

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

In the Matter of the Accusation Against:

Case No. 4121

**DONALD LOWDER**

2475 Van Patter  
Santa Rosa, CA 95403

Pharmacist License No. RPH 28713

Respondent.

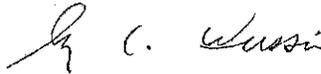
**DECISION AND ORDER**

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 November 26, 2012.

It is so ORDERED on October 25, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4121

11 **DONALD THOMAS LOWDER**  
12 **2475 Van Patter**  
13 **Santa Rosa, CA 95403**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 **Pharmacist License No. RPH 28713**

15 Respondent.

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

20  
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. Respondent Donald Thomas Lowder (Respondent) is representing himself in this  
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about October 24, 1973, the Board of Pharmacy issued Pharmacist License No.  
28 RPH 28713 to Donald Thomas Lowder (Respondent). The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 4121 and will expire on  
2 March 31, 2014, unless renewed.

3  
4 JURISDICTION

5 4. Accusation No. 4121 was filed before the Board of Pharmacy (Board), Department of  
6 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
7 statutorily required documents were properly served on Respondent on June 11, 2012.  
8 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation  
9 No. 4121 is attached as exhibit A and incorporated herein by reference.

10  
11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands, the charges and allegations in  
13 Accusation No. 4121. Respondent has also carefully read, and understands the effects of, this  
14 Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
19 the attendance of witnesses and the production of documents; the right to reconsideration and  
20 court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
23 every right set forth above.

24  
25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Accusation  
27 No. 4121. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to  
28 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.



1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 28713, issued to Donald  
3 Thomas Lowder (Respondent), is revoked. However, the revocation is stayed and Respondent is  
4 placed on probation for five (5) years on the following terms and conditions.

5 **1. Suspension**

6 As part of probation, Respondent is suspended from the practice of pharmacy for ninety  
7 (90) days beginning the effective date of this decision. Upon timely provision of documentation  
8 by Respondent showing to the satisfaction of the board or its designee that at any time since  
9 December 1, 2010, Respondent has not worked as a pharmacist because he was (a) resident in an  
10 in-patient treatment program for alcohol or drug abuse, or (b) suspended or otherwise prohibited  
11 from working as a pharmacist at the direction of the Pharmacists Recovery Program, Respondent  
12 may receive credit against this suspension period for such period(s).

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

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

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

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1           **2. Tolling of Suspension**

2           During the period of suspension, Respondent shall not leave California for any period  
3 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess  
4 of ten (10) days during suspension shall be considered a violation of probation.

5           Moreover, any absence from California during the period of suspension exceeding ten (10)  
6 days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over  
7 ten (10) days Respondent is absent from California. During any such period of tolling of  
8 suspension, Respondent must nonetheless comply with all terms and conditions of probation.

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

14           **3. Obey All Laws**

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

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

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

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

1           **4. Status of License**

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

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

9           **5. Report to the Board**

10          Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
11 designee. The report shall be made either in person or in writing, as directed. Among other  
12 requirements, Respondent shall state in each report under penalty of perjury whether there has  
13 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
14 in a form as directed shall be considered a violation of probation.

15          Any period(s) of delinquency in submission of reports as directed may be added to the total  
16 period of probation. If the final probation report is not made as directed, probation shall be  
17 automatically extended until such time as the final report is made and accepted by the board.

18          **6. Interview with the Board**

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

24          **7. Cooperate with Board Staff**

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

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1           **8. Continuing Education**

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

4           **9. Notification of Change in Employment, Name, Address(es), or Phone(s)**

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           **10. Supervised Practice**

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

18           Continuous – At least 75% of a work week

19           Substantial - At least 50% of a work week

20           Partial - At least 25% of a work week

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

22           Within thirty (30) days of the effective date of this decision, Respondent shall have his  
23 supervisor submit notification to the board in writing stating that the supervisor has read the  
24 decision in case number 4121 and is familiar with the required level of supervision as determined  
25 by the board or its designee. It shall be the Respondent's responsibility to ensure that his  
26 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
27 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
28 acknowledgements to the board shall be considered a violation of probation.

1 If Respondent changes employment, it shall be Respondent's responsibility to ensure that  
2 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
3 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment  
4 commences, submit notification to the board in writing stating the direct supervisor and  
5 pharmacist-in-charge have read the decision in case number 4121 and is/are familiar with the  
6 level of supervision as determined by the board. Respondent shall not practice pharmacy and his  
7 license shall be automatically suspended until the board or its designee approves a new  
8 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
9 acknowledgements to the board shall be considered a violation of probation.

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

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

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

23 Failure to comply with any such suspension shall be considered a violation of probation.

24 **11. Notice to Employers**

25 During the period of probation, Respondent shall notify all present and prospective  
26 employers of the decision in case number 4121 and the terms, conditions and restrictions imposed  
27 on Respondent by the decision, as follows:

28 ///

1           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
2 Respondent undertaking any new employment; Respondent shall cause his direct supervisor,  
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
5 individual(s) has/have read the decision in case number 4121, and terms and conditions imposed  
6 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
7 supervisor(s) submit timely acknowledgment(s) to the board.

8           If Respondent works for or is employed by or through a pharmacy employment service,  
9 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
10 licensed by the board of the terms and conditions in case number 4121 in advance of Respondent  
11 starting work there. A record of this notification must be provided to the board upon request.

12           Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
13 (15) days of Respondent undertaking new employment by or through a pharmacy employment  
14 service, Respondent shall cause his direct supervisor with the pharmacy employment service to  
15 report to the board in writing acknowledging that he has read the decision in case number 4121  
16 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure  
17 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

18           Failure to timely notify present or prospective employer(s) or to cause such employer(s) to  
19 submit timely acknowledgment(s) to the board shall be considered a violation of probation.

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

23           **12. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as  
24 Designated Representative-in-Charge, or Serving as a Consultant**

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

1           **13. Tolling of Probation**

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

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

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

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

21           **14. Community Services Program**

22           Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
23 board or its designee, for prior approval, a community service program in which Respondent shall  
24 provide free health-care related services on a regular basis to a community or charitable facility or  
25 agency for at least one hundred (100) hours per year for each year of probation. Within thirty  
26 (30) days of board approval thereof, Respondent shall submit documentation to the board  
27 demonstrating commencement of the community service program. A record of this notification  
28 must be provided to the board upon request. Respondent shall report on progress with the  
community service program in the quarterly reports. Failure to timely submit, commence, or  
comply with the program shall be considered a violation of probation.

1           **15. No Ownership of Licensed Premises**

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

9           **16. Ethics Course**

10           Within sixty (60) calendar days of the effective date of this decision, Respondent shall, at  
11 his own expense, enroll in a course in ethics approved in advance by the board or its designee.

12           Failure to initiate the course during the first year of probation, and complete it within the  
13 second year of probation, shall be considered a violation of probation.

14           Respondent shall submit a certificate of completion to the board or its designee within five  
15 (5) days after completing the course.

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

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

22           If Respondent is currently enrolled in the PRP, said participation is now mandatory and as  
23 of the effective date of this decision is no longer considered a self-referral under Business and  
24 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete  
25 his current contract and any subsequent addendums with the PRP.

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

28           ///

1 Probation shall be automatically extended until Respondent successfully completes the  
2 PRP. Any termination from the PRP program shall result in suspension by the board.

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

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

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

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

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

20 Failure to comply with any such suspension shall be considered a violation of probation.

21 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
22 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid  
23 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

24 **18. Prescription Coordination and Monitoring of Prescription Use**

25 Within thirty (30) days of the effective date of this decision, respondent shall submit for  
26 prior approval by the board or its designee, the name and qualifications of a single physician,  
27 nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware  
28 of respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs,

1 and who will coordinate and monitor any prescriptions for respondent for dangerous drugs,  
2 controlled substances, or mood-altering drugs. The approved practitioner shall be provided with a  
3 copy of the board's Accusation and decision. A record of this notification must be provided to  
4 the board upon request. Respondent shall sign a release authorizing the practitioner to  
5 communicate with the board about respondent's treatment(s). The coordinating physician, nurse  
6 practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for  
7 the duration of probation regarding respondent's compliance with this condition. If any  
8 substances considered addictive have been prescribed, the report shall identify a program for the  
9 time limited use of any such substances. The board or its designee may require that the single  
10 coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in  
11 addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any  
12 reason, cease supervision by the approved practitioner, respondent shall notify the board  
13 immediately and shall, within thirty (30) days of ceasing treatment, submit the name of a  
14 replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's  
15 choice to the board or its designee for prior approval. Failure to timely submit the selected  
16 practitioner or replacement practitioner to the board for approval, or to ensure the required  
17 reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

1 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
2 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

8 **19. Abstain from Drug and Alcohol Possession or 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. Random Drug Screening**

21 Respondent, at his own expense, shall participate in random testing, including but not  
22 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
23 screening program for the detection of alcohol, narcotics, hypnotics, dangerous drugs or  
24 controlled substances as the board or its designee may direct. Respondent may be required to  
25 participate in testing for the entire probation period and frequency of testing will be determined  
26 by the board or its designee. At all times, Respondent shall fully cooperate with the board or its  
27 designee, and shall, when directed, submit to such tests and samples.

28 Failure to timely submit to testing as directed shall be considered a violation of probation.

1           Upon request of the board or its designee, Respondent shall provide documentation from a  
2 licensed practitioner that the prescription for a detected drug was legitimately issued and is a  
3 necessary part of the treatment of the Respondent. Failure to timely provide such documentation  
4 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
5 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
6 shall be considered a violation of probation and shall result in automatic suspension of practice by  
7 Respondent. Respondent may not resume practice until notified by the board in writing.

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

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

20           Failure to comply with any such suspension shall be considered a violation of probation.

21           **21. Reimbursement of Board Costs**

22           As a condition precedent to successful completion of probation, Respondent shall pay to the  
23 board its costs of investigation and prosecution in the amount of \$4,898.00. Respondent shall be  
24 permitted to pay these costs in a payment plan approved by the Board or its designee, so long as  
25 full payment is made within fifty-four (54) months of the effective date of this decision. There is  
26 to be no deviation from this schedule absent prior written approval by the Board or its designee.  
27 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

28           ///

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 **22. 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 **23. Violation of Probation**

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

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

21 **24. License Surrender While on Probation/Suspension**

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

1 Upon acceptance of surrender, Respondent shall relinquish his pocket and wall license to  
2 the board within ten (10) days of notification by the board the surrender is accepted.

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

7 **25. Completion of Probation**

8 Upon written notice by the board or its designee indicating successful completion of  
9 probation, Respondent's license will be fully restored.

10 ACCEPTANCE

11 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
12 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated  
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
14 bound by the Decision and Order of the Board of Pharmacy.

15 DATED: 9-3-2012 *Donald Thomas Lowder*  
16 DONALD THOMAS LOWDER  
17 Respondent

18 ENDORSEMENT

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

21 Dated: 9/17/2012

22 Respectfully submitted,  
23 KAMALA D. HARRIS  
24 Attorney General of California  
25 FRANK H. PACOE  
26 Supervising Deputy Attorney General

27 *Joshua A. Room*  
28 JOSHUA A. ROOM  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 4121**

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  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4121

11 **DONALD THOMAS LOWDER**  
12 **2475 Van Patter Drive**  
13 **Santa Rosa, CA 95403**

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

14 **Pharmacist License No. RPH 28713**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

21 2. On or about October 24, 1973, the Board of Pharmacy issued Pharmacist License No.  
22 RPH 28713 to Donald Thomas Lowder (Respondent). The License was in full force and effect at  
23 all times relevant to the charges herein and will expire on March 31, 2012, unless renewed.

24 JURISDICTION

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

28 ///



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

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
6 drug or dangerous device except upon the prescription of an authorized prescriber.

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

9 10. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely  
10 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or  
11 to have in his or her possession a drug secured by a forged prescription.

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

14 12. Health and Safety Code section 11150 provides, in pertinent part, that no person other  
15 than an authorized prescriber shall write or issue a prescription.

16 13. Health and Safety Code section 11157 provides that no person shall issue a  
17 prescription that is false or fictitious in any respect.

18 14. Health and Safety Code section 11170 provides that no person shall prescribe,  
19 administer, or furnish a controlled substance for himself or herself.

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

24 16. Health and Safety Code section 11175 makes it unlawful for any person to obtain or  
25 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health  
26 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant  
27 prescription, or to possess a controlled substance obtained by such a prescription.

28 ///

1 17. 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 18. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or  
5 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged  
6 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered  
7 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

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

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 20. Section 4021 of the Code states:

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

15 21. Section 4022 of the Code states, in pertinent part:

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

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

20 ...

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

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

28 ///

1 FACTUAL BACKGROUND

2 23. From an unknown start date until on or about December 2, 2010, Respondent worked  
3 as a pharmacist for a Kaiser Foundation Hospital Pharmacy (#521; PHY 46284) in Rohnert Park,  
4 CA, where as a pharmacist Respondent had access to controlled substances and dangerous drugs.

5 24. During this employment, Respondent took advantage of this access to steal/divert  
6 controlled substances and dangerous drugs, including **Norco** and/or other **Hydrocodone with**  
7 **APAP** controlled drug products, for his own use. The exact number of instances of diversion by  
8 Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen by  
9 Respondent, are not known, but in the course of investigations conducted by Kaiser and by Board  
10 Inspector(s), the following were among the observations, admissions, and revelations reported:

11 a. In or about November 2010, Kaiser auditors/investigators noted indicators of  
12 possible drug diversion at Kaiser # 521 involving **Hydrocodone with APAP 10/325mg** (generic  
13 **Norco**). A subsequent inventory of the stock of **Hydrocodone with APAP 10/325mg** revealed a  
14 series of prescriptions allegedly filled by Respondent between August and October 2010 where:  
15 (i) the prescriptions were logged out of the perpetual inventory by Respondent but never sold; (ii)  
16 the drugs were never returned to stock; and (iii) the prescription numbers used for the alleged fills  
17 either belonged to another patient and drug or belonged to another patient for a different quantity  
18 of the same drug. Fictitious records had been entered into the perpetual inventory log so that the  
19 quantity of the drug on hand always matched the balance in the log. The pharmacy internal audit  
20 department determined that 8,160 tablets of **Hydrocodone with APAP 10/325mg** were missing  
21 for the audit period from July 4, 2009 through December 2, 2010.

22 b. On or about December 2, 2010, Respondent was interviewed by investigators  
23 from Kaiser. Respondent initially denied any wrongdoing, but then submitted a handwritten letter  
24 of resignation and under further questioning admitted to diverting full and partial bottles of drugs  
25 containing **Hydrocodone with APAP** from the pharmacy. Respondent was non-specific as to the  
26 dates or amounts diverted, but he did acknowledge that he developed an addiction to the drug(s),  
27 and that he was taking 25 to 30 tablets per day. Respondent admitted his most recent diversion  
28 was of a 100-tablet bottle of **Hydrocodone with APAP 10/325mg** on November 30, 2010.

1 c. The perpetual inventory log records for **Hydrocodone with APAP 10/325mg**  
2 from July 30, 2010 through November 30, 2010 showed multiple entries made by Respondent  
3 that were identified to be fictitious (i.e., the identified prescriptions were fictitious).

4 d. Surveillance video taken by Kaiser of the pharmacy area showed, on or about  
5 October 25, 2010, Respondent appearing to place one or more 100-count bottles of **Hydrocodone**  
6 **with APAP 10/325mg** into his pocket. On that same date, Respondent made an entry relating to  
7 a fictitious prescription on the perpetual inventory log for **Hydrocodone with APAP 10/325mg**.

8 e. On or about April 15, 2011, Respondent gave an oral and written statement to  
9 Board Inspector(s) in which he admitted an addiction to **Hydrocodone**-containing medications,  
10 that began sometime after he was prescribed **Vicodin** for a medical condition in 2004. At some  
11 point, he realized that he was physically addicted to **Hydrocodone with APAP**. He was not sure  
12 when he began stealing **Hydrocodone with APAP 10/325mg** from the pharmacy, but by the end  
13 of his employment with Kaiser he had progressed to taking approximately 25-30 tablets per day.

14  
15 FIRST CAUSE FOR DISCIPLINE

16 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

17 25. Respondent is subject to discipline under section 4301(f) of the Code in that  
18 Respondent, as described in paragraphs 23 and 24 above, committed numerous acts involving  
19 moral turpitude, dishonesty, fraud, deceit, or corruption.

20  
21 SECOND CAUSE FOR DISCIPLINE

22 (Creation/Signature of False Documents)

23 26. Respondent is subject to discipline under section 4301(g) of the Code in that  
24 Respondent, as described in paragraphs 23 and 24 above, created and/or signed documents that  
25 falsely represented the existence or nonexistence of a state of facts.

26 ///

27 ///

28 ///





