



California State Board of Pharmacy
1625 N. Market Blvd, N219, Sacramento, CA 95834
Phone: (916) 574-7900
Fax: (916) 574-8618
www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>UPAS Pharmacy</u>	Case No. <u>AC 4190</u>
Address of Record: <u>3332 THIRD AVE</u> <u>SAN DIEGO, CA 92103</u>	

RECEIVED BY CALIFORNIA BOARD OF PHARMACY
2015 JUL -9 PM 1:3

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. AC 4190, I hereby request to surrender my premises license, License No. PH436112. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

[Signature]
Applicant's Signature

[Signature]
Executive Officer's Approval

7/9/2015
Date

7/10/15
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

FAX 916 574 8618



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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

RECEIVED BY CALIF
BOARD OF PHARMACY

120333

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

2015 JUL 13 PM 12:00

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>BRIAN W MCKILLIP</u>	Case No. <u>AC4190</u>
Address of Record: <u>3541 INGRAHAM ST</u> <u>SAN DIEGO, CA 92109</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC4190, I hereby request to surrender my license, License No. 32896. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

B. McKillip
Applicant's Signature

D. Herald
Executive Officer's Approval

7/9/15
Date

7/21/15
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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JUL 17 2015

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

In the Matter of the First Amended Accusation and
Petition to Revoke Probation Against:

Case No. 4190

OAH No. 2012090664

**UPAS PHARMACY, INC.,
DBA UPAS PHARMACY
BRIAN WILLIAM McKILLIP, President,
Treasurer / Financial Officer, Pharmacist-in-
Charge**
3332 Third Avenue
San Diego, CA 91103
Pharmacy Permit No. PHY 36112

AND

BRIAN WILLIAM McKILLIP
3541 Ingraham Street
San Diego, CA 92109
Pharmacist License No. RPH 32896

Respondents.

DECISION AND ORDER

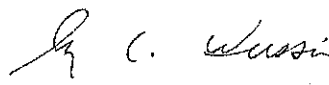
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 7, 2013.

It is so ORDERED on September 6, 2013.

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 ANTOINETTE CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the First Amended Accusation and
12 Petition to Revoke Probation Against:

13 **UPAS PHARMACY, INC.,**
14 **DBA UPAS PHARMACY;**
15 **BRIAN WILLIAM McKILLIP, President,**
16 **Treasurer / Financial Officer, Pharmacist-in-**
17 **Charge**
18 **3332 Third Avenue**
19 **San Diego, CA 92103**

20 **Pharmacy Permit No. PHY 36112**

21 **BRIAN WILLIAM McKILLIP,**
22 **3541 Ingraham Street**
23 **San Diego, CA 92109**

24 **Pharmacist License No. RPH 32896**

25 Respondents.

Case No. 4190

OAH No. 2012090664

26 **STIPULATED SETTLEMENT**
27 **AND DISCIPLINARY ORDER**

28 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

PARTIES

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

CONTINGENCY

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

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

14 15. This Stipulated Settlement and Disciplinary 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 Settlement and Disciplinary
18 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
19 writing executed by an authorized representative of each of the parties.

20 16. 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
22 Disciplinary Order:

DISCIPLINARY ORDER

23
24 IT IS HEREBY ORDERED that Pharmacist License No. RPH 32896 issued to Respondent
25 Brian William McKillip, and Pharmacy Permit No. PHY 36112 issued to Respondent Upas
26 Pharmacy, Inc. are revoked. However, the revocations are stayed and both Respondents shall
27 continue on probation for an additional four year period, until June 22, 2020, on the following
28 terms and conditions.

1 **1. Suspension – Respondent McKillip Only**

2 As part of probation, Respondent McKillip is suspended from the practice of pharmacy for
3 120 days beginning the effective date of this decision.

4 During suspension, Respondent McKillip shall not enter any pharmacy area or any portion
5 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
6 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
7 drugs and devices or controlled substances are maintained. Respondent McKillip shall not
8 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
9 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be
10 a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing
11 or dispensing of dangerous drugs and devices or controlled substances.

12 Respondent McKillip shall not engage in any activity that requires the professional
13 judgment of a pharmacist. Respondent McKillip shall not direct or control any aspect of the
14 practice of pharmacy. Respondent McKillip shall not perform the duties of a pharmacy
15 technician or a designated representative for any entity licensed by the Board.

16 Subject to the above restrictions, Respondent McKillip may continue to own or hold an
17 interest in any licensed premises in which he holds an interest at the time this decision becomes
18 effective unless otherwise specified in this order.

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

20 **2. Tolling of Suspension – Respondent McKillip Only**

21 During the period of suspension, Respondent shall not leave California for any period
22 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
23 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
24 absence from California during the period of suspension exceeding ten (10) days shall toll the
25 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
26 Respondent is absent from California. During any such period of tolling of suspension,
27 Respondent must nonetheless comply with all terms and conditions of probation.

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

6 **3. Obey All Laws – Respondents Upas & McKillip**

7 Respondents shall obey all state and federal laws and regulations.

8 Respondent McKillip shall report any of the following occurrences to the Board, in writing,
9 within 72 hours of such occurrence:

- 10 • an arrest or issuance of a criminal complaint for violation of any provision of the
11 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
12 substances laws
- 13 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
14 criminal complaint, information or indictment
- 15 • a conviction of any crime
- 16 • discipline, citation, or other administrative action filed by any state or federal agency
17 which involves Respondent's Pharmacist license and Pharmacy Permit or which is
18 related to the practice of pharmacy or the manufacturing, obtaining, handling,
19 distributing, billing, or charging for any drug, device or controlled substance.

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

21 **4. Report to the Board – Respondents Upas & McKillip**

22 Respondents shall report to the Board quarterly, on a schedule as directed by the Board or
23 its designee. The report shall be made either in person or in writing, as directed. Among other
24 requirements, Respondents shall state in each report under penalty of perjury whether there has
25 been compliance with all the terms and conditions of probation. Failure to submit timely reports
26 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
27 in submission of reports as directed may be added to the total period of probation. Moreover, if

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1 the final probation report is not made as directed, probation shall be automatically extended until
2 such time as the final report is made and accepted by the Board.

3 **5. Interview with the Board – Respondent McKillip Only**

4 Upon receipt of reasonable prior notice, Respondent McKillip shall appear in person for
5 interviews with the Board or its designee, at such intervals and locations as are determined by the
6 Board or its designee. Failure to appear for any scheduled interview without prior notification to
7 Board staff, or failure to appear for two or more scheduled interviews with the Board or its
8 designee during the period of probation, shall be considered a violation of probation.

9 **6. Cooperate with Board Staff – Respondents Upas & McKillip**

10 Respondents shall cooperate with the Board's inspection program and with the Board's
11 monitoring and investigation of Respondents' compliance with the terms and conditions of
12 probation. Failure to cooperate shall be considered a violation of probation.

13 **7. Continuing Education – Respondent McKillip Only**

14 Respondent McKillip shall provide evidence of efforts to maintain skill and knowledge as a
15 pharmacist as directed by the Board or its designee.

16 **8. Notice to Employers – Respondent McKillip Only**

17 During the period of probation, Respondent McKillip shall notify all present and
18 prospective employers of the decision in case number 3423 and the terms, conditions and
19 restrictions imposed on Respondent by the decision, as follows:

20 Within 30 days of the effective date of this decision, and within 15 days of Respondent
21 McKillip's undertaking any new employment, Respondent McKillip shall cause his direct
22 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
23 Respondent McKillip's tenure of employment) and owner to report to the Board in writing
24 acknowledging that the listed individual(s) has/have read the decision in case number 3423, and
25 terms and conditions imposed thereby. It shall be Respondent McKillip's responsibility to ensure
26 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

27 If Respondent McKillip works for or is employed by or through a pharmacy employment
28 service, Respondent McKillip must notify his direct supervisor, pharmacist-in-charge, and owner

1 at every entity licensed by the Board of the terms and conditions of the decision in case number
2 3423 in advance of the Respondent commencing work at each licensed entity. A record of this
3 notification must be provided to the Board upon request.

4 Furthermore, within 30 days of the effective date of this decision, and within 15 days of
5 Respondent McKillip's undertaking any new employment by or through a pharmacy employment
6 service, Respondent McKillip shall cause his direct supervisor with the pharmacy employment
7 service to report to the Board in writing acknowledging that he has read the decision in case
8 number 3423 and the terms and conditions imposed thereby. It shall be Respondent McKillip's
9 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
10 acknowledgment(s) to the Board.

11 Failure to timely notify present or prospective employer(s) or to cause that/those
12 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
13 probation.

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

18 **9. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
19 **Designated Representative-in-Charge, or Serving as a Consultant – Respondent McKillip**
20 **Only**

21 During the period of probation, Respondent McKillip may supervise any intern pharmacist,
22 be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
23 Board and serve as a consultant only if he subjects himself to monthly review by a Board-
24 approved consultant. Assumption of any such supervision responsibilities absent such monthly
25 review shall be considered a violation of probation.

26 **10. Reimbursement of Board Costs – Respondents Upas & McKillip**

27 As a condition precedent to successful completion of probation, Respondents shall pay,
28 jointly and severally, to the Board its costs of investigation and prosecution in the amount of
\$41,830.50. Respondents have paid to the Board \$17,777.00 of these costs. Respondents shall

1 pay 50% of the outstanding costs totalling \$12,030.25 within 30 days of the effective date of the
2 Board's Decision and Order. Respondents shall be permitted to make said payments on the
3 remaining costs in a scheduled payment plan approved by the Board.

4 There shall be no deviation from this schedule absent prior written approval by the Board or
5 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
6 probation.

7 The filing of bankruptcy by either Respondent shall not relieve either Respondent of their
8 responsibility to reimburse the Board its costs of investigation and prosecution.

9 **11. Probation Monitoring Costs – Respondents Upas & McKillip**

10 Respondents shall pay, jointly and severally, any costs associated with probation
11 monitoring as determined by the Board each and every year of probation. Such costs shall be
12 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such
13 costs by the deadline(s) as directed shall be considered a violation of probation.

14 **12. Status of License – Respondents Upas & McKillip**

15 Respondents shall, at all times while on probation, maintain an active, current license and
16 permit with the Board, including any period during which suspension or probation is tolled.
17 Failure to maintain an active, current license and permit shall be considered a violation of
18 probation.

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

23 **13. License Surrender While on Probation/Suspension – Respondents Upas &**
24 **McKillip**

25 Following the effective date of this decision, should Respondent McKillip cease practice
26 due to retirement or health, or be otherwise unable to satisfy the terms and conditions of
27 probation, Respondents may tender their license and permit to the Board for surrender. The
28 Board or its designee shall have the discretion whether to grant the request for surrender or take

1 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
2 the license and permit, Respondents will no longer be subject to the terms and conditions of
3 probation. This surrender constitutes a record of discipline and shall become a part of the
4 Respondents' license history with the Board.

5 Upon acceptance of the surrender, Respondents shall relinquish their pocket and/or wall
6 license and permit to the Board within ten days of notification by the Board that the surrender is
7 accepted. Respondents may not reapply for any license or permit from the Board for three years
8 from the effective date of the surrender. Respondents shall meet all requirements applicable to
9 the license sought as of the date the application for that license is submitted to the Board,
10 including any outstanding costs.

11 **14. Notification of a Change in Name, Residence Address, Mailing Address or**
12 **Employment – Respondent McKillip Only**

13 Respondent McKillip shall notify the Board in writing within ten days of any change of
14 employment. Said notification shall include the reasons for leaving, the address of the new
15 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
16 McKillip shall further notify the Board in writing within ten days of a change in name, residence
17 address, mailing address, or phone number.

18 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
19 phone number(s) shall be considered a violation of probation.

20 **15. Tolling of Probation – Respondent McKillip Only**

21 Except during periods of suspension, Respondent McKillip shall, at all times while on
22 probation, be employed as a pharmacist in California for a minimum of 40 hours per calendar
23 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,
24 the period of probation shall be extended by one month for each month during which this
25 minimum is not met. During any such period of tolling of probation, Respondent McKillip must
26 nonetheless comply with all terms and conditions of probation.

27 Should Respondent McKillip, regardless of residency, for any reason (including vacation)
28 cease practicing as a pharmacist for a minimum of 40 hours per calendar month in California,

1 Respondent McKillip must notify the Board in writing within ten days of the cessation of
2 practice, and must further notify the Board in writing within ten days of the resumption of
3 practice. Any failure to provide such notification(s) shall be considered a violation of probation.

4 It is a violation of probation for Respondent McKillip's probation to remain tolled pursuant
5 to the provisions of this condition for a total period, counting consecutive and non-consecutive
6 months, exceeding 36 months.

7 "Cessation of practice" means any calendar month during which Respondent is not
8 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions
9 Code section 4000 et seq. "Resumption of practice" means any calendar month during
10 which Respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as
11 defined by Business and Professions Code section 4000 et seq.

12 **16. Posted Notice of Probation – Respondent Upas**

13 Respondent Upas shall prominently post a probation notice provided by the Board in a
14 place conspicuous and readable to the public. The probation notice shall remain posted during
15 the entire period of probation.

16 Respondent Upas shall not, directly or indirectly, engage in any conduct or make any
17 statement which is intended to mislead or is likely to have the effect of misleading any patient,
18 customer, member of the public, or other person(s) as to the nature of and reason for the probation
19 of the licensed entity.

20 Failure to post such notice shall be considered a violation of probation.

21 **17. Violation of Probation – Respondents Upas & McKillip**

22 If either Respondent has not complied with any term or condition of probation, the Board
23 shall have continuing jurisdiction over such Respondent, and probation shall automatically be
24 extended, until all terms and conditions have been satisfied or the Board has taken other action as
25 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
26 probation, and to impose the penalty that was stayed.

27 If either Respondent violates probation in any respect, the Board, after giving such
28 Respondent notice and an opportunity to be heard, may revoke probation and carry out the

1 disciplinary order that was stayed. Notice and opportunity to be heard are not required for those
2 provisions stating that a violation thereof may lead to automatic termination of the stay and/or
3 revocation of the license. If a petition to revoke probation or an accusation is filed against either
4 Respondent during probation, the Board shall have continuing jurisdiction and the period of
5 probation shall be automatically extended until the petition to revoke probation or accusation is
6 heard and decided. If an accusation or petition to revoke probation is filed against Respondent
7 pursuant to this paragraph, all allegations and charges in First Amended Accusation and Petition
8 to Revoke Probation No. 4190 are deemed admitted for the purposes of such proceedings.

9 **18. Completion of Probation – Respondents Upas & McKillip**

10 Upon written notice by the Board or its designee indicating successful completion of
11 probation, Respondents' license and permit will be fully restored.

12 **19. Community Services Program – Respondents Upas & McKillip**

13 Within 60 days of the effective date of this decision, Respondents shall submit to the Board
14 or its designee, for prior approval, a community service program in which Respondent McKillip
15 shall provide free health-care related services on a regular basis to a community or charitable
16 facility or agency for at least 100 hours per year for each of probation. Respondent Upas shall
17 provide free health-care related services on a regular basis to a community or charitable facility or
18 agency for at least 100 hours per year for the first three years of probation, or a like alternative
19 subject to Board approval. Within 30 days of Board approval thereof, Respondent McKillip shall
20 submit documentation to the Board demonstrating commencement of the community service
21 programs. A record of this notification must be provided to the Board upon request. Respondent
22 McKillip shall report on progress with the community service programs in the quarterly reports.
23 Failure to timely submit, commence, or comply with the programs shall be considered a violation
24 of probation.

25 **20. Remedial Education – Respondent McKillip Only**

26 Within 60 days of the effective date of this decision, Respondent McKillip shall submit to
27 the Board or its designee, for prior approval, an appropriate program of remedial education
28 related to the grounds for discipline. The program of remedial education shall consist of at least

1 15 hours, which shall be completed within one year at Respondent McKillip's own expense. All
2 remedial education shall be in addition to, and shall not be credited toward, continuing education
3 (CE) courses used for license renewal purposes.

4 Failure to timely submit or complete the approved remedial education shall be considered a
5 violation of probation. The period of probation will be automatically extended until such
6 remedial education is successfully completed and written proof, in a form acceptable to the
7 Board, is provided to the Board or its designee.

8 Following the completion of each course, the Board or its designee may require Respondent
9 McKillip, at his own expense, to take an approved examination to test the Respondent's
10 knowledge of the course. If Respondent McKillip does not achieve a passing score on the
11 examination, this failure shall be considered a violation of probation. Any such examination
12 failure shall require Respondent McKillip to take another course approved by the Board in the
13 same subject area.

14 **21. Pharmacist-in-Charge Self-Assessment – Respondent McKillip Only**

15 Respondent McKillip shall perform a self-assessment of the pharmacy operations every
16 three months by completing a Community Pharmacy Self Assessment Form (17M-39). The
17 consultant shall countersign each of these completed self assessment forms.

18 **22. No Ownership of Licensed Premises – Respondent McKillip**

19 Respondent McKillip shall not acquire any new ownership, legal or beneficial interest nor
20 serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any
21 additional business, firm, partnership, or corporation licensed by the Board. If Respondent
22 currently own or has any legal or beneficial interest in, or serve as a manager, administrator,
23 member, officer, director, trustee, associate, or partner of any business, firm, partnership, or
24 corporation currently or hereinafter licensed by the Board, Respondent may continue to serve in
25 such capacity or hold that interest, but only to the extent of that position or interest as of the
26 effective date of this decision. Violation of this restriction shall be considered a violation of
27 probation.

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23. Separate File of Records – Respondents Upas & McKillip

Respondents shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

24. Consultant for Owner or Pharmacist-In-Charge – Respondent McKillip

During the period of probation, Respondent McKillip shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent McKillip may be a pharmacist-in-charge. However, if during the period of probation Respondent McKillip serves as a pharmacist-in-charge, Respondents shall retain an independent consultant at their own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for compliance by Respondents with state and federal laws and regulations governing the practice of pharmacy and for compliance by Respondent McKillip with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and whose name shall be submitted to the Board or its designee, for prior approval, within 30 days of the effective date of this decision. Respondent McKillip shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

25. Ethics Course – Respondent McKillip Only

Within 60 calendar days of the effective date of this decision, Respondent McKillip shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent McKillip shall submit a certificate of completion to the Board or its designee within five days after completing the course. The successful completion of the ethics course that Respondent McKillip is currently enrolled in with Board approval shall comply with this term and condition.

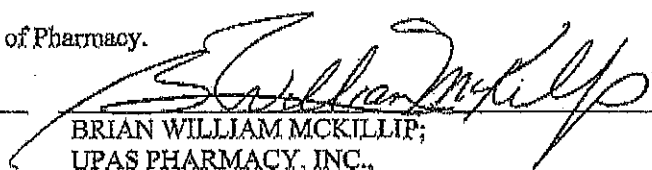
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour. I understand the stipulation and the effect it will have on my Pharmacist License and Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 7/1/13



BRIAN WILLIAM MCKILLIP;
UPAS PHARMACY, INC.,
Respondents
By Brian William McKillip, Individually and as
President/Treasurer/Financial Officer and
Pharmacist-in-Charge of Upas Pharmacy, Inc.

I have read and fully discussed with Respondent Brian McKillip; Upas Pharmacy the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7/1/2013



DICARO, COPPO & POPCKE,
DAVID M. BALFOUR, ESQ.
Attorneys for Respondents

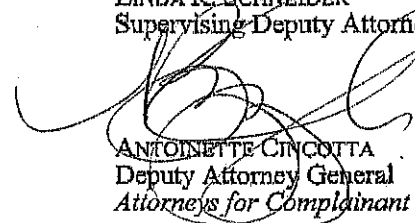
ENDORSEMENT

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

Dated: 7/8/2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



ANTOINETTE CINCOTTA
Deputy Attorney General
Attorneys for Complainant

SD2009312029

Exhibit A

First Amended Accusation and Petition to Revoke Probation No. 4190

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. 4190

13 **UPAS PHARMACY, INC.**
14 **DBA UPAS PHARMACY**
15 **3332 Third Avenue**
San Diego, CA 92103

FIRST AMENDED
ACCUSATION AND PETITION
TO REVOKE PROBATION

16 **Pharmacy Permit No. PHY 36112**

17 **BRIAN WILLIAM McKILLIP, RPH**
18 **3541 Ingraham Street**
San Diego, CA 92109

19 **Pharmacist License No. RPH 32896**

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold (Complainant) brings this First Amended Accusation and Petition to
24 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
25 Pharmacy (Board), Department of Consumer Affairs.

26 2. On or about January 26, 1990, the Board issued Pharmacy Permit Number PHY
27 36112 to Upas Pharmacy, Inc., doing business as Upas Pharmacy, with Brian William McKillip,
28 as owner and Pharmacist-In-Charge (Respondent Upas). The Pharmacy Permit was in full force

1 and effect at all times relevant to the charges brought herein and will expire on January 1, 2013,
2 unless renewed.

3 3. On or about August 9, 1979, the Board issued Pharmacist License Number RPH
4 32896 to Brian William McKillip (Respondent McKillip). In Case No. 2396, by Decision and
5 Order effective April 28, 2002, Pharmacist License Number RPH 32896 was revoked, the
6 revocation stayed, and the license was placed on probation for a period of three years subject to
7 certain terms and conditions. Respondent successfully completed his probationary term, and his
8 license was reinstated. In Case No. 3423, by Decision and Order effective June 22, 2011,
9 Pharmacist License Number RPH 32896 and Pharmacy Permit PHY 36112 were revoked, the
10 revocations were stayed, and the permit and license placed on probation for a period of five years
11 subject to certain terms and conditions. (See Decision and Order in Case No. 3423, attached
12 hereto, and incorporated here by this reference.) The Pharmacist License was in full force and
13 effect at all times relevant to the charges brought herein, and will expire on October 31, 2012,
14 unless renewed.

15 JURISDICTION

16 4. This First Amended Accusation and Petition to Revoke Probation is brought before
17 the Board under the authority of the following laws. All section references are to the Business
18 and Professions Code (Code) unless otherwise indicated.

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

23 6. Section 4300 of the Code states:

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

25 "(b) The board shall discipline the holder of any license issued by the board, whose default
26 has been entered or whose case has been heard by the board and found guilty, by any of the
27 following methods:

28 "(1) Suspending judgment.

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

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

6 9. Section 4059.5 of the Code states in relevant part:

7 ". . . .

8 "(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device
9 may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist,
10 veterinarian, naturopathic doctor pursuant to Section 3640.7, or laboratory, or a physical therapist
11 acting within the scope of his or her license. A person or entity receiving delivery of a dangerous
12 drug or dangerous device, or a duly authorized representative of the person or entity, shall sign
13 for the receipt of the dangerous drug or dangerous device."

14 10. Section 4104, subdivision (b) of the Code states:

15 "(b) Every pharmacy shall have written policies and procedures for addressing chemical,
16 mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among
17 licensed individuals employed by or with the pharmacy."

18 11. Section 4126.5 of the Code states in relevant part:

19 "(a) A pharmacy may furnish dangerous drugs only to the following:

20 "(1) A wholesaler owned or under common control by the wholesaler from whom the
21 dangerous drug was acquired.

22 "(2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

23 "(3) A licensed wholesaler acting as a reverse distributor.

24 "(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug
25 that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to
26 this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

27 "(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized
28 by law.

1 **COST RECOVERY**

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

6 **DRUGS**

7 17. Hydroquinone is a dangerous drug under Code section 4022, and is used for
8 hyperpigmentation.

9 18. Tretinoin is a dangerous drug under Code section 4022, and is used for acne.

10 19. Kenalog, also known under the generic name triamcinolone, is a dangerous drug
11 under Code section 4022, and is used for non-inflammatory skin disorders.

12 **ACCUSATION**

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Respondent Upas - Unlawful Wholesaling of Drugs)**

15 20. Respondent Upas is subject to disciplinary action under Code section 4301,
16 subdivision (j) for selling or transferring dangerous drugs at wholesale to an unlicensed person in
17 violation of sections 4169, subdivision (a)(1), and 4126.5. The circumstances are as follows:

18 21. From about September 2009 to April 2010, while Respondent McKillip was acting as
19 pharmacist-in-charge, Respondent Upas furnished dangerous drugs without a prescription,
20 including hydroquinone, tretinoin and Kenalog, to an unlicensed individual, L.M., and delivered
21 the dangerous drugs to the personal residence of L.M., located in Bonita, California.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Respondent Upas - Unlawful Drug Transfers)**

24 22. Respondent Upas is subject to disciplinary action under Code section 4301,
25 subdivision (j) for selling or transferring dangerous drugs to unlicensed persons in violation of
26 sections 4163, subdivision (a) and 4059.5, subdivision (d). The circumstances are set forth in
27 paragraph 21, which is incorporated here by this reference.

28 ///

1 33. Respondents' probations are subject to revocation because they failed to comply
2 with Probation Condition 3, referenced above. The facts and circumstances regarding this
3 violation are set forth in paragraph numbers 20 to 31 above, which are incorporated here by this
4 reference.

5 **PRAYER**

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

8 1. Revoking the probation that was granted by the Board of California in Case No. 3423,
9 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
10 RPH 32896 issued to Brian McKillip, and revoking Pharmacy Permit No. PHY 36112 issued to
11 Upas Pharmacy, Inc., dba Upas Pharmacy, Brian William McKillip, president,
12 Treasurer/Financial Officer, and Pharmacist-in-Charge;

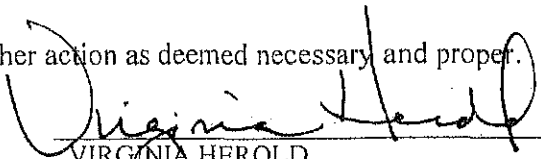
13 2 Revoking or suspending Pharmacy Permit Number PHY 36112 issued to Respondent
14 Upas Pharmacy with Brian William McKillip, owner and pharmacist-in-charge;

15 3 Revoking or suspending Pharmacist License Number RPH 32896 issued to
16 Respondent Brian William McKillip;

17 4 Ordering Upas Pharmacy and Brian William McKillip to pay the Board of Pharmacy
18 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
19 Professions Code section 125.3;

20 5 Taking such other and further action as deemed necessary and proper.

21 DATED: 7/9/12


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

28 SD2011801418
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 3423

UPAS PHARMACY, INC., dba UPAS
PHARMACY; BRIAN WILLIAM MCKILLIP,
President, Treasurer / Financial Officer,
Pharmacist-in-Charge
3332 Third Avenue
San Diego, CA 92103
Pharmacy Permit No. PHY 36112

and

BRIAN MCKILLIP
3541 Ingraham Street
San Diego, CA 92109
Pharmacist License No. RPH 32896

Respondent.

DECISION AND ORDER

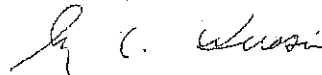
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 22, 2011.

It is so ORDERED on May 23, 2011.

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 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 UPAS PHARMACY, INC., dba UPAS
PHARMACY; BRIAN WILLIAM
13 McKILLIP, President, Treasurer / Financial
Officer, Pharmacist-in-Charge
14 3332 Third Avenue
San Diego, CA 92103
15 Pharmacy Permit No. PHY 36112
16 BRIAN WILLIAM McKILLIP,
17 3541 Ingraham Street
San Diego, CA 92109
18 Pharmacist License No. RPH 32896
19 Respondents.
20

Case No. 3423

OAH No. 2010070665

13 **STIPULATED SETTLEMENT**
14 **AND DISCIPLINARY ORDER**

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
25 (Board). She brought this action solely in her official capacity and is represented in this matter by
26 Kamala D. Harris, Attorney General of the State of California, by G. Michael German, Deputy
27 Attorney General.
28

1 documents; the right to reconsideration and court review of an adverse decision; and all other
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 8. Respondent McKillip voluntarily, knowingly, and intelligently waives and gives up
4 each and every right set forth above.

5 CULPABILITY

6 9. Respondent McKillip admits the truth of each and every charge and allegation in
7 Accusation No. 3423.

8 10. Respondent McKillip agrees that his Pharmacist License and Pharmacy Permit are
9 subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the
10 Disciplinary Order below.

11 CONTINGENCY

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

21 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
22 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
23 effect as the originals.

24 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
27 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
28

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 DISCIPLINARY ORDER

7 IT IS HEREBY ORDERED that Pharmacist License No. RPH 32896 issued to Respondent
8 Brian William McKillip, and Pharmacy Permit No. PHY 36112 issued to Respondent Upas
9 Pharmacy, Inc. are revoked. However, the revocations are stayed and both Respondents are each
10 placed on probation for five years on the following terms and conditions:

11 1. **Suspension – Respondent McKillip Only**

12 As part of probation, Respondent McKillip is suspended from the practice of pharmacy for
13 90 days beginning the effective date of this decision.

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

22 Respondent McKillip shall not engage in any activity that requires the professional
23 judgment of a pharmacist. Respondent McKillip shall not direct or control any aspect of the
24 practice of pharmacy. Respondent McKillip shall not perform the duties of a pharmacy
25 technician or a designated representative for any entity licensed by the Board.

26 Subject to the above restrictions, Respondent McKillip may continue to own or hold an
27 interest in any licensed premises in which he holds an interest at the time this decision becomes
28 effective unless otherwise specified in this order.

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

2 **2. Tolling of Suspension – Respondent McKillip Only**

3 During the period of suspension, respondent shall not leave California for any period
4 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
5 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
6 absence from California during the period of suspension exceeding ten (10) days shall toll the
7 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
8 respondent is absent from California. During any such period of tolling of suspension,
9 respondent must nonetheless comply with all terms and conditions of probation.

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

15 **3. Obey All Laws – Respondents Upas & McKillip**

16 Respondents shall obey all state and federal laws and regulations.

17 Respondent McKillip shall report any of the following occurrences to the Board, in writing,
18 within 72 hours of such occurrence:

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

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

2 **4. Report to the Board – Respondents Upas & McKillip**

3 Respondents shall report to the Board quarterly, on a schedule as directed by the Board or
4 its designee. The report shall be made either in person or in writing, as directed. Among other
5 requirements, Respondents shall state in each report under penalty of perjury whether there has
6 been compliance with all the terms and conditions of probation. Failure to submit timely reports
7 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
8 in submission of reports as directed may be added to the total period of probation. Moreover, if
9 the final probation report is not made as directed, probation shall be automatically extended until
10 such time as the final report is made and accepted by the Board.

11 **5. Interview with the Board – Respondent McKillip Only**

12 Upon receipt of reasonable prior notice, Respondent McKillip shall appear in person for
13 interviews with the Board or its designee, at such intervals and locations as are determined by the
14 Board or its designee. Failure to appear for any scheduled interview without prior notification to
15 Board staff, or failure to appear for two or more scheduled interviews with the Board or its
16 designee during the period of probation, shall be considered a violation of probation.

17 **6. Cooperate with Board Staff – Respondents Upas & McKillip**

18 Respondents shall cooperate with the Board's inspection program and with the Board's
19 monitoring and investigation of Respondents' compliance with the terms and conditions of his
20 probation. Failure to cooperate shall be considered a violation of probation.

21 **7. Continuing Education – Respondent McKillip Only**

22 Respondent McKillip shall provide evidence of efforts to maintain skill and knowledge as a
23 pharmacist as directed by the Board or its designee.

24 **8. Notice to Employers – Respondent McKillip Only**

25 During the period of probation, Respondent McKillip shall notify all present and
26 prospective employers of the decision in case number 3423 and the terms, conditions and
27 restrictions imposed on Respondent by the decision, as follows:
28

1 Within 30 days of the effective date of this decision, and within 15 days of Respondent
2 McKillip's undertaking any new employment, Respondent McKillip shall cause his direct
3 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
4 Respondent McKillip's tenure of employment) and owner to report to the Board in writing
5 acknowledging that the listed individual(s) has/have read the decision in case number 3423, and
6 terms and conditions imposed thereby. It shall be Respondent McKillip's responsibility to ensure
7 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

8 If Respondent McKillip works for or is employed by or through a pharmacy employment
9 service, Respondent McKillip must notify his direct supervisor, pharmacist-in-charge, and owner
10 at every entity licensed by the Board of the terms and conditions of the decision in case number
11 3423 in advance of the Respondent commencing work at each licensed entity. A record of this
12 notification must be provided to the Board upon request.

13 Furthermore, within 30 days of the effective date of this decision, and within 15 days of
14 Respondent McKillip's undertaking any new employment by or through a pharmacy employment
15 service, Respondent McKillip shall cause his direct supervisor with the pharmacy employment
16 service to report to the Board in writing acknowledging that he has read the decision in case
17 number 3423 and the terms and conditions imposed thereby. It shall be Respondent McKillip's
18 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
19 acknowledgment(s) to the Board.

20 Failure to timely notify present or prospective employer(s) or to cause that/those
21 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
22 probation.

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

1 9. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as
2 Designated Representative-in-Charge, or Serving as a Consultant – Respondent McKillip
3 Only

4 During the period of probation, Respondent McKillip may supervise any intern pharmacist,
5 be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
6 Board and serve as a consultant only if he subjects himself to monthly review by a Board-
7 approved consultant. Assumption of any such supervision responsibilities absent such monthly
8 review shall be considered a violation of probation.

9 10. Reimbursement of Board Costs – Respondents Upas & McKillip

10 As a condition precedent to successful completion of probation, Respondents shall pay,
11 jointly and severally, to the Board its costs of investigation and prosecution in the amount of
12 \$30,579.50. Respondents shall be permitted to make said payments in a scheduled payment plan
13 approved by the Board.

14 There shall be no deviation from this schedule absent prior written approval by the Board or
15 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
16 probation.

17 The filing of bankruptcy by either Respondent shall not relieve either Respondent of his
18 responsibility to reimburse the Board its costs of investigation and prosecution.

19 11. Probation Monitoring Costs – Respondents Upas & McKillip

20 Respondents shall pay, jointly and severally, any costs associated with probation
21 monitoring as determined by the Board each and every year of probation. Such costs shall be
22 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such
23 costs by the deadline(s) as directed shall be considered a violation of probation.

24 12. Status of License – Respondents Upas & McKillip

25 Respondents shall, at all times while on probation, maintain an active, current license and
26 permit with the Board, including any period during which suspension or probation is tolled.
27 Failure to maintain an active, current license and permit shall be considered a violation of
28 probation.

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

5 **13. License Surrender While on Probation/Suspension – Respondents Upas &**
6 **McKillip**

7 Following the effective date of this decision, should Respondent McKillip cease practice
8 due to retirement or health, or be otherwise unable to satisfy the terms and conditions of
9 probation, Respondents may tender their license and permit to the Board for surrender. The
10 Board or its designee shall have the discretion whether to grant the request for surrender or take
11 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
12 the license and permit, Respondents will no longer be subject to the terms and conditions of
13 probation. This surrender constitutes a record of discipline and shall become a part of the
14 Respondents' license history with the Board.

15 Upon acceptance of the surrender, Respondents shall relinquish their pocket and/or wall
16 ~~license and permit to the Board within ten days of notification by the Board that the surrender is~~
17 accepted. Respondents may not reapply for any license or permit from the Board for three years
18 from the effective date of the surrender. Respondents shall meet all requirements applicable to
19 the license sought as of the date the application for that license is submitted to the Board,
20 including any outstanding costs.

21 **14. Notification of a Change in Name, Residence Address, Mailing Address or**
22 **Employment – Respondent McKillip Only**

23 Respondent McKillip shall notify the Board in writing within ten days of any change of
24 employment. Said notification shall include the reasons for leaving, the address of the new
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
26 McKillip shall further notify the Board in writing within ten days of a change in name, residence
27 address, mailing address, or phone number.
28

1 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
2 phone number(s) shall be considered a violation of probation.

3 15. Tolling of Probation – Respondent McKillip Only

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

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

15 It is a violation of probation for Respondent McKillip's probation to remain tolled pursuant
16 to the provisions of this condition for a total period, counting consecutive and non-consecutive
17 months, exceeding 36 months.

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

23 16. Posted Notice of Probation – Respondent Upas

24 Respondent Upas shall prominently post a probation notice provided by the board in a place
25 conspicuous and readable to the public. The probation notice shall remain posted during the
26 entire period of probation.

27 Respondent Upas shall not, directly or indirectly, engage in any conduct or make any
28 statement which is intended to mislead or is likely to have the effect of misleading any patient,

1 customer, member of the public, or other person(s) as to the nature of and reason for the probation
2 of the licensed entity.

3 Failure to post such notice shall be considered a violation of probation.

4 **17. Violation of Probation – Respondents Upas & McKillip**

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

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

18 **18. Completion of Probation – Respondents Upas & McKillip**

19 Upon written notice by the Board or its designee indicating successful completion of
20 probation, Respondents' license and permit will be fully restored.

21 **19. Community Services Program – Respondents Upas & McKillip**

22 Within 60 days of the effective date of this decision, Respondents shall submit to the Board
23 or its designee, for prior approval, a community service program in which Respondent McKillip
24 shall provide free health-care related services on a regular basis to a community or charitable
25 facility or agency for at least 100 hours per year for each of his five years of probation.
26 Respondent Upas shall provide free health-care related services on a regular basis to a community
27 or charitable facility or agency for at least 100 hours per year for the first three years of probation,
28 or a like alternative subject to Board approval. Within 30 days of Board approval thereof,

1 Respondent McKillip shall submit documentation to the Board demonstrating commencement of
2 the community service programs. A record of this notification must be provided to the Board
3 upon request. Respondent McKillip shall report on progress with the community service
4 programs in the quarterly reports. Failure to timely submit, commence, or comply with the
5 programs shall be considered a violation of probation.

6 **20. Remedial Education – Respondent McKillip Only**

7 Within 60 days of the effective date of this decision, Respondent McKillip shall submit to
8 the Board or its designee, for prior approval, an appropriate program of remedial education
9 related to the grounds for discipline. The program of remedial education shall consist of at least
10 15 hours, which shall be completed within one year at Respondent McKillip's own expense. All
11 remedial education shall be in addition to, and shall not be credited toward, continuing education
12 (CE) courses used for license renewal purposes.

13 Failure to timely submit or complete the approved remedial education shall be considered a
14 violation of probation. The period of probation will be automatically extended until such
15 remedial education is successfully completed and written proof, in a form acceptable to the
16 Board, is provided to the Board or its designee.

17 Following the completion of each course, the Board or its designee may require Respondent
18 McKillip, at his own expense, to take an approved examination to test the Respondent's
19 knowledge of the course. If Respondent McKillip does not achieve a passing score on the
20 examination, this failure shall be considered a violation of probation. Any such examination
21 failure shall require Respondent McKillip to take another course approved by the Board in the
22 same subject area.

23 **21. Pharmacist-in-Charge Self-Assessment – Respondent McKillip Only**

24 Respondent McKillip shall perform a self- assessment of the pharmacy operations every
25 three months by completing a Community Pharmacy Self Assessment Form (17M-39). The
26 consultant shall countersign each of these completed self assessment forms.

27 **22. No Ownership of Licensed Premises – Respondent McKillip**

28 Respondent McKillip shall not acquire any new ownership, legal or beneficial interest nor

1 serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any
2 additional business, firm, partnership, or corporation licensed by the Board. If Respondent
3 currently own or has any legal or beneficial interest in, or serve as a manager, administrator,
4 member, officer, director, trustee, associate, or partner of any business, firm, partnership, or
5 corporation currently or hereinafter licensed by the Board, Respondent may continue to serve in
6 such capacity or hold that interest, but only to the extent of that position or interest as of the
7 effective date of this decision. Violation of this restriction shall be considered a violation of
8 probation.

9 **23. Separate File of Records – Respondents Upas & McKillip**

10 Respondents shall maintain and make available for inspection a separate file of all records
11 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such
12 file or make it available for inspection shall be considered a violation of probation.

13 **24. Consultant for Owner or Pharmacist-In-Charge – Respondent McKillip**

14
15 During the period of probation, Respondent McKillip shall not supervise any intern
16 pharmacist or serve as a consultant to any entity licensed by the Board. Respondent McKillip
17 may be a pharmacist-in-charge. However, if during the period of probation Respondent McKillip
18 serves as a pharmacist-in-charge, Respondents shall retain an independent consultant at their own
19 expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for
20 compliance by Respondents with state and federal laws and regulations governing the practice of
21 pharmacy and for compliance by Respondent McKillip with the obligations of a pharmacist-in-
22 charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and
23 whose name shall be submitted to the Board or its designee, for prior approval, within 30 days of
24 the effective date of this decision. Respondent McKillip shall not be a pharmacist-in-charge at
25 more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely
26 retain, seek approval of, or ensure timely reporting by the consultant shall be considered a
27 violation of probation.
28

25. Ethics Course - Respondent McKillip Only

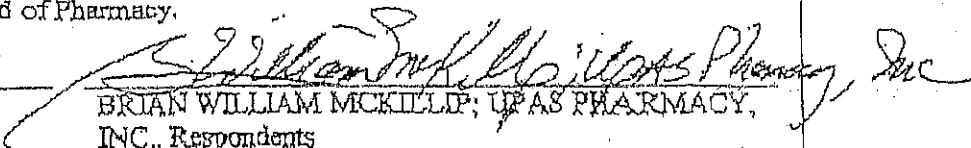
Within 60 calendar days of the effective date of this decision, Respondent McKillip shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent McKillip shall submit a certificate of completion to the Board or its designee within five days after completing the course.

ACCEPTANCE

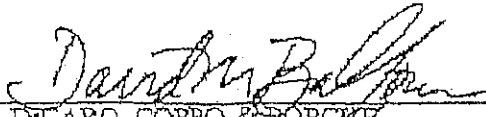
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour. I understand the stipulation and the effect it will have on my Pharmacist License and Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 3/4/2011


BRIAN WILLIAM MCKILLIP; UPAS PHARMACY,
INC., Respondents
By Brian William McKillip, individually and as
President/Treasurer/Financial Officer and
Pharmacist-in-Charge of Upas Pharmacy, Inc.

I have read and fully discussed with Respondent Brian McKillip, Upas Pharmacy the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: March 4, 2011


DICARO, COPPO & POPCKE,
DAVID M. BALFOUR, ESQ.
Attorneys for Respondents

ENDORSEMENT

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

Dated: March 4, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General



G. MICHAEL GERMAN
Deputy Attorney General
Attorneys for Complainant

SD2009312029
Stipulation.rtf

Exhibit A

Accusation No. 3243

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
4 State Bar No. 103312
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2617
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 BEFORE THE
BOARD OF PHARMACY
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 3423

13 UPAS PHARMACY, INC., dba UPAS
PHARMACY; BRIAN WILLIAM
14 McKILLIP, President, Treasurer / Financial
Officer, Pharmacist-in-Charge
15 3332 Third Avenue
San Diego, CA 92103

ACCUSATION

16 Pharmacy Permit No. PHY 36112

17 BRIAN WILLIAM McKILLIP,
18 3541 Ingraham Street
San Diego, CA 92109

19 Pharmacist License No. RPH 32896

20 Respondents.
21

22 Complainant alleges:

23 PARTIES

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

26 2. On August 9, 1979, the Board issued Pharmacist License Number RPH 32896 to
27 Respondent Brian William McKillip. The license was in full force and effect at all times relevant
28 to the charges brought herein and will expire on October 31, 2010, unless renewed. Effective

1 April 28, 2002, the license was revoked, but the revocation was stayed for three years while
2 Respondent McKillip was placed and remained on probation.

3 3. On January 26, 1990, the Board issued Pharmacy Permit Number PH-Y 36112 to
4 Respondent Upas Pharmacy, Inc. (Upas), to do business as Upas Pharmacy, with Respondent
5 Brian William McKillip as President, Treasurer / Financial Officer, and Pharmacist-in-Charge.
6 The permit was in full force and effect at all times relevant to the charges brought herein and will
7 expire on January 1, 2011, unless renewed.

8 JURISDICTION

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

12 5. Section 4300, subdivision (a) of the Business and Professions Code (Code) provides,
13 in pertinent part, that every license issued may be suspended or revoked.

14 6. Section 4302 of the Code provides that the board may revoke any license of a
15 corporation where conditions exist in relation to any person holding 10 percent or more of the
16 corporate stock of the corporation, or where conditions exist in relation to any officer or director
17 of the corporation that would constitute grounds for disciplinary action against a licensee.

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

22 STATUTORY PROVISIONS

23 8. Section 4022 of the Code states:

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this
28 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.

9. Section 4059, subsection (a), of the Code states:

A person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10. Section 4063 of the Code states:

No prescription for any dangerous drug or dangerous device may be refilled except upon authorization of the prescriber. The authorization may be given orally or at the time of giving the original prescription. No prescription for any dangerous drug that is a controlled substance may be designated refillable as needed.

11. Section 4081 of the Code states in pertinent part:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every . . . pharmacy . . . holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

12. Section 4301 of the Code states, in pertinent part:

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

(b) Incompetence.

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

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

1
2 13. Section 4332 of the Code states:

3 Any person who fails, neglects, or refuses to maintain the records required by
4 Section 4081 or who, when called upon by an authorized officer or a member of the
5 board, fails, neglects, or refuses to provide the records within a reasonable time, or
6 who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

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14 14. Section 11153 of the Health and Safety (H&S) Code states in pertinent part:

15 (a) A prescription for a controlled substance shall only be issued for a
16 legitimate medical purpose by an individual practitioner acting in the usual course of
17 his or her professional practice. The responsibility for the proper prescribing and
18 dispensing of controlled substances is upon the prescribing practitioner, but a
19 corresponding responsibility rests with the pharmacist who fills the prescription.
20 Except as authorized by this division, the following are not legal prescriptions: (1) an
21 order purporting to be a prescription which is issued not in the usual course of
22 professional treatment or in legitimate and authorized research; or (2) an order for an
23 addict or habitual user of controlled substances, which is issued not in the course of
24 professional treatment or as part of an authorized narcotic treatment program, for the
25 purpose of providing the user with controlled substances, sufficient to keep him or her
26 comfortable by maintaining customary use.

27
28 15. Section 11158 of the H&S Code states in pertinent part:

1 (a) Except as provided in Section 11159 or in subdivision (b) of this section,
2 no controlled substance classified in Schedule II shall be dispensed without a
3 prescription meeting the requirements of this chapter. Except as provided in Section
4 11159 or when dispensed directly to an ultimate user by a practitioner, other than a
5 pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V
6 may be dispensed without a prescription meeting the requirements of this chapter.

7 (b) A practitioner specified in Section 11150 may dispense directly to an
8 ultimate user a controlled substance classified in Schedule II in an amount not to
9 exceed a 72-hour supply for the patient in accordance with directions for use given by
10 the dispensing practitioner only where the patient is not expected to require any
11 additional amount of the controlled substance beyond the 72 hours. Practitioners
12 dispensing drugs pursuant to this subdivision shall meet the requirements of
13 subdivision (f) of Section 11164.

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23 16. Section 11159.2 of the H&S Code states in pertinent part:

24 (a) Notwithstanding any other provision of law, a prescription for a controlled
25 substance for use by a patient who has a terminal illness may be written on a
26 prescription form that does not meet the requirements of Section 11162.1 if the
27 prescription meets the following requirements:

28 (1) Contain the information specified in subdivision (a) of Section 11164.

(2) Indicate that the prescriber has certified that the patient is terminally ill by
the words "11159.2 exemption."

1 (b) A pharmacist may fill a prescription pursuant to this section when there is a
2 technical error in the certification required by paragraph (2) of subdivision (a),
3 provided that he or she has personal knowledge of the patient's terminal illness, and
4 subsequently returns the prescription to the prescriber for correction within 72 hours.

5 17. Section 11162.1 of the H&S Code states:

6 (a) The prescription forms for controlled substances shall be printed with the
7 following features:

8 (1) A latent, repetitive "void" pattern shall be printed across the entire
9 front of the prescription blank; if a prescription is scanned or photocopied, the word
10 "void" shall appear in a pattern across the entire front of the prescription.

11 (2) A watermark shall be printed on the backside of the prescription
12 blank; the watermark shall consist of the words "California Security Prescription."

13 (3) A chemical void protection that prevents alteration by chemical
14 washing.

15 (4) A feature printed in thermochromic ink.

16 (5) An area of opaque writing so that the writing disappears if the
17 prescription is lightened.

18 (6) A description of the security features included on each prescription
19 form.

20 (7) (A) Six quantity check off boxes shall be printed on the form and the
21 following quantities shall appear:

22 1-24

23 25-49

24 50-74

25 75-100

26 101-150

27 151 and over.

28 (B) In conjunction with the quantity boxes, a space shall be provided to
designate the units referenced in the quantity boxes when the drug is not in tablet or
capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of
the prescription blank that the "Prescription is void if the number of drugs prescribed
is not noted."

(9) The preprinted name, category of licensure, license number, federal
controlled substance registration number of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may
indicate the number of refills ordered.

1 (11) The date of origin of the prescription.

2 (12) A check box indicating the prescriber's order not to substitute.

3 (13) An identifying number assigned to the approved security printer by
the Department of Justice.

4 (14)(A) A check box by the name of each prescriber when a prescription
5 form lists multiple prescribers.

6 (B) Each prescriber who signs the prescription form shall identify himself
or herself as the prescriber by checking the box by his or her name.

7 (b) Each batch of controlled substance prescription forms shall have the lot
8 number printed on the form and each form within that batch shall be numbered
sequentially beginning with the numeral one.

9 (c)(1) A prescriber designated by a licensed health care facility, a clinic
10 specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that
has 25 or more physicians or surgeons may order controlled substance prescription
11 forms for use by prescribers when treating patients in that facility without the
information required in paragraph (9) of subdivision (a) or paragraph (3) of this
12 subdivision.

13 (2) Forms ordered pursuant to this subdivision shall have the name,
category of licensure, license number, and federal controlled substance registration
14 number of the designated prescriber and the name, address, category of licensure, and
license number of the licensed health care facility the clinic specified in Section 1200,
15 or the clinic specified in subdivision (a) of Section 1206 that has 25 or more
physicians or surgeons preprinted on the form.

16 (3) Forms ordered pursuant to this section shall not be valid prescriptions
17 without the name, category of licensure, license number, and federal controlled
substance registration number of the prescriber on the form.

18 (4)(A) Except as provided in subparagraph (B), the designated prescriber
19 shall maintain a record of the prescribers to whom the controlled substance
prescription forms are issued, that shall include the name, category of licensure,
20 license number, federal controlled substance registration number, and quantity of
controlled substance prescription forms issued to each prescriber. The record shall be
21 maintained in the health facility for three years.

22 (B) Forms ordered pursuant to this subdivision that are printed by a
computerized prescription generation system shall not be subject to subparagraph (A)
23 or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are
printed by a computerized prescription generation system may contain the prescriber's
24 name, category of professional licensure, license number, federal controlled substance
registration number, and the date of the prescription.

25 (d) This section shall become operative on July 1, 2004.

26 18. Section 11164 of the H&S Code states:

27 Except as provided in Section 11167, no person shall prescribe a controlled
28 substance, nor shall any person fill, compound, or dispense a prescription for a
controlled substance, unless it complies with the requirements of this section.

1 (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
2 except as authorized by subdivision (b), shall be made on a controlled substance
prescription form as specified in Section 11162.1 and shall meet the following
requirements:

3 (1) The prescription shall be signed and dated by the prescriber in ink and shall
4 contain the prescriber's address and telephone number; the name of the ultimate user
5 or research subject, or contact information as determined by the Secretary of the
6 United States Department of Health and Human Services; refill information, such as
the number of refills ordered and whether the prescription is a first-time request or a
refill; and the name, quantity, strength, and directions for use of the controlled
substance prescribed.

7 (2) The prescription shall also contain the address of the person for whom the
8 controlled substance is prescribed. If the prescriber does not specify this address on
the prescription, the pharmacist filling the prescription or an employee acting under
9 the direction of the pharmacist shall write or type the address on the prescription or
maintain this information in a readily retrievable form in the pharmacy.

10 (b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any
11 controlled substance classified in Schedule III, IV, or V may be dispensed upon an
12 oral or electronically transmitted prescription, which shall be produced in hard copy
13 form and signed and dated by the pharmacist filling the prescription or by any other
14 person expressly authorized by provisions of the Business and Professions Code. Any
person who transmits, maintains, or receives any electronically transmitted
prescription shall ensure the security, integrity, authority, and confidentiality of the
prescription.

15 (2) The date of issue of the prescription and all the information required for a written
16 prescription by subdivision (a) shall be included in the written record of the
17 prescription; the pharmacist need not include the address, telephone number, license
classification, or federal registry number of the prescriber or the address of the patient
on the hard copy, if that information is readily retrievable in the pharmacy.

18 (3) Pursuant to an authorization of the prescriber, any agent of the prescriber on
19 behalf of the prescriber may orally or electronically transmit a prescription for a
20 controlled substance classified in Schedule III, IV, or V, if in these cases the written
record of the prescription required by this subdivision specifies the name of the agent
of the prescriber transmitting the prescription.

21 (c) The use of commonly used abbreviations shall not invalidate an otherwise
valid prescription.

22 (d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for
23 a controlled substance classified in Schedule V may be for more than one person in
the same family with the same medical need.

24 (e) This section shall become operative on January 1, 2005.

25 19. Section 11167.5 of the H&S Code states in pertinent part:

26 (a) An order for a controlled substance classified in Schedule II for a patient of
27 a licensed skilled nursing facility, a licensed intermediate care facility, a licensed
home health agency, or a licensed hospice may be dispensed upon an oral or
28 electronically transmitted prescription. If the prescription is transmitted orally, the
pharmacist shall, prior to filling the prescription, reduce the prescription to writing in

1 ink in the handwriting of the pharmacist on a form developed by the pharmacy for
2 this purpose. If the prescription is transmitted electronically, the pharmacist shall,
3 prior to filling the prescription, produce, sign, and date a hard copy prescription. The
4 prescriptions shall contain the date the prescription was orally or electronically
5 transmitted by the prescriber, the name of the person for whom the prescription was
6 authorized, the name and address of the licensed skilled nursing facility, licensed
7 intermediate care facility, licensed home health agency, or licensed hospice in which
8 that person is a patient, the name and quantity of the controlled substance prescribed,
9 the directions for use, and the name, address, category of professional licensure,
10 license number, and federal controlled substance registration number of the
11 prescriber. The original shall be properly endorsed by the pharmacist with the
12 pharmacy's state license number, the name and address of the pharmacy, and the
13 signature of the person who received the controlled substances for the licensed skilled
14 nursing facility, licensed intermediate care facility, licensed home health agency, or
15 licensed hospice. A licensed skilled nursing facility, a licensed intermediate care
16 facility, a licensed home health agency, or a licensed hospice shall forward to the
17 dispensing pharmacist a copy of any signed telephone orders, chart orders, or related
18 documentation substantiating each oral or electronically transmitted prescription
19 transaction under this section.

20 REGULATORY PROVISIONS

21 20. California Code of Regulations, title 16 (Regulations), section 1718 states:

22 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
23 Professions Code shall be considered to include complete accountability for all
24 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.
25 The controlled substances inventories required by Title 21, CFR, Section 1304 shall
26 be available for inspection upon request for at least 3 years after the date of the
27 inventory.

28 COST RECOVERY

29 21. Section 125.3 of the Code states, in pertinent part, that the Board may request the
30 administrative law judge to direct a licensee found to have committed a violation or violations of
31 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
32 enforcement of the case.

33 DRUG

34 22. Ontak, generic name Denileukin Diftitox, is an anticancer drug classified as a
35 dangerous drug by Code section 4022.

36 FACTUAL ALLEGATIONS PERTAINING TO JULY 6, 2007 COMPLAINT

37 23. On July 6, 2007, the Board received a written complaint from the Department of
38 Healthcare Services (DHS). The DHS alleged Upas was filling prescriptions without a written
order, in violation of H&S Code, sections 11153 and 11158, and that the filling of the

1 prescriptions without a written order did not fall within the exceptions under H&S Code, sections
2 11159.2 and 11167.5. The Board investigated the written complaint and found as follows.

3 24. The Board's Inspector examined the prescription files of the Schedule II drugs and
4 discovered that Upas was filling faxed and oral prescriptions for Schedule II drugs and the
5 pharmacists at Upas were writing in the exemption under H&S Code, section 11159.2. A
6 pharmacist and pharmacy technician employed by Upas informed the Inspector that the
7 prescriptions were faxed and telephoned into Upas from a cancer center, that Upas filled and
8 delivered the prescriptions to the patients, and later obtained the prescriptions from the cancer
9 center office once weekly. The pharmacist told the Inspector that Respondent McKillip had told
10 him that the Drug Enforcement Administration (DEA) had given him permission to follow this
11 less formal procedure because these were cancer patients, even though the pharmacist had
12 informed Respondent McKillip that this was wrong.

13 25. On June 18, 2008, the Inspector requested and received from DHS a printout of the
14 Medi-Cal billing for the drug, Ontak, for Upas for the period from June 1, 2006, through August
15 31, 2006. The printout showed that during this period Upas billed and was paid for 84 ml of
16 Ontak, which is 7 boxes, each containing 6 vials x 2ml Ontak 150.

17 26. On June 20, 2008, the Inspector received a written statement he had requested from
18 Respondent McKillip regarding an audit and unauthorized prescriptions for patients of a Dr. S. In
19 it, McKillip stated he was told by a physician that the H&S Code section 11159.2 exemption
20 could be used for terminally ill patients, but during the audit realized that three to four patients
21 did not meet the requirements of this provision. McKillip stated Upas was now picking up the
22 prescriptions daily, and that he did not fully comprehend the law regarding section 11159.2.

23 27. On June 15, 2008, the Inspector received the patient profiles produced by Upas
24 showing that patient Myrtle G. had received 12ml (or 1 box of 6 x 2ml) of Ontak on 8/8/06,
25 8/3/06, 8/1/06, 7/11/06 7/31/06, 7/10/06 and 7/6/06, which were billed to Medi-Cal, and 6 ml on
26 6/29/06 and 6/26/06, which were billed to CMS (County Medical Services) for a total of 8 vials.
27 The Inspector also received a copy of DHS' July 31, 2007 letter to Upas, which showed Medi-Cal
28 was billed for 7 boxes of Ontak; and three invoices from Cardinal Health to Upas for Ontak

1 purchases. However, comparison of the invoices to the Medi-Cal billing and to Myrtle G.'s
2 patient profile revealed that Upas was shorted and overbilled for 2 boxes of Ontak, in violation of
3 the record and inventory requirements of Code section 4081 and Regulations, section 1718.

4 28. On July 3, 2008, the Inspector entered the prescriptions for Schedule II drugs
5 obtained from Upas into a spread sheet. Analysis of that data shows that out of 194 prescriptions:

6 a. 62 schedule II controlled substances prescriptions were faxed to
7 Upas and dispensed in violation of H&S Code, section 11167.5, subdivision (a), 47
of which were processed by RPH McKillip, 4 by RPH Perry, and 11 by RPH Frank;

8 b. Upas dispensed 117 schedule II controlled substance prescriptions by
9 adding the wording "11159.2 exemption," in violation of H&S Code, section 11159.2
subdivision (a)(2), 66 of which were processed by RPH McKillip, 24 by RPH Perry,
and 27 by RPH Frank; and

10 c. Upas dispensed 128 oral prescriptions of Schedule II drugs, of which
11 74 were processed by RPH McKillip, 32 by RPH Perry, and 21 by RPH Frank.

12 29. On July 29, 2008, the Inspector sent a Written Notice of violations charged to
13 Respondents Upas and McKillip. On August 20, 2008, McKillip's counsel faxed a reply to the
14 Written Notice to the Inspector, which the Board received on August 22, 2008. Though the reply
15 was a statement signed by McKillip under penalty of perjury, it was substantively only a repeat of
16 his June 20, 2008 statement, described in paragraph 26, above.

17 FIRST CAUSE FOR DISCIPLINE.

18 (Unprofessional Conduct – Furnishing Without A Prescription)

19 30. Respondents Upas Pharmacy and McKillip are subject to disciplinary action under
20 section 4301, subdivisions (j) and (o) of the Code for violation of the Pharmacy Act and laws
21 regulating drugs in that they furnished prescription medications without prescriptions therefor, or
22 without proper exemptions from the prescription requirement, in violation of Code section 4059,
23 and H&S Code section 11167.5, subdivision (a), and as detailed in paragraphs 23-29, above.

24 SECOND CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct: Incompetence)

26 32. Respondent McKillip's pharmacist license is subject to disciplinary action for
27 unprofessional conduct under Code section 4301, subdivision (b) for incompetence, because in
28 managing the operations of Upas, and in filling prescriptions, he demonstrated that he lacked the

1 requisite knowledge, ability, or skill of a competent PIC to practice pharmacy within the standard
2 of care governing pharmacists, as detailed in paragraphs 23-29, above.

3 THIRD CAUSE FOR DISCIPLINE

4 (Failure to Maintain Dangerous Drugs Acquisition Records and Current Inventory)

5 33. Respondents Upas and McKillip are subject to disciplinary action under section 4301,
6 subdivision (o) of the Code for violation of the Pharmacy Act and Regulations, in that they failed
7 to maintain purchase records for two vials of Ontak, 150 mcg, resulting in an inaccurate inventory
8 in violation of Regulations, section 1718, and Code section 4081, subdivision (a), as detailed in
9 paragraphs 23-29, above.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Failure to Produce or Provide Pharmacy Records)

12 34. Respondents Upas and McKillip are subject to disciplinary action under section 4301,
13 subdivision (o) of the Code for violation of the Pharmacy Act in that they failed, neglected, or
14 refused to provide invoices to the Pharmacy Inspector for two vials of Ontak 150mcg, in violation
15 of Code, sections 4081, subdivision (a), and 4332, as detailed in paragraphs 23-29, above.

16 FACTUAL ALLEGATIONS PERTAINING TO DECEMBER 12, 2007 COMPLAINT

17 35. On December 12, 2007, the Board received an on-line complaint from the office of
18 Dr. S., a physician with offices located up the street from Respondent Upas. Dr. S. alleged that
19 Respondents Upas and McKillip were filling prescriptions without authorization from his office.
20 Dr. S.'s office staff stated some of their patients receiving prescriptions without authorization
21 were Joanne C., Cheryl T., Jennifer A., and Carl H.

22 36. During his May 30, 2008, visit to Upas, the Inspector completed an Inspection Report
23 and asked to see the Doctor's Utilization Report (DUR) for Dr. S. for all patients for the last two
24 years, and patient profiles for Joanne C., Cheryl T., Jennifer A., Carl H., Ronald F., Theresa H.,
25 and Marizel P., including prescription numbers, dates, drugs, third party insurance, and patient
26 addresses information.

27 37. On June 15, 2008, the Inspector received the patient profiles for Ronald F., Marizel
28 P., Theresa H., Carl H., Joanne C., Jennifer A., and Cheryl T.; and the DUR for Dr. S. On June

1 18, 2008, the Inspector sent a letter to Dr. S. with the patient profiles of Carl H., Joanne C.,
2 Cheryl T., and Jennifer A., asking him to determine if the prescription refills allegedly authorized
3 by him were in fact authorized by him. On July 17, 2008, the Inspector received Dr. S.'s reply,
4 which included the patient profiles for Carl H., Jennifer A., Cheryl T., and Joanne C. The
5 Inspector's review of these documents showed that:

- 6 a. Upas filled seven unauthorized prescriptions for Carl H.;
- 7 b. Upas filled seven unauthorized prescriptions for Jennifer A.;
- 8 c. Upas filled eleven unauthorized prescriptions for Cheryl T.; and
- 9 d. Upas filled two unauthorized prescriptions for Joanne C.

10 38. On July 29, 2008, the Inspector sent a Written Notice of violations charged to
11 Respondents Upas and McKillip. On August 20, 2008, McKillip's counsel faxed a reply to the
12 Written Notice to the Inspector, which the Board received on August 22, 2008. Though the reply
13 was a statement signed by McKillip under penalty of perjury, it was substantively only a repeat of
14 his June 20, 2008 statement, described in paragraph 26, above.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct – Violating Pharmacy Laws)

17 39. Respondents Upas Pharmacy and McKillip are subject to disciplinary action under
18 section 4301, subdivision (o) of the Code for violation of the Pharmacy Act, in that they furnished
19 prescription medications without prescriptions therefor, in violation of Code section 4059,
20 subdivision (a), as detailed in paragraphs 35—38, above.

21 SIXTH CAUSE FOR DISCIPLINE

22 (Filing of Non-Compliant Schedule II Prescriptions)

23 40. Respondents Upas and McKillip are subject to disciplinary action under section 4301,
24 subdivisions (j) and (o) of the Code for violation of the Pharmacy Act and laws regulating drugs
25 in that they filled 25 prescriptions for controlled substances and dangerous drugs without the
26 authorization of the prescriber, in violation of Code section 4063, and H&S Code, sections 11158
27 and 11167.5, subdivision (a), as detailed in paragraphs 35—38, above.

28

