

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

In the Matter of the Accusation Against:

**BALBOA PHARMACY  
6465 Balboa Avenue, #101  
San Diego, CA 92111**

**Pharmacy Permit No. PHY 53437**

**ROERT YASMEH  
13652 Winstanley Way  
San Diego, CA 92130**

**Pharmacist License No. RPH 48357**

Case No. 4578

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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 March 17, 2016.

It is so ORDERED February 16, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 NICOLE R. TRAMA  
Deputy Attorney General  
4 State Bar No. 263607  
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*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 Against:

Case No. 4578

12 **BALBOA PHARMACY**  
13 **6465 Balboa Avenue, #101**  
14 **San Diego, CA 92111**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 **Pharmacy Permit No. PHY 53437**

16 **and**

17 **ROBERT YASMEH**  
18 **13652 Winstanley Way**  
**San Diego, CA 92130**

19 **Pharmacist License No. RPH 48357**

20 Respondents.

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 She brought this action solely in her official capacity and is represented in this matter by Kamala  
26 D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney  
27 General.  
28

1 2. Respondent Balboa Pharmacy and Respondent Yasmeh are represented in this  
2 proceeding by attorney Patrick Monroe, whose address is: Best Best & Krieger, 655 W.  
3 Broadway, 15<sup>th</sup> Floor, San Diego, CA 92101.

4 3. On or about January 18, 2002, the Board of Pharmacy issued Pharmacy Permit No.  
5 PHY 45633 to Robert Yasmeh, to do business as Balboa Pharmacy. On or about April 7, 2008,  
6 the Board issued Pharmacy Permit Number PHY 45633 to RTY Pharmaceutical Inc., to do  
7 business as Balboa Pharmacy (Respondent Balboa Pharmacy). On or about April 17, 2015,  
8 Respondent Balboa Pharmacy moved addresses to 6465 Balboa Avenue, Ste. 101 in San Diego,  
9 California, 92111 and subsequently cancelled Pharmacy Permit No. PHY 45633. On or about  
10 April 17, 2015, the Board issued Pharmacy Permit No. PHY 53437 to Respondent Balboa  
11 Pharmacy at their new location. The Pharmacy Permit PHY 53437 will expire on April 1, 2016,  
12 unless renewed.

13 4. On or about September 1, 1995, the Board of Pharmacy issued Pharmacist License  
14 No. RPH 48357 to Robert Yasmeh (Respondent Yasmeh). The Pharmacist License was in full  
15 force and effect at all times relevant to the charges brought in Accusation No. 4578 and will  
16 expire on July 31, 2017, unless renewed.

#### 17 JURISDICTION

18 5. Accusation No. 4578 was filed before the Board of Pharmacy (Board), Department of  
19 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other  
20 statutorily required documents were properly served on Respondents on September 25, 2015.  
21 Respondents timely filed their Notices of Defense contesting the Accusation. On or about  
22 October 28, 2015, the Board filed First Amended Accusation No. 4578 against Respondents.

23 6. A copy of First Amended Accusation No. 4578 is attached as exhibit A and  
24 incorporated herein by reference.

#### 25 ADVISEMENT AND WAIVERS

26 7. Respondents have carefully read, fully discussed with counsel, and understand the  
27 charges and allegations in First Amended Accusation No. 4578. Respondents have also carefully  
28

1 read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and  
2 Disciplinary Order.

3 8. Respondents are fully aware of their legal rights in this matter, including the right to a  
4 hearing on the charges and allegations in the First Amended Accusation; the right to confront and  
5 cross-examine the witnesses against them; the right to present evidence and to testify on their own  
6 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
7 production of documents; the right to reconsideration and court review of an adverse Decision;  
8 and all other rights accorded by the California Administrative Procedure Act and other applicable  
9 laws.

10 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
11 every right set forth above.

#### 12 CULPABILITY

13 10. Respondents understand and agree that the charges and allegations in First Amended  
14 Accusation No. 4578, if proven at a hearing, constitute cause for imposing discipline upon  
15 Pharmacy Permit Number PHY 53437 and Pharmacist License Number RPH 48357.

16 11. For the purpose of resolving the First Amended Accusation without the expense and  
17 uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could  
18 establish a factual basis for the charges in the First Amended Accusation, and that Respondents  
19 hereby give up the right to contest those charges.

20 12. Respondents agree that its Pharmacy Permit and Pharmacist License are subject to  
21 discipline and they agree to be bound by the Board's probationary terms as set forth in the  
22 Disciplinary Order below.

#### 23 CONTINGENCY

24 13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents  
25 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may  
26 communicate directly with the Board regarding this stipulation and settlement, without notice to  
27 or participation by Respondents or their counsel. By signing the stipulation, Respondents  
28 understand and agree that they may not withdraw their agreement or seek to rescind the

1 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this  
2 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of  
3 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between  
4 the parties, and the Board shall not be disqualified from further action by having considered this  
5 matter.

6 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
7 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
8 signatures thereto, shall have the same force and effect as the originals.

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

15 16. In consideration of the foregoing admissions and stipulations, the parties agree that  
16 the Board may, without further notice or formal proceeding, issue and enter the following  
17 Disciplinary Order:

18 **DISCIPLINARY ORDER**

19 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 53437 issued to Respondent  
20 Balboa Pharmacy and Pharmacist License No. RPH 48357 issued to Respondent Robert Yasmeh  
21 are revoked. However, the revocations are stayed and Respondents are placed on probation for  
22 three (3) years on the following terms and conditions:

23 1. **Obey All Laws**

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

25 Respondents shall report any of the following occurrences to the Board, in writing, within  
26 seventy-two (72) hours of such occurrence:

- 27  an arrest or issuance of a criminal complaint for violation of any provision of the  
28 Pharmacy Law, state and federal food and drug laws, or state and federal controlled

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substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondents' Pharmacy Permit or Pharmacist License or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging for any drug, device or controlled substance.

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

**2. Report to the Board**

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

**3. Interview with the Board**

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

**4. Cooperate with Board Staff**

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

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**5. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondents shall pay to the Board its costs of investigation and prosecution in the amount of \$8,487.00. Respondents shall be jointly and severally liable for payment of the costs. Respondents shall make said payment as follows: Within one hundred and twenty (120) days of the effective date of the Decision, Respondents shall pay the lump sum of \$8,487.00. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

**6. Probation Monitoring Costs**

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

**7. Status of License**

Respondents shall, at all times while on probation, maintain current licensure with the Board, including any period during which suspension or probation is tolled. Failure to maintain current licensure shall be considered a violation of probation.

If Respondents' license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof or otherwise, upon renewal or reapplication Respondents' licenses shall be subject to all terms and conditions of this probation not previously satisfied.

If Respondent Balboa Pharmacy submits an application to the Board, and the application is approved, for a change of location, change of permit or change of ownership, the Board shall retain continuing jurisdiction over the license, and Respondent Balboa Pharmacy shall remain on probation as determined by the Board.

1           **8. License Surrender While on Probation/Suspension**

2           Following the effective date of this Decision, should Respondent Balboa Pharmacy  
3           discontinue business, Respondent Balboa Pharmacy may tender the premises license to the Board  
4           for surrender. The Board or its designee shall have the discretion whether to grant the request for  
5           surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance  
6           of the surrender of the license, Respondent Balboa Pharmacy will no longer be subject to the  
7           terms and conditions of probation. Upon acceptance of the surrender, Respondent Balboa  
8           Pharmacy shall relinquish the premises wall and renewal license to the Board within ten (10) days  
9           of notification by the Board that the surrender is accepted. Respondent Balboa Pharmacy shall  
10          further submit a completed Discontinuance of Business form according to Board guidelines and  
11          shall notify the Board of the records inventory transfer. Respondent Balboa Pharmacy shall also  
12          arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum,  
13          providing a written notice to ongoing patients that specifies the anticipated closing date of the  
14          pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care,  
15          and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing  
16          patients. Within five days of its provision to the pharmacy's ongoing patients, Respondent Balboa  
17          Pharmacy shall provide a copy of the written notice to the Board. For the purposes of this  
18          provision, "ongoing patients" means those patients for whom the pharmacy has on file a  
19          prescription with one or more refills outstanding, or for whom the pharmacy has filled a  
20          prescription within the preceding sixty (60) days.

21          Respondent Balboa Pharmacy may not apply for any new licensure from the Board for  
22          three (3) years from the effective date of the surrender. Respondent Balboa Pharmacy shall meet  
23          all requirements applicable to the license sought as of the date the application for that license is  
24          submitted to the Board. Respondent Balboa Pharmacy further stipulates that it will reimburse the  
25          Board for its costs of investigation and prosecution prior to the acceptance of the surrender.

26          Following the effective date of this Decision, should Respondent Yasmeh cease practice  
27          due to retirement or health, or be otherwise unable to satisfy the terms and conditions of  
28          probation, Respondent Yasmeh may tender his license to the Board for surrender. The Board or



1 its designee shall have the discretion whether to grant the request for surrender or take any other  
2 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the  
3 license, Respondent Yasmeh will no longer be subject to the terms and conditions of probation.  
4 This surrender constitutes a record of discipline and shall become a part of the Respondent  
5 Yasmeh's license history with the Board. Upon acceptance of the surrender, Respondent Yasmeh  
6 shall relinquish his pocket and wall license to the Board within ten (10) days of notification by the  
7 Board that the surrender is accepted. Respondent Yasmeh may not reapply for any license from  
8 the Board for three (3) years from the effective date of the surrender. Respondent Yasmeh shall  
9 meet all requirements applicable to the license sought as of the date the application for that  
10 license is submitted to the Board, including any outstanding costs.

11 **9. Notice to Employees**

12 Respondent Balboa Pharmacy shall, upon or before the effective date of this Decision,  
13 ensure that all employees involved in permit operations are made aware of all the terms and  
14 conditions of probation, either by posting a notice of the terms and conditions, circulating such  
15 notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent  
16 place and shall remain posted throughout the probation period. Respondent Balboa Pharmacy  
17 shall ensure that any employees hired or used after the effective date of this Decision are made  
18 aware of the terms and conditions of probation by posting a notice, circulating a notice, or both.  
19 Additionally, Respondent Balboa Pharmacy shall submit written notification to the Board, within  
20 fifteen (15) days of the effective date of this Decision, that this term has been satisfied. Failure to  
21 submit such notification to the Board shall be considered a violation of probation.

22 "Employees" as used in this provision includes all full-time, part-time,  
23 volunteer, temporary and relief employees and independent contractors employed or  
24 hired at any time during probation.

25 **10. Owners and Officers: Knowledge of the Law**

26 Respondent Balboa Pharmacy shall provide, within thirty (30) days after the effective date  
27 of this Decision, signed and dated statements from its owners, including any owner or holder of  
28 ten percent (10%) or more of the interest in Respondent or Respondent's stock, and any officer,

1 stating under penalty of perjury that said individuals have read and are familiar with state and  
2 federal laws and regulations governing the practice of pharmacy. The failure to timely provide  
3 said statements under penalty of perjury shall be considered a violation of probation.

4 **11. Posted Notice of Probation**

5 Respondent Balboa Pharmacy shall prominently post a probation notice provided by the  
6 Board in a place conspicuous and readable to the public. The probation notice shall remain  
7 posted during the entire period of probation.

8 Respondent Balboa Pharmacy shall not, directly or indirectly, engage in any conduct or  
9 make any statement which is intended to mislead or is likely to have the effect of misleading any  
10 patient, customer, member of the public, or other person(s) as to the nature of and reason for the  
11 probation of the licensed entity.

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

13 **12. Violation of Probation**

14 If Respondents have not complied with any term or condition of probation, the Board shall  
15 have continuing jurisdiction over Respondents' licenses, and probation shall be automatically  
16 extended until all terms and conditions have been satisfied or the Board has taken other action as  
17 deemed appropriate to treat the failure to comply as a violation of probation, to terminate  
18 probation, and to impose the penalty that was stayed.

19 If Respondents violate probation in any respect, the Board, after giving Respondents notice  
20 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
21 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
22 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
23 a petition to revoke probation or an accusation is filed against Respondents during probation, the  
24 Board shall have continuing jurisdiction and the period of probation shall be automatically  
25 extended until the petition to revoke probation or accusation is heard and decided.

26 **13. Completion of Probation**

27 Upon written notice by the Board or its designee indicating successful completion of  
28 probation, Respondents' licenses will be fully restored.

1           **14. Notice to Employers**

2           During the period of probation, Respondent Yasmeh shall notify all present and prospective  
3 employers of the Decision in case number 4578 and the terms, conditions and restrictions  
4 imposed on Respondent Yasmeh by the Decision, as follows:

5           Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of  
6 Respondent Yasmeh undertaking any new employment, Respondent Yasmeh shall cause his  
7 direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed  
8 during Respondent's tenure of employment) and owner to report to the Board in writing  
9 acknowledging that the listed individual(s) has/have read the Decision in case number 4578, and  
10 terms and conditions imposed thereby. It shall be Respondent Yasmeh's responsibility to ensure  
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

12           If Respondent Yasmeh works for or is employed by or through a pharmacy employment  
13 service, Respondent Yasmeh must notify his direct supervisor, pharmacist-in-charge, and owner  
14 at every entity licensed by the Board of the terms and conditions of the Decision in case number  
15 4578 in advance of the Respondent commencing work at each licensed entity. A record of this  
16 notification must be provided to the Board upon request.

17           Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen  
18 (15) days of Respondent Yasmeh undertaking any new employment by or through a pharmacy  
19 employment service, Respondent Yasmeh shall cause his direct supervisor with the pharmacy  
20 employment service to report to the Board in writing acknowledging that he has read the Decision  
21 in case number 4578 and the terms and conditions imposed thereby. It shall be Respondent  
22 Yasmeh's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
23 acknowledgment(s) to the Board.

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

27           "Employment" within the meaning of this provision shall include any full-time,  
28 part-time, temporary, relief or pharmacy management service as a pharmacist or any

1 position for which a pharmacist license is a requirement or criterion for employment,  
2 whether the Respondent is an employee, independent contractor or volunteer.

3 **15. Continuing Education**

4 Respondent Yasmeh shall provide evidence of efforts to maintain skill and knowledge as a  
5 pharmacist as directed by the Board or its designee.

6 **16. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as  
7 Designated Representative-in-Charge, or Serving as a Consultant**

8 During the period of probation, Respondent Yasmeh shall not supervise any intern  
9 pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity  
10 licensed by the Board nor serve as a consultant unless otherwise specified in this order.

11 Assumption of any such unauthorized supervision responsibilities shall be considered a violation  
12 of probation.

13 **17. Notification of a Change in Name, Residence Address, Mailing Address or  
14 Employment**

15 Respondent Yasmeh shall notify the Board in writing within ten (10) days of any change of  
16 employment. Said notification shall include the reasons for leaving, the address of the new  
17 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
18 Yasmeh shall further notify the Board in writing within ten (10) days of a change in name,  
19 residence address, mailing address, or phone number.

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

22 **18. Tolling of Probation**

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

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

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

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

15           **19. Consultant for Owner or Pharmacist-In-Charge**

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

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20. Ethics Course

Within sixty (60) calendar days of the effective date of this Decision, Respondent Yasmeh 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 Yasmeh 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, Patrick Monroe. I understand the stipulation and the effect it will have on Pharmacy Permit Number PHY 53437 and Pharmacist Number RPH 48357. 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: 1/5/2016   
ROBERT YASMEH, as an individual and as  
authorized agent on behalf of BALBOA PHARMACY  
Respondents

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

DATED: \_\_\_\_\_  
PATRICK MONROE  
Attorney for Respondents

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ACCEPTANCE

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DATED: \_\_\_\_\_  
ROBERT YASMEH, as an individual and as  
authorized agent on behalf of BALBOA PHARMACY  
Respondents

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DATED: 1/5/16 \_\_\_\_\_  
PATRICK MONROE  
Attorney for Respondents


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ENDORSEMENT

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

Dated: 1/6/2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
  
NICOLE R. TRAMA  
Deputy Attorney General  
*Attorneys for Complainant*

SD201370498981177019.doc



**Exhibit A**

**First Amended Accusation No. 4578**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 Case No. 4578

12 In the Matter of the Accusation Against:

13 **BALBOA PHARMACY**  
14 **6465 Balboa Avenue, #101**  
**San Diego, CA 92111**

**FIRST AMENDED ACCUSATION**

15 **Pharmacy Permit No. PHY 53437**

16 and

17 **ROBERT YASMEH**  
18 **13652 Winstanley Way**  
**San Diego, CA 92130**

19 **Pharmacist License No. RPH 48357**

20 Respondents.

21  
22 Complainant alleges:

23 **PARTIES**

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

27 2. On or about January 18, 2002, the Board of Pharmacy issued Pharmacy Permit No.  
28 PHY 45633 to Robert Yasmeh, to do business as Balboa Pharmacy. On or about April 7, 2008,

1 the Board issued Pharmacy Permit Number PHY 45633 to RTY Pharmaceutical Inc., to do  
2 business as Balboa Pharmacy (Respondent Balboa Pharmacy). On or about April 17, 2015,  
3 Respondent Balboa Pharmacy moved addresses to 6465 Balboa Avenue, Ste. 101 in San Diego,  
4 California, 92111 and subsequently cancelled Pharmacy Permit No. PHY 45633. On or about  
5 April 17, 2015, the Board issued Pharmacy Permit No. PHY 53437 to Respondent Balboa  
6 Pharmacy at their new location. The Pharmacy Permit PHY 53437 will expire on April 1, 2016,  
7 unless renewed.

8 3. On or about September 1, 1995, the Board of Pharmacy issued Pharmacist License  
9 Number RPH 48357 to Robert Yasmeh (Respondent Yasmeh). The Pharmacist License was in  
10 full force and effect at all times relevant to the charges brought herein and will expire on July 31,  
11 2015, unless renewed.

#### 12 JURISDICTION

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

16 5. Section 4011 of the Code provides that the Board shall administer and enforce both  
17 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
18 Act [Health & Safety Code, § 11000 et seq.].

19 6. Section 4300(a) of the Code provides that every license issued by the Board may be  
20 suspended or revoked.

21 7. Section 4300.1 of the Code states:

22 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
23 by operation of law or by order or decision of the board or a court of law, the  
24 placement of a license on a retired status, or the voluntary surrender of a license by a  
25 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
26 investigation of, or action or disciplinary proceeding against, the licensee or to render  
27 a decision suspending or revoking the license.  
28

## STATUTORY PROVISIONS

8. Section 4022 of the Code states:

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

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

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

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

9. Section 4043 of the Code, in pertinent part, defines "wholesaler" to mean and include "a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in Section 4022."

10. Section 4059.5, subdivision (a) of the Code states:

Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative shall sign for and receive the delivery.

11. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy."

12. Section 4126.5 of the Code states:

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

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

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

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

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy

1 furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity  
2 sufficient to alleviate the temporary shortage.

3 (5) A patient or to another pharmacy pursuant to a prescription or as  
4 otherwise authorized by law.

5 (6) A health care provider that is not a pharmacy but that is authorized to  
6 purchase dangerous drugs.

7 (7) To another pharmacy under common control.

8 (b) Notwithstanding any other provision of law, a violation of this section  
9 may subject the person or persons who committed the violation to a fine not to  
10 exceed the amount specified in Section 125.9 for each occurrence pursuant to a  
11 citation issued by the board.

12 (c) Amounts due from any person under this section on or after January 1,  
13 2005, shall be offset as provided under Section 12419.5 of the Government Code.  
14 Amounts received by the board under this section shall be deposited into the  
15 Pharmacy Board Contingent Fund.

16 (d) For purposes of this section, "common control" means the power to  
17 direct or cause the direction of the management and policies of another person  
18 whether by ownership, by voting rights, by contract, or by other means.

19 13. Section 4160 of the Code provides, in pertinent part, that a wholesaler license shall be  
20 required for a person or entity to act as a wholesaler, that every wholesaler shall be supervised or  
21 managed by a Designated Representative in Charge, and that the Designated Representative in  
22 Charge shall be responsible for the wholesaler's compliance with state and federal laws.

23 14. Section 4301 of the Code states in pertinent part:

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

28 . . . .

(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 **REGULATORY PROVISIONS**

2 15. California Code of Regulations, title 16, section 1709.1(a) states that “[t]he  
3 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have  
4 responsibility for the daily operation of the pharmacy.”

5 **COST RECOVERY**

6 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
7 administrative law judge to direct a licentiate found to have committed a violation or violations of  
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
9 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
10 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
11 included in a stipulated settlement.

12 **FACTUAL ALLEGATIONS**

13 17. Since January 18, 2002, Respondent Yasmeh has been the Pharmacist-in-Charge  
14 (PIC) of Respondent Balboa Pharmacy. Respondent Balboa Pharmacy has never been licensed as  
15 a wholesaler by the Board of Pharmacy.

16 18. From March 12, 2010 to July 15, 2011, Respondents sold or furnished 650 dangerous  
17 drugs to three wholesalers, on 187 different occasions (631 different invoice/prescription  
18 numbers) for total sales in the amount of \$415,490.37. The three wholesalers that Respondents  
19 sold to were Dubin Medical Inc., Vital Healthcare and Gulf Coast Pharmaceuticals, Inc.<sup>1</sup>

20 19. The drug ordering process with Dubin Medical Inc., was as follows: Dubin Medical  
21 representatives contacted Respondents with desired drugs and quantities; Dubin Medical then  
22 provided a purchase order; Respondents documented the sales in their computer system with  
23 Dubin Medical as the patient and doctor and listed the drugs as if they were filled as a  
24 prescription; Dubin Medical sent a delivery person to sign for and pick up the medications from  
25 Respondents; and Dubin Medical sent a check to Respondents based on the price listed on the

26 <sup>1</sup> On or about November 13, 2002, the Board of Pharmacy issued Wholesaler Permit  
27 Number 4212 to Dubin Medical Inc., to do business and Dubin Medical Inc. Vital Healthcare  
28 LLC and Gulf Coast Pharmaceuticals, Inc., hold Wholesaler Out-of-State Distributor (OSD)  
Licenses with the Board of Pharmacy.

1 patient printout provided by Respondents at pick up. From May 12, 2010 to July 15, 2011,  
2 Respondents sales for dangerous drugs sold to Dubin Medical totaled \$401,168.50.

3 20. The drug ordering process with Vital Health Care and Gulf Coast Pharmaceuticals,  
4 Inc., was as follows: Respondents would receive a request (purchase order) for short supply  
5 items; if the items were available or if the allocation was anticipated, Respondents filled the  
6 order; the purchase order request was entered into the pharmacy software and invoiced by the  
7 pharmacy system; Respondents would invoice and package the items; the package was shipped or  
8 picked up by the company representative. From March 12, 2010 to September 20, 2010,  
9 Respondents sales for dangerous drugs to Vital Healthcare and Gulf Coast Pharmaceuticals were  
10 \$3,790.00 and \$10,531.87, respectively.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Functioning as an Unlicensed Wholesaler)**

13 21. Respondents are subject to disciplinary action under Code section 4301(o), for  
14 violating section 4160 of the Code, in that Respondents "sold" or furnished dangerous drugs to  
15 Dubin Medical and by doing so acted as an unlicensed wholesaler, as set forth in paragraphs 17  
16 through 20, which are incorporated herein by reference.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Selling Dangerous Drugs Under Unauthorized Conditions)**

19 22. Respondents are subject to disciplinary action under Code section 4301(o), for  
20 violating pharmacy law, by selling or furnishing dangerous drugs to Dubin Medical under  
21 unauthorized conditions, in violation of Code section 4126.5, as set forth in paragraphs 17  
22 through 20, which are incorporated herein by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(General Unprofessional Conduct)**

25 23. Respondents are subject to disciplinary action under Code section 4301, for general  
26 unprofessional conduct in that Respondents acted as a purchasing agent for wholesalers and  
27 removed drugs from normal distribution to increase the wholesaler's supply of a scare drug,  
28 thereby affecting the allocation system implemented by the manufacturer and authorized

1 distributors of the drug, as set forth in paragraphs 17 through 20, which are incorporated herein  
2 by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failing to Deliver Dangerous Drugs)**

5 24. Respondents are subject to disciplinary action under Code section 4301(o), for  
6 violating Code section 4059.5(a), in that Respondents did not deliver dangerous drugs to the  
7 licensed premises, but instead allowed a representative of the wholesaler to pick up the drugs at  
8 Respondent Balboa Pharmacy, as set forth in paragraphs 17 through 20, which are incorporated  
9 herein by reference.

10 **DISCIPLINARY CONSIDERATIONS**

11 25. To determine the degree of discipline, if any, to be imposed on Respondents,  
12 Complainant alleges:

13 26. On or about August 9, 2011, the Board of Pharmacy issued Citation No. CI 2010  
14 47313 to Respondent Balboa Pharmacy for violation of California Code of Regulations, Title 16,  
15 sections 1714(c) and 1716 and Business and Professions Code section 4115(e), in that on April  
16 14, 2011, Respondent allowed a non-licensed individual to perform the duties of a pharmacy  
17 technician, dispensed a prescription that varied from the dosage as written on the prescription and  
18 the pharmacy did not have hot running water for use. The Board assessed a fine in the amount of  
19 \$1,000.00 and Respondent Balboa Pharmacy complied with Citation No. CI 2010 47313.

20 27. On or about August 9, 2011, the Board of Pharmacy issued Citation No. CI 2011  
21 49175 to Respondent Yasmeh for violation of California Code of Regulations, Title 16, sections  
22 1714(c) and 1716 and Business and Professions Code section 4115(e), as set forth in paragraph  
23 26, above. The Board assessed a fine the in amount of \$575.00 and Respondent Yasmeh  
24 complied with Citation No. CI 2011 49175.

25 28. On or about October 12, 2012, the Board of Pharmacy issued Citation No. CI 2011  
26 48852 to Respondent Balboa Pharmacy for violation of Business and Professions Code sections  
27 4126.5(a)(4) and 4059(b), for illegally furnishing dangerous drugs to a wholesaler, Optimal  
28 Pharmaceutical, and for failing to correctly or accurately list the quantities of dangerous drugs on



1 sales records. The Board assessed a fine in the amount of \$6,850.00 and Respondent Balboa  
2 Pharmacy complied with Citation No. CI 2011 48852.

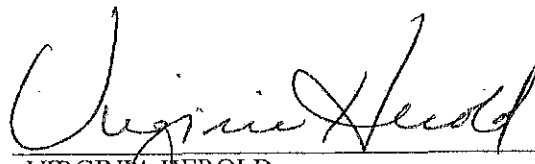
3 29. On or about October 12, 2012, the Board of Pharmacy issued Citation No. 2012  
4 54032 to Respondent Yasmeh for violation of Business and Professions Code sections  
5 4126.5(a)(4) and 4059(b), as set forth in paragraph 28, above. The Board assessed a fine in the  
6 amount of \$5,500.00 and Respondent Yasmeh complied with Citation No. 2012 54032.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Permit Number 53437, issued to Balboa  
11 Pharmacy;
- 12 2. Revoking or suspending Pharmacist License Number RPH 48357, issued to Robert  
13 Yasmeh;
- 14 3. Ordering Balboa Pharmacy and Robert Yasmeh to pay the Board of Pharmacy the  
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
16 Professions Code section 125.3;
- 17 4. Taking such other and further action as deemed necessary and proper.
- 18
- 19

20  
21 DATED: 10/28/15



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

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