

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

In the Matter of the Accusation Against:

Case No. 4116

**DENYS JOSEPH MICHAUD  
3811 Briarwood Street  
Napa, CA 94558**

**Pharmacist License No. RPH 26275**

Respondent.

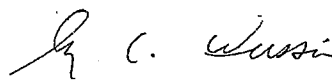
**DECISION AND ORDER**

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 March 16, 2012.

It is so ORDERED on February 15, 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 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
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6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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11 **DENYS JOSEPH MICHAUD**  
12 **3811 Briarwood Street**  
13 **Napa, CA 94558**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

14 **Pharmacist License No. RPH 26275**

15 Respondent.

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 Accusation.

21 PARTIES

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

25 2. Denys Joseph Michaud (Respondent) is represented in this proceeding by attorney  
26 Douglas Pharr, whose address is Law Office of Douglas Pharr, 1700 Second Street, Suite 333,  
27 Napa, CA 94559 (telephone (707) 258-2654; fax (707) 258-2820).

28 ///



1           9. Respondent understands that by signing this stipulation he enables the Board to issue  
2 an order accepting the surrender of his Pharmacist License without further process.

3  
4   RESERVATION

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

8  
9   CONTINGENCY

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

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

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

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

**ORDER**

1  
2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 26275, issued to Respondent  
3 Denys Joseph Michaud, is surrendered and accepted by the Board of Pharmacy.

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

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

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

12 4. Respondent may not apply, reapply, or petition for any licensure or registration of the  
13 Board for three (3) years from the effective date of the Decision and Order.

14 5. If he ever applies for licensure or petitions for reinstatement, the Board shall treat it as  
15 a new application for licensure. Respondent must comply with all laws, regulations and  
16 procedures for licensure in effect at the time the application or petition is filed, and all of the  
17 charges and allegations in Accusation No. 4116 shall be deemed to be true, correct and admitted  
18 by Respondent when the Board determines whether to grant or deny the application or petition.

19 6. Respondent shall pay the agency its costs of investigation and enforcement in the  
20 amount of \$4,430.50 prior to issuance of a new or reinstated license.

21 7. If Respondent should ever apply or reapply for a new license or certification, or  
22 petition for reinstatement of a license, by any other health care licensing agency in the State of  
23 California, all of the charges and allegations contained in Accusation No. 4116 shall be deemed to  
24 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any  
25 other proceeding seeking to deny or restrict licensure.

26 ///

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28 ///

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Douglas Pharr. I understand the stipulation and the effect it will have on my Pharmacist 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.

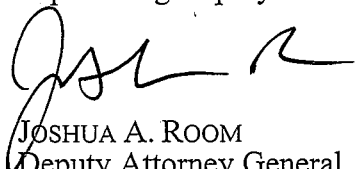
DATED: 12/28/11   
DENYS JOSEPH MICHAUD  
Respondent

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

DATED: 12-28-11   
DOUGLAS PHARR  
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: 1/6/2012  
Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General  
  
JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 4116**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
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12 **3811 Briarwood Street**  
13 **Napa, CA 94558**

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

14 **Pharmacist License No. RPH 26275**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about August 5, 1969, the Board of Pharmacy issued Pharmacist License  
21 Number RPH 26275 to Denys Joseph Michaud (Respondent). The Pharmacist License was in full  
22 force and effect at all times relevant to the charges brought herein and will expire on August 31,  
23 2012, unless renewed.

24  
25 JURISDICTION

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





1 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
2 of a licensee under this chapter.

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

7 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
8 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
9 to the qualifications, functions or duties of the license.

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

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

17 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
18 drug or dangerous device except upon the prescription of an authorized prescriber.

19 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
20 controlled substance, except that furnished upon a valid prescription/drug order.

21 12. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell,  
22 dispense or compound any drug while under the influence of a dangerous drug or alcohol.

23 13. Health and Safety Code section 11170 provides that no person shall prescribe,  
24 administer, or furnish a controlled substance for himself or herself.

25 14. Health and Safety Code section 11173, subdivision (a), provides that no person shall  
26 obtain or attempt to obtain controlled substances, or procure or attempt to procure the  
27 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,  
28 or subterfuge; or (2) by the concealment of a material fact.

1 15. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),  
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

4 16. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any  
5 person to use or be under the influence of any controlled substance in Schedule II (Health and  
6 Safety Code section 11055), subdivision (c), or any narcotic drug in Schedules III-V, except when  
7 administered by or under the direction of an authorized licensee.

#### 8 COST RECOVERY

9 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
11 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

#### 12 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

13 18. Section 4021 of the Code states:

14 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
15 11053) of Division 10 of the Health and Safety Code.”

16 19. Section 4022 of the Code states, in pertinent part:

17 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
18 except veterinary drugs that are labeled as such, and includes the following:

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

21 ...

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

24 20. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for  
25 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III  
26 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous  
27 drug as designated by Business and Professions Code section 4022. The varying compounds are  
28 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

1 FACTUAL BACKGROUND

2 21. From an unknown start date until on or about November 3, 2010, Respondent was  
3 employed as a staff pharmacist at a Raley's Pharmacy in Napa, CA (# 319; PHY 41724), where  
4 by virtue of his licensure he had access to controlled substances and dangerous drugs.

5 22. In the period prior to and/or including November 2010, Respondent used this access  
6 to divert/steal controlled substances and dangerous drugs for his own use, including **Norco** and/or  
7 generic **Hydrocodone with APAP 10/325** (the **Norco** generic equivalent) products.

8 23. The exact number of instances of diversion/theft by Respondent, and the full quantity  
9 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but  
10 investigations by Raley's, police, and Board Inspector(s) revealed/reported the following.

11 a. In or about May 2010, discrepancies discovered during inventories and audits  
12 of the pharmacy's controlled substance inventory, particularly its **Hydrocodone with APAP**  
13 **10/325** (generic **Norco**) supplies, led to suspicions that Respondent might be the cause because  
14 the counts were off on a number of occasions after he worked a shift;

15 b. An audit of the controlled substance inventory for the pharmacy showed that in  
16 the period between May 5, 2010 and October 16, 2010, the pharmacy was short six hundred and  
17 sixty-seven (667) tablets of **Norco** and/or **Hydrocodone with APAP 10/325** (generic **Norco**);

18 c. On or about October 27, 2010, diversion was confirmed when a hard count of  
19 the **Hydrocodone with APAP 10/325** inventory was performed on succeeding days, and there  
20 were tablets missing without intervening prescriptions being filled to explain the missing tablets;

21 d. On or about October 20, October 22, October 25, and November 3, 2010, video  
22 surveillance of Respondent showed him behaving suspiciously and appearing to place tablets of  
23 **Norco** and/or **Hydrocodone with APAP 10/325** in his pocket(s) and/or in his mouth;

24 e. On or about November 3, 2010, Respondent admitted to taking generic **Norco**  
25 pills (**Hydrocodone with APAP 10/325**) from the pharmacy, and to consuming them throughout  
26 the day while he was on duty in the pharmacy (at a rate of 2-8 pills a day). He admitted to having  
27 taken them from the pharmacy for "at least" the last 30-45 days. Respondent agreed to reimburse  
28 Raley's the value of six hundred and ninety-five (695) tablets of generic **Norco** (\$854.85).

1 FIRST CAUSE FOR DISCIPLINE

2 (Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 24. Respondent is subject to discipline under section 4301(f) of the Code in that  
4 Respondent, as described in paragraphs 21 to 23 above, committed one or more acts involving  
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

7 (Self-Administration of Controlled Substance(s))

8 25. Respondent is subject to discipline under section 4301(h) of the Code and/or Health  
9 and Safety Code section 11170, in that Respondent, as described in paragraphs 21 to 23 above,  
10 administered one or more controlled substances to himself.

11 THIRD CAUSE FOR DISCIPLINE

12 (Furnishing of Controlled Substance(s))

13 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
14 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described  
15 in paragraphs 21 to 23 above, furnished to himself or another without a valid prescription, and/or  
16 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance(s))

19 27. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
21 in paragraphs 21 to 23 above, possessed, conspired to possess, and/or assisted in or abetted  
22 possession of, a controlled substance, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Working While Under the Influence)

25 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
26 and/or section 4327 of the Code, in that Respondent, as described in paragraphs 21 to 23 above,  
27 was under the influence of controlled substances while selling or dispensing drugs.

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SIXTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 21 to 23 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

SEVENTH CAUSE FOR DISCIPLINE

(Unlawful Use of Narcotic Controlled Substances)

30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11550, in that, as described in paragraphs 21 to 23 above, Respondent used or was under the influence of, conspired to use/be under the influence of, and/or assisted in or abetted use/being under the influence of, certain identified controlled substances, not administered by or under the direction of an authorized licensee.

EIGHTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

31. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about April 7, 2011, in the criminal case *People v. Denys Joseph Michaud*, Case No. CR154374 in Napa County Superior Court, Respondent was convicted on the basis of the conduct described in paragraphs 21 to 23 of violating Penal Code section(s) 484/488 (Petty Theft), a misdemeanor. The conviction was entered as follows:

a. On or about November 5, 2010, based on the conduct described in paragraphs 21 to 23 (and other conduct), Respondent was charged by criminal Complaint in Case No. CR154374 with violating (1) Penal Code section 487(a) (Grand Theft of Personal Property), a felony; (2) Penal Code section 459 (Second Degree Commercial Burglary), a felony; (3) Penal Code section 459 (Second Degree Commercial Burglary), a felony; (4) Penal Code section 459 (Second Degree Commercial Burglary), a felony; (5) Penal Code section 459 (Second Degree Commercial Burglary), a felony; and (6) Penal Code section 242 (Battery), a misdemeanor.

