

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

In the Matter of the Accusation Against:

Case No. 4155

BRIAN ELLIOT JOHNSON

839 Lincoln Street
Red Bluff, CA 96080

Pharmacist License No. RPH 51715

Respondent.

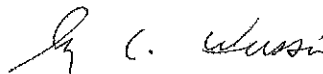
DECISION AND ORDER

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 May 31, 2013.

It is so ORDERED on May 1, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

11 In the Matter of the Accusation Against:

Case No. 4155

12 **BRIAN ELLIOT JOHNSON**
13 **839 Lincoln Street**
14 **Red Bluff, CA 96080**
Pharmacist License No. RPH 51715

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

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

19 **PARTIES**

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

24 2. Brian Elliot Johnson (Respondent) is representing himself in this proceeding and has
25 chosen not to exercise his right to be represented by counsel.

26 3. On or about August 28, 2000, the Board issued Pharmacist License No. RPH 51715
27 to Brian Elliot Johnson (Respondent). The Pharmacist License was in full force and effect at all
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1 times relevant to the charges brought in Accusation No. 4155 but expired on September 30, 2012,
2 and has not been renewed.

3 **JURISDICTION**

4 4. Accusation No. 4155 was filed before the Board, Department of Consumer Affairs
5 (Department), and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on August 23, 2012.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 4155 is attached as Exhibit A and incorporated by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 4155. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

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

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

22 **CULPABILITY**

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 4155, agrees that cause exists for discipline and hereby surrenders his Pharmacist License
25 No. RPH 51715 for the Board's formal acceptance.

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

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CONTINGENCY

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

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

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

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

ORDER

22
23 **IT IS ORDERED** that Pharmacist License No. RPH 51715, issued to Respondent Brian
24 Elliot Johnson, is surrendered and accepted by the Board of Pharmacy.

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

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

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

5 4. If Respondent ever files an application for licensure or a petition for reinstatement in
6 the State of California, the Board shall treat it as a new application for licensure. Respondent
7 shall not apply for any permit, license or registration from the board for three (3) years after the
8 effective date of this decision. Respondent stipulates that should he apply for any license from the
9 board on or after the effective of the decision that all allegations set forth in the accusation shall
10 be deemed true, correct and admitted when the board determines whether to grant or deny the
11 application. Respondent shall satisfy all requirements applicable to that license as of the date the
12 application is submitted to the board, including but not limited to taking and passing the
13 California Pharmacist Licensing Examination prior to issuance of a new license. Respondent is
14 required to report this license surrender as a disciplinary action.

15 5. Respondent shall pay the agency its costs of investigation and enforcement in the
16 amount of \$10,625.00 prior to issuance of a new or reinstated license.

17 6. If Respondent should ever apply or reapply for a new license or certification, or
18 petition for reinstatement of a license, by any other health care licensing agency in the State of
19 California, all of the charges and allegations contained in Accusation, No. 4155 shall be deemed
20 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
21 other proceeding seeking to deny or restrict licensure.

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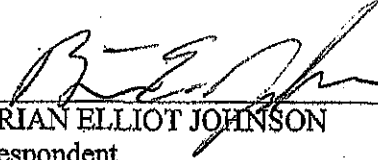
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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. 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:

3/15/2013


BRIAN ELLIOT JOHNSON
Respondent

ENDORSEMENT

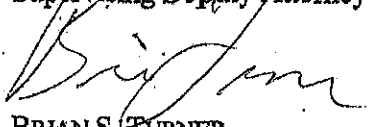
The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

3/29/13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General


BRIAN S. TURNER
Deputy Attorney General
Attorneys for Complainant

SA2011102815
Stipulation.rtf

Exhibit A

Accusation No. 4155

1 KAMALA D. HARRIS
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Attorneys for Complainant
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9 **BEFORE THE**
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4155

13 **BRIAN ELLIOT JOHNSON**
2521 Hilltop Drive, #309
14 Redding, California 96002

A C C U S A T I O N

15 Pharmacist License No. RPH 51715

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 28, 2000, the Board of Pharmacy issued Pharmacist License
24 Number RPH 51715 to Brian Elliot Johnson (Respondent). The Pharmacist License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2012, unless renewed.

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JURISDICTION

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

STATUTORY AND REGULATORY PROVISIONS

4. Section 480(a)(3)(A) provides in pertinent part the Board may deny a license to anyone who performs an act or acts which if done by a licentiate would be grounds for suspension or revocation of the license.

5. Section 4022 provides:

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

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

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

(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.

6. Section 4060 provides:

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, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. 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.

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

3 7. Section 4300 provides in relevant part:

4 "(a) Every license issued may be suspended or revoked."

5 8. Section 4301 provides in relevant part:

6 "The board shall take action against any holder of a license who is
7 guilty of unprofessional conduct. Unprofessional conduct shall
include, but not be limited to, any of the following:

8 (f) The commission of any act involving moral turpitude, dishonesty,
9 fraud, deceit, or corruption, whether the act is committed in the course of
relations as a licensee or otherwise, and whether the act is a felony or
misdemeanor.

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

15 (j) The violation of any of the statutes of this state, of any
16 other state, or of the United States regulating controlled substances
and dangerous drugs.

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

21 9. Section 4327 provides in relevant part:

22 Any person who, while on duty, sells, dispenses or compounds
23 any drug while under the influence of any dangerous drug or alcoholic
beverages shall be guilty of a misdemeanor.

24 10. Section 4301 provides in relevant part:

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

28 ///

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

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

7 (j) The violation of any of the statutes of this state, of any
8 other state, or of the United States regulating controlled substances
and dangerous drugs.

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

13 CONTROLLED SUBSTANCES

14 11. "Dilaudid" is a brand of hydromorphone and is a Schedule II controlled substance as
15 designated by Health and Safety Code section 11055 (b)(1)(K). This drug is classified as a
16 narcotic pain medication.

17 12. "Oxycontin" is a brand of Oxycodone and is designated a Schedule II substance by
18 Health and Safety Code section 11055(b)(1)(M). This drug is classified as a narcotic pain
19 medication.

20 13. "Morphine" is designated a Schedule II substance by Health and Safety Code
21 section 11055(b)(1)(L). This drug is classified as a narcotic pain medication.

22 14. "Fentanyl" is designated a Schedule II substance by Health and Safety Code
23 section 11055(e)(8). This drug is classified as a narcotic pain medication.

24 15. "Ritalin" and "Methylin" are brands of methylphenidate and are designated a
25 Schedule II substance by Health and Safety Code section 11055(d)(6). This drug is classified as
26 a stimulant.

27 16. "Demerol" is designated a Schedule II substance by Health and Safety Code
28 section 11055(b)(29). This drug is a narcotic pain medication.

1 17. "Vicodin" and "Norco" are designated Schedule III substances by Health and Safety
2 Code section 11055(e)(4). These drugs are classified as narcotic pain medications.

3 **COST RECOVERY**

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

8 **FACTUAL ALLEGATIONS**

9 19. At all times relevant, Respondent was employed as a staff pharmacist at a hospital in
10 Eureka, California. Commencing in February 2010 and continuing through September 2010,
11 Respondent used his pharmacist position and access to hospital drug stocks to divert and
12 administer drugs for personal use. Respondent first diverted prescription medication from the
13 hospital's wasted controlled substance solutions locker and either injected or swallowed the
14 drugs.

15 20. Respondent then began diverting prescription medication from various locations
16 within the hospital including but not limited to the hospital wasted solutions locker, and the
17 pharmacy narcotic safe. It is not possible to identify precisely the quantity and dates Respondent
18 diverted and self-administered the dangerous drugs.

19 21. Respondent diverted prescription medications through various other means including
20 accessing the hospital's narcotic medication locker, also referred to as a Pyxis. To access this
21 device, an employee is provided with a unique code. Once in the Pyxis, the employee can access
22 the hospital's supply of narcotics including all of the drugs set forth in paragraphs 11 through 17
23 then send the drugs to various places in the hospital. Respondent utilized his code to access
24 Pyxis on numerous occasions for drugs that had not been ordered by a physician but recorded the
25 drugs had been sent to various places in the hospital including the IV room and CCU when in fact
26 Respondent took, possessed and self-administered the diverted drugs. The diverted drugs were
27 never ordered or received by various hospital units.
28

1 22. To date, documented diversion of drugs by Respondent includes the following:
2 Demerol 18,000 milligrams July 21, 2010 to September 17, 2010
3 Morphine 6,300 milligrams March 5, 2010 to September 19, 2010
4 Hydromorphone 500 milligrams September 2, 2010
5 Methylphenidate 440 milligrams August 21, 2010 to September 15, 2010

6 **FIRST CAUSE FOR DISCIPLINE**
7 (Unprofessional Conduct-Corrupt Acts)

8 23. Respondent's license is subject to disciplinary action pursuant to section 4301 (f)
9 for corrupt acts by diverting and self-administering dangerous drugs as that term is defined in
10 section 4022. The circumstances are as follows:

11 24. Paragraphs 19 through 22 are incorporated herein as though set forth at length.
12 While employed as a pharmacist and while using his pharmacist license at St. Joseph's Hospital,
13 Respondent diverted and self-administered dangerous drugs without a lawful prescription. In
14 performing the acts alleged herein, Respondent committed deceit, fraud and corrupt acts within
15 the meaning of section 4301(f)

16 **SECOND CAUSE FOR DISCIPLINE**
17 (Unprofessional Conduct-Unlawful Possession)

18 25. Respondent's license is subject to disciplinary action pursuant to sections 4301(j)
19 and (o) on grounds that Respondent unlawfully possessed dangerous drugs without a prescription.
20 The circumstances are as follows:

21 26. Paragraphs 19 and 22 are incorporated herein as though set forth at length. From
22 February 2010 through September 2010, Respondent diverted and possessed dangerous drugs
23 from St. Joseph's Hospital while employed as a pharmacist and utilizing his pharmacist license.
24 Respondent did not have a lawful prescription or reason to possess the diverted drugs in violation
25 of Health and Safety Code section 11350 and 11377(a). Respondent's possession of the drugs in
26 this manner was violation of the laws of California and the United States of America.

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1 **THIRD CAUSE FOR DISCIPLINE**
2 (Unprofessional Conduct-Self Administration)

3 27. Respondent's license is subject to disciplinary action pursuant to section 4301(h)
4 on grounds that Respondent self-administered dangerous drugs. The circumstances are as
5 follows:

6 28. Paragraphs 19 through 22 are incorporated herein as though set forth at length.
7 From February 2010 to September 2010, while in the course and scope of his duties as a hospital
8 pharmacist, Respondent self-administered dangerous drugs, as that term is defined in section
9 4022, without lawful prescription all in violation of section 4301(h).

10 **FOURTH CAUSE FOR DISCIPLINE**
11 (Unprofessional Conduct-Under the Influence)

12 29. Respondent's license is subject to disciplinary action pursuant to section 4301(o)
13 on grounds that Respondent self-administered without lawful prescription and performed the
14 duties of a pharmacist while under the influence of dangerous drugs. The circumstances are as
15 follows:

16 30. Paragraphs 19 through 22 are incorporated herein as though set forth at length.
17 Respondent acquired or diverted and self-administered or otherwise used dangerous drugs while
18 performing the duties of a pharmacist in violation of section 4301(o).

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacist License Number RPH 51715, issued to Brian
23 Elliot Johnson.

24 2. Ordering Brian Elliot Johnson to pay the Board of Pharmacy the reasonable costs
25 of the investigation and enforcement of this case, pursuant to Business and Professions Code
26 section 125.3;

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

DATED: 8/13/12 

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