated from the PRP program shall be automatically suspended by the board.

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

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

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

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

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

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

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

28 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not

1 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid
2 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

3 **18. Random Drug Screening**

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

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

28 During suspension, respondent shall not engage in any activity that requires the

1 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
2 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
3 designated representative for any entity licensed by the board.

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

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

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

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

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

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

28 Respondent shall sign a release authorizing the practitioner to communicate with the board about

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

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

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

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

1 designated representative for any entity licensed by the board.

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

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

6 **21. Community Services Program**

7 Within ninety (90) days of the effective date of this decision, respondent shall submit to the
8 board or its designee, for prior approval, a community service program in which respondent shall
9 provide free health-care related services on a regular basis to a community or charitable facility or
10 agency for at least 160 hours within the first two years of probation. Within thirty (30) days of
11 board approval thereof, respondent shall submit documentation to the board demonstrating
12 commencement of the community service program. A record of this notification must be
13 provided to the board upon request. Respondent shall report on progress with the community
14 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
15 program shall be considered a violation of probation.

16 **22. Supervised Practice**

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

22 Continuous – At least 75% of a work week

23 Substantial - At least 50% of a work week

24 Partial - At least 25% of a work week

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

26 Within thirty (30) days of the effective date of this decision, respondent shall have his
27 supervisor submit notification to the board in writing stating that the supervisor has read the
28 decision in case number 3875 and is familiar with the required level of supervision as determined

1 by the board or its designee. It shall be the respondent's responsibility to ensure that his
2 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
3 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
4 acknowledgements to the board shall be considered a violation of probation.

5 If respondent changes employment, it shall be the respondent's responsibility to ensure that
6 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
7 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
8 commences, submit notification to the board in writing stating the direct supervisor and
9 pharmacist-in-charge have read the decision in case number 3875 and is familiar with the level of
10 supervision as determined by the board. Respondent shall not practice pharmacy and his license
11 shall be automatically suspended until the board or its designee approves a new supervisor.
12 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
13 acknowledgements to the board shall be considered a violation of probation.

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

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

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

27 Subject to the above restrictions, respondent may continue to own or hold an interest in any
28 licensed premises in which he holds an interest at the time this decision becomes effective unless

1 otherwise specified in this order.

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

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

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

11 **24. Tolling of Suspension**

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

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

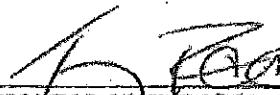
24 **25. Ethics Course**

25 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
26 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
27 Failure to initiate the course during the first year of probation, and complete it within the second
28 year of probation, is a violation of probation.

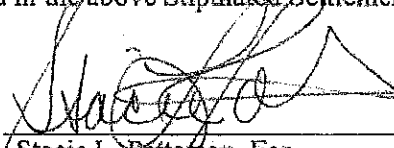
1 Respondent shall submit a certificate of completion to the board or its designee within five
2 days after completing the course.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, Stacie L. Patterson, Esq. I understand the stipulation and the effect
6 it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
7 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
8 of the Board of Pharmacy.

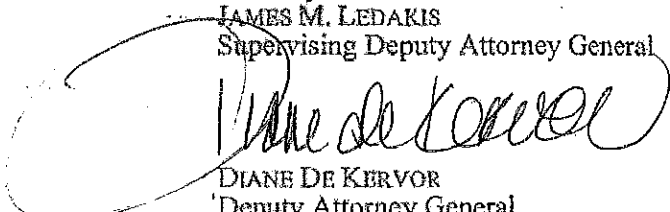
9
10 DATED: 3/19/13 
11 ANTHONY LOUIS RICCI
Respondent

12 I have read and fully discussed with Respondent Anthony Louis Ricci the terms and
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
14 I approve its form and content.

15 DATED: 3/22/13 
16 Stacie L. Patterson, Esq.
Attorney for Respondent

17 ENDORSEMENT

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

20
21 Dated: 3/22/13 Respectfully submitted,
22 KAMALA D. HARRIS
Attorney General of California
23 JAMES M. LEDAKIS
Supervising Deputy Attorney General
24 
25 DIANE DE KERVOR
26 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3875

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KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
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Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 3875

ANTHONY LOUIS RICCI
10919 Spicewood Court
San Diego, CA 92130

A C C U S A T I O N

Pharmacist License No. RPH 43096

Respondents.

Complainant alleges:

PARTIES

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

2. On or about March 2, 1990, the Board of Pharmacy issued Pharmacist License Number RPH 43096 to Anthony Louis Ricci (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2013, unless renewed. Respondent was the Pharmacist in Charge of Mission Pharmacy & Compounding Ltd (PHY 46560) from March 28, 2008 to May 31, 2009.

///

1 **JURISDICTION**

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

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

9 5. Section 4300, subdivision (a) of the Code states "Every license issued may be
10 suspended or revoked."

11 **STATUTORY PROVISIONS**

12 6. Section 4022 of the Code states

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

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

16 (b) Any device that bears the statement: "Caution: federal law restricts
17 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
18 licensed to use or order use of the device.

19 (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.

20 7. Section 4036.5 of the Code states:

21 "Pharmacist-in-charge" means a pharmacist proposed by a pharmacy and
22 approved by the board as the supervisor or manager responsible for ensuring the
pharmacy's compliance with all state and federal laws and regulations pertaining to
23 the practice of pharmacy.

24 8. Section 4059(a) of the Code states:

25 A person may not furnish any dangerous drug, except upon the
26 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
27 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.
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9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. 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 manufacturer, wholesaler, pharmacy, veterinary food animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment 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.

(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.

11. 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
2 that the pharmacist in charge, the pharmacist on duty if the pharmacist in charge is
3 not on duty, or, in the case of a veterinary food animal drug retailer or wholesaler, the
4 designated representative on duty, shall, at all times during which the licensed
5 premises are open for business, be able to produce a hard copy and electronic copy of
6 all records of acquisition or disposition or other drug or dispensing related records
7 maintained electronically.

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

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

13 12. Section 4113 of the Code states:

14 (a) Every pharmacy shall designate a pharmacist-in-charge and, within
15 30 days thereof, shall notify the board in writing of the identity and license number of
16 that pharmacist and the date he or she was designated.

17

18 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
19 compliance with all state and federal laws and regulations pertaining to the practice of
20 pharmacy.

21 13. Section 4301 of the Code states:

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

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

.....

(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.

14. Section 4306.5 of the Code states:

Unprofessional conduct for a pharmacist may include any of the
following:

1 (a) Acts or omissions that involve, in whole or in part, the inappropriate
2 exercise of his or her education, training, or experience as a pharmacist, whether or
3 not the act or omission arises in the course of the practice of pharmacy or the
ownership, management, administration, or operation of a pharmacy or other entity
licensed by the board.

4 15. Section 4332 of the Code states, in pertinent part, that any person who fails, neglects,
5 or refuses to maintain the records required by Section 4081 or who, when called upon by an
6 authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the
7 records within a reasonable time, or who willfully produces or furnishes records that are false, is
8 guilty of a misdemeanor.

9 16. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a
10 pharmacy and all other records required by Section 4081 shall be maintained on the premises and
11 available for inspection by authorized officers of the law for a period of at least three years. In
12 cases where the pharmacy discontinues business, these records shall be maintained in a board
13 licensed facility for at least three years.

14 17. Health and Safety Code section 11170 provides that "No person shall prescribe,
15 administer, or furnish a controlled substance for himself."

16 18. Health and Safety Code section 11171 provides that "no person shall prescribe,
17 administer, or furnish a controlled substance except under the conditions and in the manner
18 provided by this division."

19 19. Health and Safety Code section 11173(a) provides that "no person shall obtain or
20 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
21 prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or
22 (2) by the concealment of a material fact."

23 20. United States Code, title 21, section 843 states, in pertinent part:

24 (a) It shall be unlawful for any person knowingly or intentionally -
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26 (3) to acquire or obtain possession of a controlled substance by
27 misrepresentation, fraud, forgery, deception, or subterfuge;
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REGULATORY PROVISIONS

21. Title 16, California Code of Regulations, Section 1709.1 provides:

(a) The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

(b) The pharmacy owner shall vest the pharmacist-in-charge with adequate authority to assure compliance with the laws governing the operation of a pharmacy.

22. Title 16, California Code of Regulations, Section 1714 provides:

...

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

...

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

23. Title 16, California Code of Regulations, section 1715.6 provides:

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

24. Title 16, California Code of Regulations, section 1718 provides:

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

25. Title 16, California Code of Regulations, section 1735.3 provides that Pharmacies shall maintain detailed records of the proper acquisition, storage, and destruction of chemicals, bulk drug substances, drug products, and components used in compounding and that those records shall be retained in a readily retrievable form for at least three years from the date the record was created.

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1 26. Title 21, Code of Federal Regulations, section 1304.04, provides:

2
3 (f) Each registered manufacturer, distributor, importer, exporter, narcotic
4 treatment program and compounder for narcotic treatment program shall maintain
inventories and records of controlled substances as follows:

5 (1) Inventories and records of controlled substances listed in Schedules
6 I and II shall be maintained separately from all of the records of the registrant; and

7 (2) Inventories and records of controlled substances listed in Schedules
8 III, IV, and V shall be maintained either separately from all other records of the
registrant or in such form that the information required is readily retrievable from the
ordinary business records of the registrant.

9 (g) Each registered individual practitioner required to keep records and
10 institutional practitioner shall maintain inventories and records of controlled
substances in the manner prescribed in paragraph (f) of this section.

11 27. Title 21, Code of Federal Regulations, section 1304.11 provides:

12 (a) General requirements. Each inventory shall contain a complete and
13 accurate record of all controlled substances on hand on the date the inventory is
taken, and shall be maintained in written, typewritten, or printed form at the
14 registered location. An inventory taken by use of an oral recording device must be
promptly transcribed. Controlled substances shall be deemed to be "on hand" if they
15 are in the possession of or under the control of the registrant, including substances
returned by a customer, ordered by a customer but not yet invoiced, stored in a
16 warehouse on behalf of the registrant, and substances in the possession of employees
of the registrant and intended for distribution as complimentary samples. A separate
17 inventory shall be made for each registered location and each independent activity
registered, except as provided in paragraph (e)(4) of this section. In the event
18 controlled substances in the possession or under the control of the registrant are
stored at a location for which he/she is not registered, the substances shall be included
19 in the inventory of the registered location to which they are subject to control or to
which the person possessing the substance is responsible. The inventory may be taken
20 either as of opening of business or as of the close of business on the inventory date
and it shall be indicated on the inventory.

21 (b) Initial inventory date. Every person required to keep records shall
22 take an inventory of all stocks of controlled substances on hand on the date he/she
first engages in the manufacture, distribution, or dispensing of controlled substances,
23 in accordance with paragraph (e) of this section as applicable. In the event a person
commences business with no controlled substances on hand, he/she shall record this
24 fact as the initial inventory.

25 (c) Biennial inventory date. After the initial inventory is taken, the
registrant shall take a new inventory of all stocks of controlled substances on hand at
26 least every two years. The biennial inventory may be taken on any date which is
within two years of the previous biennial inventory date.

27 28. Title 21, Code of Federal Regulations, section 1307 provides:

28 (a) Any person in possession of any controlled substance and desiring or

1 required to dispose of such substance may request assistance from the Special Agent
2 in Charge of the Administration in the area in which the person is located for
authority and instructions to dispose of such substance. The request should be made
as follows:

3 (1) If the person is a registrant, he/she shall list the controlled substance
4 or substances which he/she desires to dispose of on DEA Form 41, and submit three
copies of that form to the Special Agent in Charge in his/her area; or

5 (2) If the person is not a registrant, he/she shall submit to the Special
6 Agent in Charge a letter stating:

7 (i) The name and address of the person;

8 (ii) The name and quantity of each controlled substance to be disposed
of;

9 (iii) How the applicant obtained the substance, if known; and

10 (iv) The name, address, and registration number, if known, of the
11 person who possessed the controlled substances prior to the applicant, if known.

12 (b) The Special Agent in Charge shall authorize and instruct the applicant
to dispose of the controlled substance in one of the following manners:

13 (1) By transfer to person registered under the Act and authorized to
14 possess the substance;

15 (2) By delivery to an agent of the Administration or to the nearest
office of the Administration;

16 (3) By destruction in the presence of an agent of the Administration or
17 other authorized person; or

18 (4) By such other means as the Special Agent in Charge may determine
to assure that the substance does not become available to unauthorized persons.

19 (c) In the event that a registrant is required regularly to dispose of
20 controlled substances, the Special Agent in Charge may authorize the registrant to
dispose of such substances, in accordance with paragraph (b) of this section, without
21 prior approval of the Administration in each instance, on the condition that the
registrant keep records of such disposals and file periodic reports with the Special
22 Agent in Charge summarizing the disposals made by the registrant. In granting such
authority, the Special Agent in Charge may place such conditions as he deems proper
23 on the disposal of controlled substances, including the method of disposal and the
frequency and detail of reports.

24 (d) This section shall not be construed as affecting or altering in any way
25 the disposal of controlled substances through procedures provided in laws and
regulations adopted by any State.

26 COST RECOVERY

27 29. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
 2 enforcement of the case.

3 DRUGS

4 BRAND NAME	5 GENERIC NAME	6 DANGEROUS DRUG PER B & PC 4022	7 CONTROLLED SUBSTANCE PER H & SC	8 INDICATIONS FOR USE
9 Fastin, 10 Ionamin, 11 Adipex	Phentermine	YES	YES per HSC 11057 (f)(4)	Short-term Weight Loss
12 Fentora, 13 Actiq	Fentanyl	YES	YES per HSC 11055 (e)(8)	"Break-Through Pain"
14 Dilaudid	Hydromorphone	YES	YES per HSC 11055 (b)(1)(K)	Severe Pain
15 Ketelaer	Ketamine	YES	YES per HSC 11056 (g)	Anesthesia Adjunct
16 Lorcet, 17 Vicodin, 18 Vicodin ES, 19 Norco, etc.	Hydrocodone/APAP	YES	YES per HSC 11056 (e)(4)	Pain
20 MS, 21 Oramorph, 22 MS Contin	Morphine	YES	YES per HSC 11055 (b)(1)(M)	Pain
23 Provigil	Modafinil	YES	YES per HSC 11057 (f)(3)	Narcolepsy, obstructive sleep apnea/hypopnea syndrome, and shift work sleep disorder.
24 Tenuate	Diethylpropion	YES	YES per 11057 (f)(1)	Short-term Weight Loss

25 FACTS

26 30. Respondent worked at Mission Pharmacy & Compounding Ltd (PHY 46560) in San
 27 Diego California since January of 2008. He was the Pharmacist in Charge (PIC) of the pharmacy
 28 from March 28, 2008 to May 31, 2009, when he was discharged.

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1 31. Mission Pharmacy and Compounding was a pharmacy with three sections: a "retail"
2 pharmacy area, a "non-sterile compounding" area, and a "sterile compounding" room.
3 Respondent controlled the "non-sterile compounding" area and "sterile compounding" room.¹

4 **Inventory**

5 32. During Respondent's tenure as the PIC, Mission Pharmacy did not maintain or submit
6 the required biannual Drug Enforcement Administration (DEA) Inventory. No inventory was
7 taken when Respondent took over the Pharmacy in March of 2008, no inventory was submitted
8 when it was due in April of 2008, and only an unsigned inventory presumably started by
9 Respondent and dated September 5, 2008 was located in the pharmacy. A DEA inventory was
10 finally submitted on April 1, 2009.

11 33. Instead of the required inventories, the Pharmacy maintained perpetual inventories,
12 one for the "sterile compounding" room and one for the "non-sterile compounding" area of the
13 Pharmacy. The classifications of drugs were not separated in these inventories. The "retail" and
14 "non-sterile compounding" areas, and the "sterile compounding" room each had their own,
15 separate, controlled substance (perpetual) records.

16 34. An inspection of the Pharmacy's records found numerous discrepancies and missing
17 controlled substances while Respondent was in charge of the Pharmacy, but other than one
18 shoplifting incident, no controlled substance losses from the compounding areas were reported to
19 the Board.

20 **Controlled Substance Return**

21 35. On February 12, 2009, the Pharmacy returned controlled substance powders
22 (Fentanyl, Hydromorphone, Morphine) to Rx Reverse Distributors. Rx Reverse Distributors is a
23 Federal and State licensed pharmaceutical returns company that has a DEA Registration. This
24 allows them to process and destroy controlled substances appropriately. This was the only
25

26 ¹ "Compounding" means any of the following activities occurring in a licensed pharmacy,
27 by or under the supervision of a licensed pharmacist, pursuant to a prescription: (1) altering the
28 dosage form or delivery system of a drug; (2) altering the strength of a drug; (3) combining
components or active ingredients; or (4) preparing a drug product from chemicals or bulk drug
substances. Sterile compounding is when the drug must also be sterile.

1 controlled substance "returns" document maintained in the pharmacy for the entirety of
2 Respondent's employment as PIC. It reflected the following returns:

DRUG	AMOUNT
Avinza 30mg Tab	59
Fentanyl Loz 800mcg	30
Fentanyl TDM 100mcg/hr	14
Fentanyl Powder	0.46 gm
Hydromorphone Powder	2.31 gm
Morphine Powder	4.5 gm

11 **Controlled Substances Losses on Perpetual Log**

12 36. During his tenure, Respondent wasted or ruined medications several times, or he
13 reported that vials had less than they were supposed to have.

14 37. With respect to Fentanyl Powder, Non-Sterile, the following was lost:

- 15 a. July 9, 2008, inventory "wastage" on scale (-0.47gm).
- 16 b. August 1, 2008, partial vial had 0.45gm not 1.55 (-1.10gm). Loss not explained.
- 17 c. August 7, 2008, partial vial had 0.19gm not 0.22 (-0.03gm).
- 18 d. August 11, 2008, partial vial had 0.70gm, not 0.75 (-0.05gm).
- 19 e. October 2, 2008, partial vial had 1.35gm, not 1.42 (-0.07gm).
- 20 f. November 6, 2008, partial vial had 0.48gm, not 0.51 (-0.03 gm).
- 21 g. January 22, 2009, partial vial had 0.04gm, not 0.85 (-0.81 gm), listed as
22 "Compound Waste" on perpetual log.

23 38. The total unaccounted for Non-Steryl Fentanyl powder from these entries was 2.56
24 gm. (2.56gm = 2,560 mg = 2,560,000 mcg.)² No DEA-106 Loss Report was filed with the Board

25
26 ² Any unaccounted for drug is especially significant for Fentanyl because it is dosed in
27 micrograms. Further, pharmaceutical manufacturers slightly overfill containers so the user
28 obtains the desired dose/amount. Accordingly, it is unusual to repeatedly find powdered drug
losses after opening "partial vials" and weighing them, or to have "wastage" on the scale when a
medicine is weighed. "Accumulation" of the product is more common because of overfill.

1 for these losses. The return/destruction of 0.46 gm of Fentanyl Powder to Rx Reverse
2 Distributors on February 12, 2009, was not indicated on the perpetual log for this drug.

3 39. With respect to **Fentanyl Powder, Sterile**, the following was lost:

4 a. April 15, 2008, "Writing off 0.11gm accumulate compounding scale waste"
5 (- 0.11 gm).

6 b. April 17, 2008, "Inventory – 40mg Cmpd Waste" (- 0.04gm).

7 c. August 27, 2008, "Reconcile Book Inv. To Actual: Vial had 0.560gm instead
8 of 1.070gm" (-0.51 gm).

9 d. August 27, 2008, "Wasted 6gm Syr During Compounding of Lot 02708F2570-
10 Had to Remake It" (- 6.0 gm = 6,000 mg = 6,000,000 mcg).³

11 e. September 15, 2008, "Reconcile Book w/ Actual Inv. Wt in Vial 2.55 gm
12 instead of 2.56 gm (-0.01 gm).

13 f. December 23, 2008, "Reconcile Book Inventory with Actual Inventory, Partial
14 Vial = 0.55gm; partial vial (actually) 0.34gm (-0.21gm).

15 40. The total unaccounted for **sterile Fentanyl Powder** from these entries is 6.88 gm.

16 No DEA Loss Report was filed with the Board for these losses. The return/destruction on
17 February 12, 2009, to Rx Reverse Distributors of 0.46 gm of Fentanyl Powder is not indicated on
18 the perpetual log for this drug. The amount of Fentanyl returned, .46 gm, is significantly less than
19 the 6 gm supposedly wasted on August 27, 2008, and there is no notation as to what happened to
20 the remainder of this supposedly wasted drug, which should have been securely stored until it was
21 returned.

22 41. With respect to **Hydromorphone Powder, Non-Sterile**, the following was lost:

23 a. April 17, 2008, inventory "Accumulated Compd Waste-Spillage" (-4.24gm).

24 b. September 4, 2008, "Reconcile Book Inventory w/ Actual Inventory. Book =
25 1.11 gm, Actual = 1.10 gm" (-0.01 gm).

26
27 ³ This is a large amount of wasted Fentanyl (6 gm). There is no mention of how this drug
28 was destroyed or where it went. It was not listed on the Return/ Destruction Rx Reverse
Distributors log.

1 c. December 31, 2008, "Reconcile Book Inventory, Partial Vial = 1.50gm, Actual
2 Inventory 1.12 gm, Cmpd Waste" (- 0.38 gm).

3 42. The total unaccounted for **Hydromorphone Powder, non-sterile**, was 4.63gm. No
4 DEA Loss Report form has been filed with the Board for these losses. The Return/Destruction to
5 Rx Reverse Distributors of 2.31 gm Hydromorphone Powder is not noted on this log.

6 43. With respect to **Hydromorphone Powder, Sterile**, the following was lost:

7 a. March 26, 2008, the unsigned and never submitted DEA inventory states
8 "Actual Inventory on 03/26 approx. 10.5gm." However, the amount listed as inventory on that
9 date in the perpetual log is 11.25 gm, for a loss of (-0.75gm).

10 b. On April 17, 2008, "Inventory, Accumulated Compound Waste 78.5mg"
11 (-0.758gm).

12 c. On April 28, 2008, "Reconciliation-Actual Weight of Opened Vial was 4.21
13 gm, with 25gm vial = 29.21 gm." Went from 29.215gm on April 17 to 29.21 gm on April 28,
14 2009) (- 0.005gm).

15 d. June 11, 2008, "Should have been 6.36gm Remaining in Vial. Actual Wgt =
16 6.24gm Therefore will write off 0.12gm to Compounding Waste."

17 e. June 19, 2008, Takes off 0.12gm for "Reconciliation" of his note on June 11,
18 2008 (-0.12gm).

19 f. June 26, 2008, transfers 5gm to Non-Sterile Cmpding, Notes "14.84 gm. Was 1
20 x 10gm Unopened & Partial. On 07-30 Partial was Weighed Out at 4.793gm. Difference =
21 0.47gm or approx 0.05gm."

22 g. July 30, 2008, "Reconcile Inventory Wgt w/ Actual Wgt, -0.05gm due to Scale
23 Wastage" (-0.05gm) (Taken off for his note on 06-26-08).

24 h. September 4, 2008, "Reconcile Inventory w/Actual Wgt, -0.01 gm Scale
25 Wastage" (-0.01gm).

26 i. October 30, 2008, "Reconcile Book Inventory w/Actual Iv. Vial had 1.661gm
27 vs 1.65gm, 0.02gm Cmpd Waste" (-0.02gm).

28

1 j. December 17, 2008, "Reconcile: "Next to Last 10gm Vial Contained 4.34 gm
2 of Powder instead of 4.66" (-0.32gm).

3 44. The total unaccounted for **sterile Hydromorphone Powder** was 1.283 gm. No DEA
4 Loss Report form has been filed with the Board for these losses. The Return/Destruction to Rx
5 Reverse Distributors of 2.31 gm Hydromorphone Powder on 02-12-09 is not noted on this log.

6 45. With respect to **Morphine Sulfate USP, Sterile**, the following was lost:

7 a. April 17, 2008, "Math Error. Actual Weight was 15.42 gm + 25gm Vial =
8 40.42gm" (Not 40.5gm) (-0.08gm).

9 b. November 10, 2008, "Batch discarded / Addition of NaOH ruined Aq
10 Solubility; Could Not Correct, See Cmpd Sheet" (-4.5 gm).

11 c. November 13, 2008, "Book Inventory w/ Actual Inventory. Only had 9.987gm
12 in vial. Lost 0.683gm to Cmpd. Waste & Powder Stuck to Side of Vial" (-0.68 gm).

13 46. The total unaccounted for **sterile Morphine Sulfate** was 5.26 gm. There has been no
14 DEA-106 Report form submitted to the Board for these losses. The Return/Destruction to Rx
15 Reverse Distributors of 4.5gm Morphine Powder on February 12, 2009 is not noted on this log.

16 **Improper Disposal of Controlled Substances**

17 47. On August 27, 2008, a 6 gm Syringe of Fentanyl Powder was wasted by Respondent.
18 How this drug was disposed of is unknown, but there is no record of its proper disposal with a
19 DEA approved return entity.

20 48. On November 10, 2008, a 4.5 gm batch of morphine Powder was "ruined" and
21 wasted by Respondent. How this drug was disposed of is unknown, but there is no record of its
22 proper disposal with a DEA approved return entity.

23 **Possession of Controlled Substance**

24 49. On March 13, 2009, one of the Pharmacists reported to his supervisor that he located
25 a Phentermine pill stuck in the pill counter, which he did not recall filling the previous day.

26 50. On March 19, 2009, Respondent called into work and said he would not be returning
27 because he had entered into a drug and alcohol rehabilitation program.

28

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct for Theft of Dangerous Drugs From Pharmacy)

3 57. Respondent is subject to disciplinary action under Code section 4301, subdivisions
4 (f), (j), and (o), 4306.5, as well as Health and Safety Code section 11173, and United State Code,
5 Title 21, section 843, in that he admitted that he took Phentermine from the Pharmacy without a
6 prescription or authorization from a prescriber and without paying the pharmacy for the
7 medication. The facts supporting this cause are specified in paragraphs 48-54 above and
8 incorporated herein by reference.

9 THIRD CAUSE FOR DISCIPLINE

10 (Failure to Take and Maintain Mandated Inventories of Controlled Substances)

11 58. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
12 (o), 4113, subdivision (c), 4332, 4333, and 4081, 4105, Regulation section 1735.3, and 21 Code
13 of Federal Regulations sections 1304.04, subdivisions (f) and (g), and 1304.11, in that he failed to
14 take and maintain an adequate inventory of the controlled substances on hand at the Pharmacy
15 and failed to maintain records for controlled substances that were C-I and II separate from C-III,
16 IV, and V. The facts supporting this cause are specified in paragraphs 29-54 above and
17 incorporated herein by reference.

18 FOURTH CAUSE FOR DISCIPLINE

19 (Failure to Maintain Drug Security Resulting in Loss of Drugs)

20 59. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
21 (j) and (o), for violating Code section 4081(a) and (b) by failing to maintain an inventory of all
22 controlled substances and/or dangerous drugs as defined by title 16, California Code of
23 Regulations, sections 1714, subdivisions (b) and (d), and 1718, in that the Pharmacy failed to
24 have complete accountability of controlled substances and the result was a loss of drugs. As the
25 Pharmacist in Charge, Respondent was responsible for maintaining this accounting for the
26 Pharmacy. The facts supporting this cause are specified in paragraphs 29-54 above and
27 incorporated herein by reference.
28

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failed to Report Losses of Controlled Substances)**

3 60. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
4 (j) and (o), 4332, for violating Code section 4081(a) and (b) in that although losses of controlled
5 substances took place during his tenure as the Pharmacist in Charge, he failed to properly report
6 those losses to the DEA or the Pharmacy Board. Pursuant to Regulation section 1715.6, losses of
7 controlled substances must be reported within 30 days. As the Pharmacist in Charge, section
8 4081, 4113(c), and Regulation section 1709.1, provide that Respondent was responsible for
9 ensuring that mandated reports were properly submitted. The facts supporting this cause are
10 specified in paragraphs 29-54 above and incorporated herein by reference.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Improper Disposal of Controlled Substances)**

13 61. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
14 (j) and (o), for violating Code section 4081(a) and (b) by failing to properly dispose of controlled
15 substances as required by 21 Code of Federal Regulations sections 1307.21(b)(1). Controlled
16 substances must be disposed of properly, by several approved means, including transferal to a
17 registrant (such as a Reverse Distributor). Respondent disposed of controlled substances
18 inappropriately without proper records, resulting in inaccurate records of powdered controlled
19 substances at the pharmacy. As the Pharmacist in Charge, sections 4081, 4113(c), and Regulation
20 section 1709.1 provide that Respondent was responsible for ensuring that any disposals were
21 properly done and properly reported and that the Pharmacy's records properly reflected the
22 remaining inventory of controlled substances. The facts supporting this cause are specified in
23 paragraphs 29-54 above and incorporated herein by reference.

24 **PRAYER**

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

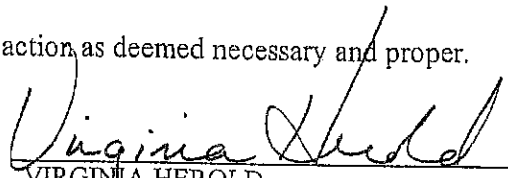
27 1. Revoking or suspending Pharmacist License Number RPH 43096, issued to Anthony
28 Louis Ricci;

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2. Ordering Anthony Louis Ricci 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;

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/17/12



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

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