

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

In the Matter of the First Amended Accusation
Against:

**ELLIOT MILES STONE
42451 15TH Street West
Lancaster, CA 93534**

Pharmacy Technician License No. TCH 82587

Respondent.

Case No. 3932

OAH No. L-2011061376

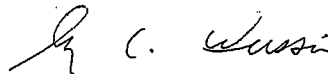
DECISION AND ORDER

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 March 22, 2012.

It is so ORDERED on February 21, 2012.

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 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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14 **Pharmacy Technician License No. TCH**
82587

15 Respondent.

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STIPULATED SURRENDER OF
LICENSE AND ORDER

16
17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
19 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
20 submitted to the Board for approval and adoption as the final disposition of the First Amended
21 Accusation.

22 **PARTIES**

23 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
24 She brought this action solely in her official capacity and is represented in this matter by Kamala
25 D. Harris, Attorney General of the State of California, by Randy M. Mailman, Deputy Attorney
26 General.

27 2. Elliot Miles Stone is represented in this proceeding by attorney Kathryn A. Ogas,
28 whose address is 10755-F Scripps Poway Parkway #281, San Diego, CA 92131.

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in the First
3 Amended Accusation No. 3932, agrees that cause exists for discipline and hereby surrenders his
4 Pharmacy Technician License No. TCH 82587 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Pharmacy Technician License without further process.

7 CONTINGENCY

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

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

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

26 13. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following Order:
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ORDER

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IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 82587, issued to Respondent Elliot Miles Stone, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

2. Respondent shall lose all rights and privileges as a pharmacy technician in California as of the effective date of the Board's Decision and Order.

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

4. Respondent may not apply for any license, permit, or registration from the Board for three years from the effective date of this decision. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in the First Amended Accusation No. 3932 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$6,194.00 prior to issuance of a new license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in the First Amended Accusation, No. 3932 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Kathryn A. Ogas. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 1/6/12 *Elliot Stone*
ELLIOT MILES STONE
Respondent

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

DATED: 1/6/12 *Kathryn A Ogas*
KATHRYN A. OGAS
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: 1/9/2012 Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

Randy M. Mailman
RANDY M. MAILMAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 3932

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
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82587

FIRST AMENDED ACCUSATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about March 28, 2008, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 82587 to Elliot Miles Stone ("Respondent"). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on July 31, 2011, unless renewed.

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1 7. Section 4059, subdivision (a), of the Code provides: "A person may not furnish any
2 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
3 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
4 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

6 8. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
7 license issued by the Board.

8 9. Section 4301 states:

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

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

12

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

18 ...

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

21 ...

22 (l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment...”

11 **REGULATORY PROVISION**

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

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

19 **CONTROLLED SUBSTANCE-DANGEROUS DRUGS**

20 11. Marijuana is designated as a Schedule I controlled substance by Health and
21 Safety Code section 11054(d)(13) and is a dangerous drug pursuant to Business and
22 Professions Code section 4022.

23 12. Section 11357 (b) of the Health and Safety Code states, in pertinent part,
24

25 "Except as authorized by law, every person who possesses not more than 28.5
26 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor
27 and shall be punished by a fine of not more than one hundred dollars (\$100)."
28

1 COST RECOVERY

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

6 FIRST CAUSE FOR DISCIPLINE

7 (Self Administration of Marijuana)

8 14. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
9 Code for unprofessional conduct in that Respondent self administered marijuana to the extent or
10 in a manner as to be dangerous or injurious to himself, to a person holding a license under this
11 chapter, or to any other person or to the public, or to the extent that the use impairs his ability to
12 conduct with safety to the public, the practice authorized by the license. The basis of the conduct
13 is as follows:

14 15. From June 23, 2008, through September 25, 2009, Respondent was employed as a
15 pharmacy technician at Wal-Mart in Lancaster, California.

16 16. On or about September 22, 2009, Respondent submitted a biological sample for drug
17 screening to Wal-Mart.

18 17. Drug analysis revealed that Respondent had consumed marijuana.

19 18. Respondent did not report to work subsequent to providing the biological sample.

20 19. On or about August 3, 2011, Respondent was convicted of one misdemeanor count of
21 reckless driving in violation of California Vehicle Code section 23103, in the criminal proceeding
22 entitled *The People of the State of California v. Elliot Miles Stone* (Super. Ct. Los Angeles
23 County, 2010, No. 0AV07023). Respondent was sentenced to probation for a period of 2 years,
24 ordered to attend a DMV impaired driver education course and fined.

25 20. The circumstances surrounding the conviction are that on May 21, 2010 at 3:18 a.m.,
26 Respondent was stopped by a deputy with the Los Angeles' Sheriff's Department when he was
27 found driving his car at 85 miles per hour, in a 65 mile per hour zone, while under the influence
28 of marijuana to the extent that he could not safely operate a motor vehicle.

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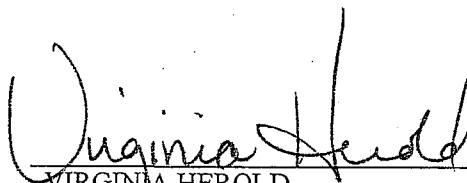
PRAYER

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 Pharmacy Technician License Number TCH 82587, issued to Elliot Miles Stone;
2. Ordering Elliot Miles Stone 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:

12/5/11



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

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