

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

In the Matter of the Accusation Against:

**STEVE JOSEPH SMITH**  
1055 West College Ave., #C  
Santa Rosa, CA 95401

Pharmacist License No. RPH 50549

Respondent.

Case No. 4696

OAH No. 2014051205

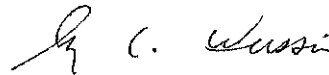
**DECISION AND ORDER**

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

This decision shall become effective on November 7, 2014.

It is so ORDERED on October 31, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 **STEVE JOSEPH SMITH**  
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14 **Pharmacist License No. RPH 50549**

15 Respondent.

Case No. 4696

OAH No. 2014051205

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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

18 **PARTIES**

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

23 2. Respondent Steve Joseph Smith ("Respondent") is represented in this proceeding by  
24 attorney Timothy J. Aspinwall, whose address is: 621 Capitol Mall, 25th Floor, Sacramento, CA,  
25 95814.

26 3. On or about September 11, 1998, the Board of Pharmacy issued Pharmacist License  
27 No. RPH 50549 to Steve Joseph Smith (Respondent). The Pharmacist License was in full force  
28 and effect at all times relevant to the charges brought in Accusation No. 4696 and will expire on

1 September 30, 2014, unless renewed.

2 **JURISDICTION**

3 4. Accusation No. 4696 was filed before the Board of Pharmacy (Board), Department of  
4 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
5 statutorily required documents were properly served on Respondent on April 22, 2014.  
6 Respondent timely filed his Notice of Defense contesting the Accusation.

7 5. A copy of Accusation No. 4696 is attached as exhibit A and incorporated herein by  
8 reference.

9 **ADVISEMENT AND WAIVERS**

10 6. Respondent has carefully read, fully discussed with counsel, and understands the  
11 charges and allegations in Accusation No. 4696. Respondent has also carefully read, fully  
12 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
13 Order.

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

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

23 **CULPABILITY**

24 9. Respondent understands and agrees that the charges and allegations in Accusation  
25 No. 4696, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist  
26 License.

27 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
28 further proceedings, Respondent gives up his right to contest those charges.

1 11. Respondent agrees that his Pharmacist License is subject to discipline and he agrees  
2 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

3 **RESERVATION**

4 12. The admissions made by Respondent herein are only for the purposes of this  
5 proceeding, or any other proceedings in which the Board of Pharmacy or other professional  
6 licensing agency is involved, and shall not be admissible in any other criminal or civil  
7 proceeding.

8 **CONTINGENCY**

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

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

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

27 16. In consideration of the foregoing admissions and stipulations, the parties agree that  
28 the Board may, without further notice or formal proceeding, issue and enter the following

1 Disciplinary Order:

2 **DISCIPLINARY ORDER**

3 IT IS HEREBY ORDERED that Pharmacist License No. RPH 50549, issued to  
4 Respondent Steve Joseph Smith (Respondent), is revoked. However, the revocation is stayed and  
5 Respondent is placed on probation for five (5) years on the following terms and conditions.

6 **1. Suspension**

7 As part of probation, respondent is suspended from the practice of pharmacy for ninety  
8 days beginning on the effective date of this decision. Respondent shall be given ninety (90) days  
9 credit for the suspension already served.

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

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

22 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
23 licensed premises in which he holds an interest at the time this decision becomes effective unless  
24 otherwise specified in this order.

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

26 **2. Tolling of Suspension**

27 During the period of suspension, Respondent shall not leave California for any period  
28 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess

1 of ten (10) days during suspension shall be considered a violation of probation.

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

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

11 **3. Obey All Laws**

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

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

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

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

26 **4. Report to the Board**

27 Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
28 designee. The report shall be made either in person or in writing, as directed. Among other

1 requirements, respondent shall state in each report under penalty of perjury whether there has  
2 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
3 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
4 in submission of reports as directed may be added to the total period of probation. Moreover, if  
5 the final probation report is not made as directed, probation shall be automatically extended until  
6 such time as the final report is made and accepted by the board.

7 **5. Interview with the Board**

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

13 **6. Cooperate with Board Staff**

14 Respondent shall cooperate with the board's inspection program and with the board's  
15 monitoring and investigation of respondent's compliance with the terms and conditions of his  
16 probation. Failure to cooperate shall be considered a violation of probation.

17 **7. Continuing Education**

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

20 **8. Notice to Employers**

21 During the period of probation, respondent shall notify all present and prospective  
22 employers of the decision in case number 4696 and the terms, conditions and restrictions imposed  
23 on respondent by the decision, as follows:

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
25 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
26 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
27 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
28 individual(s) has/have read the decision in case number 4696, and terms and conditions imposed

1 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
2 submit timely acknowledgment(s) to the board.

3 If respondent works for or is employed by or through a pharmacy employment service,  
4 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
5 licensed by the board of the terms and conditions of the decision in case number 4696 in advance  
6 of the respondent commencing work at each licensed entity. A record of this notification must be  
7 provided to the board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
9 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
10 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
11 report to the board in writing acknowledging that he has read the decision in case number 4696  
12 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
13 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

14 Failure to timely notify present or prospective employer(s) or to cause that/those  
15 employer(s) to submit timely acknowledgments to the board shall be considered a violation of  
16 probation.

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

21 **9. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
22 **Designated Representative-in-Charge, or Serving as a Consultant**

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

27 **10. Reimbursement of Board Costs**

28 As a condition precedent to successful completion of probation, respondent shall pay to the



1 board its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall be  
2 permitted to pay these costs in a payment plan approved by the Board or its designee, so long as  
3 full payment is made within fifty-four (54) months of the effective date of this decision. There is  
4 to be no deviation from this schedule absent prior written approval by the Board or its designee.  
5 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

6 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to  
7 reimburse the board its costs of investigation and prosecution.

#### 8 **11. Probation Monitoring Costs**

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

#### 13 **12. Status of License**

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

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

#### 21 **13. License Surrender While on Probation/Suspension**

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

1           Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to  
2 the board within ten (10) days of notification by the board that the surrender is accepted.  
3 Respondent may not reapply for any license from the board for three (3) years from the effective  
4 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
5 of the date the application for that license is submitted to the board, including any outstanding  
6 costs.

7           **14. Notification of a Change in Name, Residence Address, Mailing Address or**  
8 **Employment**

9           Respondent shall notify the board in writing within ten (10) days of any change of  
10 employment. Said notification shall include the reasons for leaving, the address of the new  
11 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
12 shall further notify the board in writing within ten (10) days of a change in name, residence  
13 address, mailing address, or phone number.

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

16           **15. Tolling of Probation**

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

23           Should respondent, regardless of residency, for any reason (including vacation) cease  
24 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,  
25 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
26 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
27 failure to provide such notification(s) shall be considered a violation of probation.  
28

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

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

9 **16. Violation of Probation**

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

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

22 **17. Completion of Probation**

23 Upon written notice by the board or its designee indicating successful completion of  
24 probation, respondent's license will be fully restored.

25 **18. Supervised Practice**

26 During the period of probation, respondent shall practice only under the supervision of a  
27 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
28 decision, respondent shall not practice pharmacy and his license shall be automatically suspended

1 until a supervisor is approved by the board or its designee. The supervision shall be, as required  
2 by the board or its designee, either:

3 Continuous – At least 75% of a work week

4 Substantial - At least 50% of a work week

5 Partial - At least 25% of a work week

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

7 Within thirty (30) days of the effective date of this decision, respondent shall have his  
8 supervisor submit notification to the board in writing stating that the supervisor has read the  
9 decision in case number 4696 and is familiar with the required level of supervision as determined  
10 by the board or its designee. It shall be the respondent's responsibility to ensure that his  
11 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
12 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
13 acknowledgements to the board shall be considered a violation of probation.

14 If respondent changes employment, it shall be the respondent's responsibility to ensure that  
15 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
16 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment  
17 commences, submit notification to the board in writing stating the direct supervisor and  
18 pharmacist-in-charge have read the decision in case number 4696 and is familiar with the level of  
19 supervision as determined by the board. Respondent shall not practice pharmacy and his license  
20 shall be automatically suspended until the board or its designee approves a new supervisor.  
21 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
22 acknowledgements to the board shall be considered a violation of probation.

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

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

1 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
2 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
3 and controlled substances. Respondent shall not resume practice until notified by the board.

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

8 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
9 licensed premises in which he holds an interest at the time this decision becomes effective unless  
10 otherwise specified in this order.

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

12 **19. Pharmacists Recovery Program (PRP)**

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

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

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

24 Probation shall be automatically extended until respondent successfully completes the PRP.  
25 Any person terminated from the PRP program shall be automatically suspended by the board.  
26 Respondent may not resume the practice of pharmacy until notified by the board in writing.

27 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
28 licensed practitioner as part of a documented medical treatment shall result in the automatic

1 suspension of practice by respondent and shall be considered a violation of probation.

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

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

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

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

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

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

22 **20. Random Drug Screening**

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

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

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

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

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

27 Failure to comply with this suspension shall be considered a violation of probation.  
28

1           **21. Abstain from Drugs and Alcohol Use**

2           Respondent shall completely abstain from the possession or use of alcohol, controlled  
3 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
4 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
5 request of the board or its designee, respondent shall provide documentation from the licensed  
6 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
7 treatment of the respondent. Failure to timely provide such documentation shall be considered a  
8 violation of probation. Respondent shall ensure that he is not in the same physical location as  
9 individuals who are using illicit substances even if respondent is not personally ingesting the  
10 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
11 not supported by the documentation timely provided, and/or any physical proximity to persons  
12 using illicit substances, shall be considered a violation of probation.

13           **22. Prescription Coordination and Monitoring of Prescription Use**

14           Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
15 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
16 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
17 history involving controlled substances, and/or dangerous drugs, and who will coordinate and  
18 monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-  
19 altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation  
20 and decision. A record of this notification must be provided to the board upon request.  
21 Respondent shall sign a release authorizing the practitioner to communicate with the board about  
22 respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or  
23 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding  
24 respondent's compliance with this condition. If any substances considered addictive have been  
25 prescribed, the report shall identify a program for the time limited use of any such substances.  
26 The board may require that the single coordinating physician, nurse practitioner, physician  
27 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive  
28 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,



1 respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment,  
2 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist  
3 of respondent's choice to the board or its designee for its prior approval. Failure to timely submit  
4 the selected practitioner or replacement practitioner to the board for approval, or to ensure the  
5 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

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

23 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
24 licensed premises in which he holds an interest at the time this decision becomes effective unless  
25 otherwise specified in this order.

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

27 **23. No New Ownership of Licensed Premises**

28 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a

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

8 **24. Ethics Course**

9 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll  
10 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.  
11 Failure to initiate the course during the first year of probation, and complete it within the second  
12 year of probation, is a violation of probation.

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

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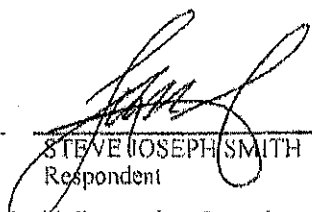
24 **ACCEPTANCE**

25 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
26 discussed it with my attorney, Timothy J. Aspinwall. I understand the stipulation and the effect it  
27 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary  
28 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order

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of the Board of Pharmacy.


DATED: 9/23/14

  
STEVE JOSEPH SMITH  
Respondent

I have read and fully discussed with Respondent Steve Joseph Smith the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 9/24/14

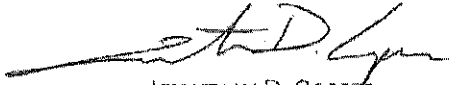
  
Timothy J. Aspinwall  
Attorney for Respondent

**ENDORSEMENT**

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

Dated: 10/2/14

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

  
JONATHAN D. COOPER  
Deputy Attorney General  
Attorneys for Complainant

**Exhibit A**

**Accusation No. 4696**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER  
Deputy Attorney General  
4 State Bar No. 141461  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1404  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 4696

11 **STEVE JOSEPH SMITH**  
12 **1055 West College Ave. #C**  
13 **Santa Rosa, CA 95401**

**ACCUSATION**

14 **Pharmacist License No. RPH 50549**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about September 11, 1998, the Board of Pharmacy issued Pharmacist License  
21 Number RPH 50549 to Steve Joseph Smith (Respondent). The Pharmacist License was in full  
22 force and effect at all times relevant to the charges brought herein and will expire on September  
23 30, 2014, unless renewed.

24 **JURISDICTION**

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

28 4. Section 4011 of the Code provides that the Board shall administer and enforce both

1 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
2 Act [Health & Safety Code, § 11000 et seq.].

3 5. Section 4300 of the Code provides that every license issued by the Board may be  
4 suspended or revoked.

5 **STATUTORY AND REGULATORY PROVISIONS**

6 6. Section 4301 of the Code provides, in pertinent part:

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

10 ...  
11 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
12 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
13 whether the act is a felony or misdemeanor or not.

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

20 ...  
21 (j) The violation of any of the statutes of this state, of any other state, or of the United  
22 States regulating controlled substances and dangerous drugs.

23 ...  
24 7. California Code of Regulations, title 16, section 1770, states:

25 For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare.

3 **CONTROLLED SUBSTANCES**

4 8. Section 4021 of the Code states:

5 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
6 11053) of Division 10 of the Health and Safety Code.

7 9. Section 4022 of the Code states:

8 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use,  
9 except veterinary drugs that are labeled as such, and includes the following:

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

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

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

17 10. Section 4060 of the Code states:

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

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

4 11. California Health and Safety Code section 11170 states:

5 No person shall prescribe, administer, or furnish a controlled substance for himself.

6 12. California Health and Safety Code section 11173 states:

7 (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt  
8 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,  
9 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

10 (b) No person shall make a false statement in any prescription, order, report, or record,  
11 required by this division.

12 (c) No person shall, for the purpose of obtaining controlled substances, falsely assume the  
13 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,  
14 veterinarian, registered nurse, physician's assistant, or other authorized person.

15 (d) No person shall affix any false or forged label to a package or receptacle containing  
16 controlled substances.

17 13. **Morphine** is a Schedule II controlled substance as designated by Health and Safety  
18 Code section 11055(b)(1)(M), and a dangerous drug as designated by Business and Professions  
19 Code section 4022.

20 14. **Hydrocodone/Acetaminophen** is a Schedule III controlled substance as designated  
21 by Health and Safety Code section 11056(e)(4) and a dangerous drug per Business and  
22 Professions Code section 4022.

#### 23 COST RECOVERY

24 15. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
25 administrative law judge to direct a licensee found to have committed a violation or violations of  
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
27 enforcement of the case.

28 ///



1 FACTUAL SUMMARY

2 16. On or about June 27, 2012, Respondent admitted to his business partner that he was  
3 an "impaired pharmacist" and was in need of a drug rehabilitation program. On or about August  
4 9, 2012, Respondent admitted to a Pharmacy Board investigator that he had a substance abuse, or  
5 chemical dependency, problem.

6 17. On or about October 11, 2012, Respondent met with a Pharmacy Board investigator.  
7 At that time, Respondent admitted that, during the preceding two-year period, he had stolen  
8 unused controlled substances including, but not limited to, hydrocodone, morphine and other  
9 opiates, that had been returned to his pharmacy<sup>1</sup> by customers. Respondent stole these items  
10 during the course of his duties and relations as a pharmacist.

11 FIRST CAUSE FOR DISCIPLINE

12 (Acts of Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

13 18. Respondent is subject to disciplinary action under Code section 4301(f) in that he  
14 committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption during the  
15 course of relations as a licensee and otherwise, as set forth above in paragraph 16.

16 SECOND CAUSE FOR DISCIPLINE

17 (Dangerous Use of Drugs)

18 19. Respondent is subject to disciplinary action under Code section 4301(h) in that he  
19 administered to himself and used controlled substances and/or dangerous drugs, and used said  
20 substances to the extent or in a manner as to be dangerous or injurious to himself and to others,  
21 and/or to the extent that such use impaired his ability to conduct with safety to the public the  
22 practice authorized by his license, as set forth above in paragraphs 15-16.

23 THIRD CAUSE FOR DISCIPLINE

24 (Violation of Drug Laws)

25 20. Respondent is subject to disciplinary action under Code section 4301(j) in that he  
26 violated statutes of this state regulating controlled substances and dangerous drugs, as set forth

27 \_\_\_\_\_  
28 <sup>1</sup> Respondent worked at, and was a joint owner of, Dollar Drug in Santa Rosa, California.

1 above in paragraphs 15-16. Respondent's conduct violated California law including, but not  
2 limited to, Business and Professions Code section 4060 (unlawful possession of controlled  
3 substances) and Health and Safety Code sections 11170 (unlawful administration or furnishing to  
4 self), 11173 (unlawfully obtaining controlled substances by fraud, deceit or subterfuge), 11377  
5 (unlawful possession of certain controlled substances) and 11350 (unlawful possession of certain  
6 controlled substances).

7 PRAYER

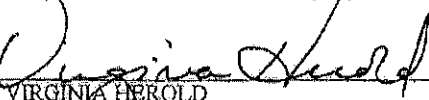
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacist License Number RPH 50549, issued to Steve  
11 Joseph Smith;

12 2. Ordering Steve Joseph Smith to pay the Board of Pharmacy the reasonable costs of  
13 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
14 125.3;

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

16 DATED: 4/9/14

17   
18 VIRGINIA HEROLD  
19 Executive Officer  
20 Board of Pharmacy  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant  
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27  
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