

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

In the Matter of the Accusation Against:

Case No. 4177

**MICHELLE GRAU**  
9268 Regents Road B  
La Jolla, CA 92037

Intern Pharmacist Registration No.  
INT 27112

Respondent.

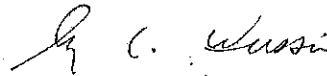
**DECISION AND ORDER**

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 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

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
4 State Bar No. 267200  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2634  
7 Facsimile: (619) 645-2061  
E-mail: Adrian.Contreras@doj.ca.gov  
8 *Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:

13 **MICHELLE F. GRAU**  
14 **9268 Regents Road B**  
**La Jolla, CA 92037**

15 **Intern Pharmacist Registration No. INT**  
16 **27112**

17 Respondent.

Case No. 4177

OAH No. 2012020011

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

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

22 **PARTIES**

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

27 2. On or about October 19, 2010, the Board of Pharmacy issued Intern Pharmacist  
28 Registration No. INT 27112 to Michelle F. Grau (Respondent). The Intern Pharmacist

1 Registration was in full force and effect at all times relevant to the charges brought in First  
2 Amended Accusation No. 4177 and will expire on October 31, 2015, unless renewed.

3 JURISDICTION

4 3. First Amended Accusation No. 4177 was filed before the Board of Pharmacy (Board),  
5 Department of Consumer Affairs, and is currently pending against Respondent. The First  
6 Amended Accusation and all other statutorily required documents were properly served on  
7 Respondent on August 28, 2012. Respondent timely filed her Notice of Defense contesting the  
8 Accusation that was served on her on November 30, 2011. A copy of First Amended Accusation  
9 No. 4177 is attached as Exhibit A and incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 4. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in First Amended Accusation No. 4177. Respondent also has carefully  
13 read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of  
14 License and Order.

15 5. Respondent is fully aware of her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to  
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to  
19 compel the attendance of witnesses and the production of documents; the right to reconsideration  
20 and court review of an adverse decision; and all other rights accorded by the California  
21 Administrative Procedure Act and other applicable laws.

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

24 CULPABILITY

25 7. Respondent admits the truth of each and every charge and allegation in First  
26 Amended Accusation No. 4177, agrees that cause exists for discipline and hereby surrenders her  
27 Intern Pharmacist Registration No. INT 27112 for the Board's formal acceptance.  
28



1 Respondent. This stipulation constitutes a record of the discipline and shall become a part of  
2 Respondent's license history with the Board of Pharmacy.

3 2. Respondent shall lose all rights and privileges as an intern pharmacist in California as  
4 of the effective date of the Board's Decision and Order.

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

7 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of  
8 California, the Board shall treat it as a new application for licensure. Respondent must comply  
9 with all the laws, regulations and procedures for licensure in effect at the time the application or  
10 petition is filed, and all of the charges and allegations contained in First Amended Accusation No.  
11 4177 shall be deemed to be true, correct and admitted by Respondent when the Board determines  
12 whether to grant or deny the application or petition.

13 5. Respondent shall pay the agency its costs of investigation and enforcement in the  
14 amount of \$8,285.00 prior to issuance of a new or reinstated license.

15 6. If Respondent should ever apply or reapply for a new license or certification, or  
16 petition for reinstatement of a license, by any other health care licensing agency in the State of  
17 California, all of the charges and allegations contained in First Amended Accusation, No. 4177  
18 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement  
19 of Issues or any other proceeding seeking to deny or restrict licensure.

20 7. Respondent shall not reapply for licensure with the Board until three (3) years from  
21 the effective date of the Board's Decision and Order in this matter has passed.

22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Intern Pharmacist Registration. 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: 9/19/12 Michelle Grau  
MICHELLE F. GRAU  
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: 9/19/12 Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
  
Adrian R. Contreras  
ADRIAN R. CONTRERAS  
Deputy Attorney General  
*Attorneys for Complainant*

SD2011801103  
70621866.doc

**Exhibit A**

**First Amended Accusation No. 4177**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
4 State Bar No. 267200  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2634  
7 Facsimile: (619) 645-2061  
E-mail: Adrian.Contreras@doj.ca.gov  
8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:  
13 **MICHELLE F. GRAU**  
14 **9268 Regents Road B**  
**La Jolla, CA 92037**  
15 **Intern Pharmacist Registration No. INT**  
16 **27112**  
17 Respondent.

Case No. 4177  
OAH No. 2012020011  
**FIRST AMENDED**  
**ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 19, 2010, the Board of Pharmacy issued Intern Pharmacist  
24 Registration No. INT 27112 to Michelle F. Grau (Respondent). The license was in full force and  
25 effect at all times relevant to the charges brought herein and will expire on October 31, 2015,  
26 unless renewed.

27 ///  
28 ///



1 **JURISDICTION**

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

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

9 5. Section 4300 of the Code states:

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

11 "..."

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 "Each board under the provisions of this code shall develop criteria to evaluate the  
15 rehabilitation of a person when:

16 "(a) Considering the denial of a license by the board under Section 480; or

17 "(b) Considering suspension or revocation of a license under Section 490.

18 "Each board shall take into account all competent evidence of rehabilitation furnished by  
19 the applicant or licensee."

20 7. Section 490 of the Code states:

21 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
22 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
23 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
24 or profession for which the license was issued.

25 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
26 discipline a licensee for conviction of a crime that is independent of the authority granted under  
27 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
28 of the business or profession for which the licensee's license was issued.

1           “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
2 conviction following a plea of nolo contendere. An action that a board is permitted to take  
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
5 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
6 1203.4 of the Penal Code.

7           “(d) The Legislature hereby finds and declares that the application of this section has been  
8 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
9 554, and that the holding in that case has placed a significant number of statutes and regulations  
10 in question, resulting in potential harm to the consumers of California from licensees who have  
11 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
12 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
13 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change  
14 to, but rather are declaratory of, existing law.”

15           8.     Section 493 of the Code states:

16           “Notwithstanding any other provision of law, in a proceeding conducted by a board within  
17 the department pursuant to law to deny an application for a license or to suspend or revoke a  
18 license or otherwise take disciplinary action against a person who holds a license, upon the  
19 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
20 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
21 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
22 and the board may inquire into the circumstances surrounding the commission of the crime in  
23 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
24 qualifications, functions, and duties of the licensee in question.

25           “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and  
26 ‘registration.’”

27     ///

28     ///

1           9.     Section 4022 of the Code states:

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

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

6           "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
7 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled  
8 in with the designation of the practitioner licensed to use or order use of the device.

9           "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
10 prescription or furnished pursuant to Section 4006."

11          10.     Section 4060 of the Code states:

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

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

26        ///

27        ///

28        ///

1           11. Section 4301 of the Code states:

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

5           "...

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

9           "...

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

15           "...

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

18           "..."

19           "(l) The conviction of a crime substantially related to the qualifications, functions, and  
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
22 substances or of a violation of the statutes of this state regulating controlled substances or  
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
25 The board may inquire into the circumstances surrounding the commission of the crime, in order  
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
27 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
2 of this provision. The board may take action when the time for appeal has elapsed, or the  
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
7 indictment.”

8 “ . . . ”

### 9 REGULATORY PROVISIONS

10 12. California Code of Regulations, title 16, section 1760, states:

11 “In reaching a decision on a disciplinary action under the Administrative Procedure Act  
12 (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines  
13 entitled “Disciplinary Guidelines” (Rev. 10/2007), which are hereby incorporated by reference.

14 “Deviation from these guidelines and orders, including the standard terms of probation, is  
15 appropriate where the board, in its sole discretion, determines that the facts of the particular case  
16 warrant such a deviation—the presence of mitigating factors; the age of the case; evidentiary  
17 problems.”

18 13. California Code of Regulations, title 16, section 1769, states:

19 “ . . .

20 “(b) When considering the suspension or revocation of a facility or a personal license on the  
21 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
22 the rehabilitation of such person and his present eligibility for a license will consider the  
23 following criteria:

24 “(1) Nature and severity of the act(s) or offense(s).

25 “(2) Total criminal record.

26 “(3) The time that has elapsed since commission of the act(s) or offense(s).

27 “(4) Whether the licensee has complied with all terms of parole, probation, restitution or  
28 any other sanctions lawfully imposed against the licensee.



1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct-Use of a Controlled Substance to an Extent or in a  
3 Manner Dangerous or Injurious to Oneself or to Others)

4 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)  
5 in that she used the controlled substances or dangerous drugs amphetamine, methamphetamine,  
6 hydrocodone, and morphine in a manner dangerous or injurious to herself or to others. The  
7 circumstances are as follows:

8 21. On or about October 28, 2010, at approximately 8:02 p.m., officers with the San  
9 Diego Police Department were dispatched when a caller stated that a female driver was slumped  
10 over inside an SUV. Officers arrived at the scene and saw Respondent sitting in the driver's seat,  
11 slumped and behind the wheel. The first officer knocked on the passenger side window and  
12 driver's side window in an attempt to wake her. The keys were in the accessories position of the  
13 ignition and the lights on the dash were lit. Respondent finally woke up after five minutes.

14 22. Respondent was confused and in a state of panic. She immediately began crying and  
15 hyperventilating. Although Respondent said she was scared and initially did not want to open the  
16 door, eventually she opened the door for the officers. The first officer saw Respondent's  
17 movements while she was in the driver's seat and her "lethargic" responses indicated to him that  
18 she was under the influence of a controlled substance. He helped Respondent out of the SUV and  
19 assisted her to sit on the curb. He spoke to Respondent and saw further signs of her being under  
20 the influence of a controlled substance: her pupils were constricted, or "pinpoint," with little to  
21 no reaction to light; her speech was slurred; and her hand-eye coordination was "very delayed."

22 23. Meanwhile, a second officer went to retrieve Respondent's identification from the  
23 SUV after she consented and, in doing so, he saw an uncapped syringe in the center console. He  
24 saw an open purse in the front seat that had two small tin foiled pipes inside with the interior  
25 portion of the pipes burnt. He opened the passenger door and found Respondent's purse. Inside  
26 the purse, he found a capped syringe with a brown liquid inside, an empty capped syringe, and a  
27 small clear plastic Ziploc baggie containing five white pills, later determined to be Vicodin.





1 attempt to pay for this merchandise. A store security guard then stopped her outside of the store.  
2 The value of the merchandise was estimated at over \$500. Respondent later admitted that she had  
3 no money and that she was in pharmacy school.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)**

6 30. Respondent is subject to disciplinary action under Code sections 4301, subdivision (f)  
7 in that Respondent committed petty theft, an act of moral turpitude or dishonesty. The  
8 circumstances are described in paragraphs 27-29, above, and are hereby incorporated as if fully  
9 set forth herein.

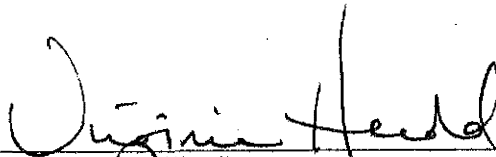
10 **PRAYER**

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

- 13 1. Revoking or suspending Intern Pharmacist Registration No. INT 27112, issued to  
14 Michelle F. Grau;
- 15 2. Ordering Michelle F. Grau to pay the Board of Pharmacy the reasonable costs of the  
16 investigation and enforcement of this case, pursuant to Business and Professions Code section  
17 125.3; and
- 18 3. Taking such other and further action as deemed necessary and proper.

21 DATED: \_\_\_\_\_

8/27/12

20 

22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

26 SD2011801103  
27 70552676.doc