

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

In the Matter of the Petition to Revoke Probation  
Against:

**ERIC DUANE OZIMY**

Pharmacist License Number RPH 36956

Respondent.

Case No. 4746

OAH No. 2014020858

**DECISION AND ORDER**

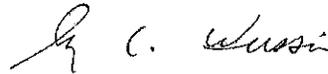
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 17, 2015.

It is so ORDERED on March 18, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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

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

In the Matter of the Petition to Revoke  
Probation Against:

ERIC DUANE OZIMY

Pharmacist License Number RPH 36956

Respondent.

Case No. 4746

OAH No. 2014020858

**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 2, 2015, in Sacramento, California.

Complainant, Virginia Herold, Executive Officer of the Board of Pharmacy, was represented by Geoffrey S. Allen, Deputy Attorney General.

Eric Duane Ozimy appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on February 2, 2015.

**FACTUAL FINDINGS**

*License and Disciplinary History*

1. On or about August 16, 1982, the Board of Pharmacy (Board) issued Pharmacist License Number RPH 36956 to Eric Duane Ozimy (respondent).

2. On or about April 28, 1986, Accusation No. 1298 was filed against respondent alleging that respondent admitted to stealing Percodan from his employer, Fry's Drug Stores. Effective November 6, 1986, respondent's license was revoked, the revocation stayed, and placed on probation for a period of two years.

3. On or about August 18, 1988, Accusation and Petition to Revoke Probation No. 1408 was filed against respondent alleging that respondent admitted to stealing Percodan from his employer, Stockton Medical Group, and forging a prescription while employed as a pharmacist at California Medical Group. Effective February 25, 1989, respondent's license was revoked, the revocation stayed, and placed on probation for a period of five years. Respondent was also suspended from the practice of pharmacy for one year.

4. On or about October 6, 2009, Accusation No. 3298 was filed against respondent alleging that on or about August 8, 2006, in the San Joaquin County Superior Court, respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), (driving under the influence of alcohol or drugs), a misdemeanor. The circumstances were that on or about March 17, 2006, respondent was the driver in a solo vehicle collision in which respondent struck a tree and brick planter. The results of the toxicology analysis showed a blood alcohol content of 0.00 and a positive result for opiates, namely hydrocodone (Vicodin) and Zolpidem (Ambien). Accusation No. 3298 also alleged that respondent unlawfully self-administered controlled substances and/or dangerous drugs. Accusation 3298 included the prior disciplinary matters in Accusation No. 1298 and Accusation and Petition to Revoke Probation No. 1408, referenced in Factual Findings 2 and 3.

On August 12, 2010, respondent, who was then represented by counsel, signed a stipulated settlement by which he admitted the truth of each and every charge and allegation in Accusation No. 3298. Respondent stipulated that his license would be revoked, that the revocation would be stayed, and that he would be placed on probation for five years on specified terms and conditions. The stipulated settlement was adopted by the Board as its Decision and Order on October 19, 2010, which became effective on November 18, 2010.

5. On or about December 15, 2011, Accusation and Petition to Revoke Probation No. 4103 was filed against respondent alleging that respondent violated the term of probation requiring that he participate in the Pharmacists Recovery Program (PRP) in that he was terminated from the PRP based upon positive tests for hydromorphone and hydrocodone on March 4, 2011, and hydrocodone on April 29, 2011.

On October 8, 2012, respondent, who was then represented by counsel, signed a stipulated settlement by which he admitted the truth of each and every charge and allegation in the Accusation and Petition to Revoke Probation No. 4103. Respondent stipulated that his license would be revoked, that the revocation would be stayed, and he would be placed on probation for five years on specified terms and conditions. The stipulated settlement was adopted by the Board as its Decision and Order on November 28, 2012, which became effective on December 28, 2012.

6. On or about October 24, 2013, Petition to Revoke Probation No. 4746 was filed in this case alleging that respondent violated numerous terms of probation, which are the subject of this Decision, and are discussed below.

*Violations of Probation*

7. The violations of probation were established by the testimony of the probation monitor Diane Potter (Ms. Potter) and respondent, as follows:

Condition 2: Report to the Board

Respondent 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. . . . Failure to submit timely reports in a form as directed shall be considered a violation of probation. . . .

Violation of Condition 2: The testimony of probation monitor Ms. Potter established that respondent has not filed any quarterly reports since July 2012, as required by the conditions of probation in Case No. 3298, effective November 18, 2010, and in Case No. 4103, effective December 28, 2012. Respondent testified he was not required to file a quarterly report if he instead met in person with his probation monitor. Ms. Potter replaced respondent's former probation monitor in early 2013. Respondent never met with Ms. Potter. Respondent did not provide any corroboration or specify whether any of the meetings with his former probation monitor occurred after July 2012.

Condition 8: Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$999.50. This amount is the unpaid balance of the costs of investigation and prosecution ordered in Case No. 3298. Respondent shall make said payments in a payment plan to be approved by the Board or its designee.

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.

[¶] . . . [¶]

Violation of Condition 8: The testimony of Ms. Potter and respondent established that respondent has not paid any of the costs of investigation and prosecution in the amount of \$999.50, as mandated by the Decision and Order in Case No. 4103. This amount is the unpaid balance of the investigation and prosecution costs mandated in the Decision and Order in Case No. 3298, effective November 18, 2010. Respondent conceded that he had not made any payments or requested a payment plan on the costs mandated in Case No. 4103.

Condition 16: Pharmacists Recovery Program (PRP)

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

[¶] . . . [¶]

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

[¶] . . . [¶]

Violation of Condition 16: Respondent's testimony established that he was suspended from the PRP in early 2013, and subsequently terminated, for failure to meet his financial obligations for treatment in the program. It was not established, as alleged by complainant, that respondent was deemed a public risk by the PRP.

Condition 17: Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. . . .

[¶] . . . [¶]

Violation of Condition 17: Respondent's testimony established that he did not participate in any random biological fluid testing subsequent to his suspension from the PRP. Ms. Potter testified, and the written conditions of probation indicate, that respondent's obligation under Condition 17 to arrange for and participate in random biological fluid testing is independent of respondent's participation in the PRP pursuant to Condition 16.

Condition 19: Prescription Coordination and Monitoring of Prescription Use

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the Respondent's history with the use of

alcohol, controlled substances, and/or dangerous drugs and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. . . . Failure to timely submit the selected practitioner or replacement practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

[¶] . . . [¶]

Violation of Condition 19: The testimony of respondent and Ms. Potter established that respondent did not submit to the Board the name of any physician or other health care professional willing to serve as a prescription monitor and coordinator. Respondent testified that he has not seen a physician since 2011, and cannot financially afford a prescription monitor.

#### Condition 20: Community Services Program

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board or its designee, for prior approval, a community service program in which Respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least two hundred-fifty (250) hours during the period of probation. Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board demonstrating commencement of the community service program. A record of this notification must be provided to the Board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

Violation of Condition 20: The testimony of respondent and Ms. Potter established that respondent did not complete or show proof of completion of any community service in satisfaction of Condition 20. Respondent testified that he sent a letter to the Board proposing some community service, and that the Board rejected his proposal. Respondent did not provide the letter or any more specific information about his proposal.

#### Condition 23: Ethics Course

Within sixty (60) calendar days of the effective date of this decision, Respondent 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.

Violation of Condition 23: The testimony of respondent and Ms. Potter established that respondent did not submit to the Board an ethics course for approval, or show proof of completion of any ethics course.

### *Mitigation and Aggravation*

8. Respondent testified that he believed all of his obligations under the conditions of probation were suspended when he received notice from the PRP in early 2013, that they were suspending him from the program. This argument in mitigation is unpersuasive. First, as respondent acknowledged at hearing, ignorance is no excuse regarding the question of whether the conditions of probation remained in force. Second, respondent could have sought clarification from the Board regarding his continuing obligations under the conditions of probation. Finally, when asked at hearing whether he considered contacting the Board to seek clarification regarding his responsibilities, he reiterated his testimony that Ms. Potter had not contacted him since the time she replaced his former probation monitor in early 2013. This statement reflects a simple failure to accept responsibility both at hearing and during the period of his noncompliance.

9. Respondent's noncompliance in this matter is aggravated by his record of discipline and noncompliance with probation, as outlined in Factual Findings 2 through 5.

10. Respondent's record of noncompliance with probation as outlined in Factual Findings 3 and 5, and his failure to accept responsibility in this matter, clearly indicate that he would be unlikely to comply with the terms of probation if he were allowed to continue with probation.

### LEGAL CONCLUSIONS

1. The complainant bears the burden of proving the allegations in the Petition to Revoke Probation by a preponderance of the evidence. *Sandarg v. Dental Bd. of Calif.* (2010) 184 Cal.App.4th 1434, 1440-1441. The term preponderance of the evidence means "more likely than not" *Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388, or "evidence that has more convincing force than that opposed to it." *People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567 (quoting BAJI No. 2.60). This standard of proof was applied to each allegation in the Petition to Revoke Probation in reaching the conclusions below.

2. Pursuant to Business and Professions Code section 4300, subdivision (d), the Board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation.

3. A preponderance of evidence clearly demonstrates that respondent has violated conditions of probation 2, 8, 16, 17, 19, 20, and 23. (Factual Finding 7)

4. Pursuant to Business and Professions Code section 4001.1, protection of the public safety is the Board's highest priority in exercising its disciplinary functions. Given respondent's history of noncompliance and failure to accept responsibility (Factual Findings 8 through 10), probation is ineffective in protecting the public at this time.

5. For the reasons stated in Legal Conclusions 1 through 4, legal cause exists to lift the stay of the revocation of respondent's license in the Board's Decision and Order effective December 28, 2012.

### ORDER

The stay of the order of revocation of respondent's license issued by the Board in its Decision and Order effective December 28, 2012 is lifted. Pharmacist license number RPH 36956 issued to respondent Eric Duane Ozimy is revoked.

Respondent shall pay to the Board \$999.50, as the costs of investigation and prosecution in Case No. 4103, as ordered in the Decision and Order in Case No. 4103.

DATED: February 19, 2015



TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings

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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 Petition to Revoke  
12 Probation Against,

Case No. 4746

13 **ERIC DUANE OZIMY**  
14 **3455 Oak Grove Circle**  
**Stockton, CA 95209**

PETITION TO REVOKE PROBATION

15 **Pharmacist License No. RPH 36956**

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 16, 1982, the Board of Pharmacy issued Pharmacist License  
24 Number RPH 36956 (License) to Eric Duane Ozimy (Respondent). The License will expire on  
25 February 28, 2014, unless renewed.  
26  
27  
28



1 (e) The proceedings under this article shall be conducted in accordance with  
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
3 Government Code, and the board shall have all the powers granted therein. The  
4 action shall be final, except that the propriety of the action is subject to review by  
5 the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6 6. California Code of Regulations, title 16, section 1773, states that a pharmacist who is  
7 serving a period of probation shall comply with the conditions of his or her probation as ordered  
8 by the Board in an administrative action or by stipulation the parties.

9 FIRST CAUSE TO REVOKE PROBATION

10 (Failure to Submit Reports)

11 7. At all times after the effective date of Respondent's probation, Condition 2 stated:

12 **Report to the Board**

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

22 8. Respondent's probation is subject to revocation because he failed to comply with  
23 Probation Condition 2, referenced above. The facts and circumstances regarding this violation  
24 are as follows: Respondent failed to submit quarterly reports. As of the filing of the instant  
25 Petition, no quarterly reports have been received from Respondent.

26 SECOND CAUSE TO REVOKE PROBATION

27 (Failure to Pay Costs)

28 9. At all times after the effective date of Respondent's probation, Condition 8 stated:

**Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$999.50. This amount is the unpaid balance of the costs of investigation and prosecution ordered in Case No. 3298. Respondent shall make said payments in a payment plan to be approved by the Board or its designee.

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 Respondent shall not relieve Respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.



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

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

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

#### 6 **Random Drug Screening**

7 Respondent, at his own expense, shall participate in random testing, including  
but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle  
8 testing, or other drug screening program as directed by the Board or its designee.  
Respondent may be required to participate in testing for the entire probation period  
9 and the frequency of testing will be determined by the Board or its designee. At all  
times, Respondent shall fully cooperate with the Board or its designee, and shall,  
10 when directed, submit to such tests and samples for the detection of alcohol,  
narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or  
11 its designee may direct. Failure to timely submit to testing as directed shall be  
considered a violation of probation. Upon request of the Board or its designee,  
12 Respondent shall provide documentation from a licensed practitioner that the  
prescription for a detected drug was legitimately issued and is a necessary part of  
13 the treatment of the Respondent. Failure to timely provide such documentation  
shall be considered a violation of probation. Any confirmed positive test for  
14 alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of  
a documented medical treatment shall be considered a violation of probation and  
15 shall result in the automatic suspension of practice of pharmacy by Respondent. ---  
Respondent may not resume the practice of pharmacy until notified by the Board in  
writing.

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

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

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

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

27 ///

28 ///



1 resume practice until notified by the Board.

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

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

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

12 14. Respondent's probation is subject to revocation because he failed to comply with  
13 Probation Condition 19, referenced above. The facts and circumstances regarding this violation  
14 are as follows: Respondent failed to submit any practitioner to the Board for approval as a  
15 prescription coordinator and/or monitor.

#### 16 FIFTH CAUSE TO REVOKE PROBATION

17 (Community Service Program)

18 15. At all times after the effective date of Respondent's probation, Condition 20 stated:

#### 19 **Community Services Program**

20 Within sixty (60) days of the effective date of this decision, Respondent shall  
21 submit to the Board or its designee, for prior approval, a community service  
22 program in which Respondent shall provide free health-care related services on a  
23 regular basis to a community or charitable facility or agency for at least two  
24 hundred-fifty (250) hours during the period of probation. Within thirty (30) days of  
25 Board approval thereof, Respondent shall submit documentation to the Board  
26 demonstrating commencement of the community service program. A record of this  
27 notification must be provided to the Board upon request. Respondent shall report  
28 on progress with the community service program in the quarterly reports. Failure to  
timely submit, commence, or comply with the program shall be considered a  
violation of probation.

16. Respondent's probation is subject to revocation because he failed to comply with  
Probation Condition 20, referenced above. The facts and circumstances regarding this violation  
are as follows: Respondent failed to submit a community service program for Board approval.  
Respondent also has failed to commence any volunteer hours.

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1 SIXTH CAUSE TO REVOKE PROBATION

2 (Failure to Complete Ethics Course)

3 17. At all times after the effective date of Respondent's probation, Condition 23 stated:

4 **Ethics Course**

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

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

12 18. Respondent's probation is subject to revocation because he failed to comply with  
13 Probation Condition 23, referenced above. The facts and circumstances regarding this violation  
14 are as follows: Respondent failed to enroll in or complete a Board-approved ethics course within  
15 60 days of the effective date of the Probation.

16 DISCIPLINE CONSIDERATIONS

17 19. To determine the degree of discipline, if any, to be imposed on Respondent,  
18 Complainant alleges that on or about November 6, 1986, in a prior disciplinary action entitled In  
19 the Matter of the Accusation Against Eric Duane Ozimy before the Board of Pharmacy, in Case  
20 No. 1298, Respondent's License was revoked, the revocation stayed, and placed on probation for  
21 a period of two years. That decision is now final and is incorporated by reference as if fully set  
22 forth.

23 20. To determine the degree of discipline, if any, to be imposed on Respondent,  
24 Complainant alleges that on or about August 11, 1988, in a prior disciplinary action entitled In the  
25 Matter of the Accusation and Petition to Revoke Probation Against Eric Duane Ozimy before the  
26 Board of Pharmacy, in Case No. 1408, Respondent's License was revoked, the revocation stayed,  
27 and placed on probation for a period of five years. Respondent was also suspended from the  
28 practice of pharmacy for one year. Respondent's return to practice was contingent upon the  
approval of the Board and the successful completion of the Pharmacist Recovery Program. That  
decision is now final and is incorporated by reference as if fully set forth.



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

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

**ERIC DUANE OZIMY**  
3455 Oak Grove Circle  
Stockton, CA 95209

Pharmacist License No. RPH 36956

Respondent.

Case No. 4103

OAH No. 2012030621

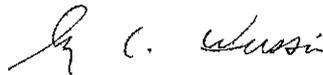
**DECISION AND ORDER**

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 December 28, 2012.

It is so ORDERED on November 28, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

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

13 **ERIC DUANE OZIMY**  
14 **3455 Oak Grove Circle**  
**Stockton, CA 95209**  
15 **Pharmacist License No. RPH 36956**

16 Respondent.

Case No. 4103

OAH No. 2012030621  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

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

20 PARTIES

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

25 2. Respondent Eric Duane Ozimy (Respondent) is represented in this proceeding by  
26 attorney Albert M. Ellis, whose address is: Hakeem, Ellis & Marengo, 3414 Brookside Road,  
27 Suite 100, Stockton, CA 95219  
28







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

6 **3. Interview with the Board**

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

12 **4. Cooperate with Board Staff**

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

16 **5. Continuing Education**

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

19 **6. Notice to Employers**

20 During the period of probation, Respondent shall notify all present and prospective  
21 employers of the decision in case number 4103 and the terms, conditions and restrictions imposed  
22 on Respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
24 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
25 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
26 tenure of employment) and owner to report to the Board in writing acknowledging that the listed  
27 individual(s) has/have read the decision in case number 4103, and terms and conditions imposed  
28

1 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
2 supervisor(s) 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 4103 in advance  
6 of the Respondent commencing work at each licensed entity. A record of this notification must  
7 be 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  
10 employment service, Respondent shall cause his direct supervisor with the pharmacy employment  
11 service to report to the Board in writing acknowledging that he has read the decision in case  
12 number 4103 and the terms and conditions imposed thereby. It shall be Respondent's  
13 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
14 acknowledgment(s) to the Board.

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

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

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

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

28 ///

1           **8. Reimbursement of Board Costs**

2           As a condition precedent to successful completion of probation, Respondent shall pay to the  
3 Board its costs of investigation and prosecution in the amount of \$999.50. This amount is the  
4 unpaid balance of the costs of investigation and prosecution ordered in Case No. 3298.  
5 Respondent shall make said payments in a payment plan to be approved by the Board or its  
6 designee.

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

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

12           **9. Probation Monitoring Costs**

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

17           **10. Status of License**

18          Respondent shall, at all times while on probation, maintain an active, current License with  
19 the Board, including any period during which suspension or probation is tolled. Failure to  
20 maintain an active, current License shall be considered a violation of probation.

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

25           **11. License Surrender While on Probation/Suspension**

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

1 have the discretion whether to grant the request for surrender or take any other action it deems  
2 appropriate and reasonable. Upon formal acceptance of the surrender of the License, Respondent  
3 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
4 record of discipline and shall become a part of the Respondent's license history with the Board.

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

11 **12. Notification of a Change in Name, Residence Address, Mailing Address or**  
12 **Employment**

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

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

20 **13. Tolling of Probation**

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

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

1 Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and  
2 must further notify the Board in writing within ten (10) days of the resumption of practice. Any  
3 failure to provide such notification(s) shall be considered a violation of probation.

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

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

#### 13 **14. Violation of Probation**

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

19 If Respondent violates probation in any respect, the Board, after giving Respondent 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.  
23 If a petition to revoke probation or an accusation is filed against Respondent 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 **15. Completion of Probation**

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

1           **16. Pharmacists Recovery Program (PRP)**

2           Within thirty (30) days of the effective date of this decision, Respondent shall contact the  
3           Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,  
4           successfully participate in, and complete the treatment contract and any subsequent addendums as  
5           recommended and provided by the PRP and as approved by the Board or its designee. The costs  
6           for PRP participation shall be borne by the Respondent.

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

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

13          Probation shall be automatically extended until Respondent successfully completes the  
14          PRP. Any person terminated from the PRP program shall be automatically suspended by the  
15          Board. Respondent may not resume the practice of pharmacy until notified by the Board in  
16          writing.

17          Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
18          licensed practitioner as part of a documented medical treatment shall result in the automatic  
19          suspension of practice by Respondent and shall be considered a violation of probation.  
20          Respondent may not resume the practice of pharmacy until notified by the Board in writing.

21          During suspension, Respondent shall not enter any pharmacy area or any portion of the  
22          licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
23          drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices  
24          or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
25          involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
26          consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the  
27          Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
28          and controlled substances. Respondent shall not resume practice until notified by the Board.

1 During suspension, Respondent shall not engage in any activity that requires the  
2 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
3 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
4 designated representative for any entity licensed by the Board.

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

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

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

#### 12 **17. Random Drug Screening**

13 Respondent, at his own expense, shall participate in random testing, including but not  
14 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
15 screening program as directed by the Board or its designee. Respondent may be required to  
16 participate in testing for the entire probation period and the frequency of testing will be  
17 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the  
18 Board or its designee, and shall, when directed, submit to such tests and samples for the detection  
19 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or  
20 its designee may direct. Failure to timely submit to testing as directed shall be considered a  
21 violation of probation. Upon request of the Board or its designee, Respondent shall provide  
22 documentation from a licensed practitioner that the prescription for a detected drug was  
23 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely  
24 provide such documentation shall be considered a violation of probation. Any confirmed positive  
25 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a  
26 documented medical treatment shall be considered a violation of probation and shall result in the  
27 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the  
28 practice of pharmacy until notified by the Board in writing.

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

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

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

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

17 **18. Abstain from Drugs and Alcohol Use**

18 Respondent shall completely abstain from the possession or use of alcohol, controlled  
19 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
20 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon  
21 request of the Board or its designee, Respondent shall provide documentation from the licensed  
22 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the  
23 treatment of the Respondent. Failure to timely provide such documentation shall be considered a  
24 violation of probation. Respondent shall ensure that he is not in the same physical location as  
25 individuals who are using illicit substances even if Respondent is not personally ingesting the  
26 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia  
27 not supported by the documentation timely provided, and/or any physical proximity to persons  
28 using illicit substances, shall be considered a violation of probation.

1           **19. Prescription Coordination and Monitoring of Prescription Use**

2           Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
3 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
4 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the  
5 Respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs and  
6 who will coordinate and monitor any prescriptions for Respondent for dangerous drugs,  
7 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a  
8 copy of the Board's Accusation/Petition to Revoke Probation and decision. A record of this  
9 notification must be provided to the Board upon request. Respondent shall sign a release  
10 authorizing the practitioner to communicate with the Board about Respondent's treatment(s). The  
11 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the  
12 Board on a quarterly basis for the duration of probation regarding Respondent's compliance with  
13 this condition. If any substances considered addictive have been prescribed, the report shall  
14 identify a program for the time limited use of any such substances. The Board may require that  
15 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a  
16 specialist in addictive medicine, or consult a specialist in addictive medicine. Should  
17 Respondent, for any reason, cease supervision by the approved practitioner, Respondent shall  
18 notify the Board immediately and, within thirty (30) days of ceasing treatment, submit the name  
19 of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's  
20 choice to the Board or its designee for its prior approval. Failure to timely submit the selected  
21 practitioner or replacement practitioner to the Board for approval, or to ensure the required  
22 reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

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

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

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

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

17 **20. Community Services Program**

18 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
19 Board or its designee, for prior approval, a community service program in which Respondent  
20 shall provide free health-care related services on a regular basis to a community or charitable  
21 facility or agency for at least two hundred-fifty (250) hours during the period of probation.

22 Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the  
23 Board demonstrating commencement of the community service program. A record of this  
24 notification must be provided to the Board upon request. Respondent shall report on progress  
25 with the community service program in the quarterly reports. Failure to timely submit,  
26 commence, or comply with the program shall be considered a violation of probation.

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1           **21. Supervised Practice**

2           During the period of probation, Respondent shall practice only under the supervision of a  
3 licensed pharmacist not on probation with the Board. Upon and after the effective date of this  
4 decision, Respondent shall not practice pharmacy and his License shall be automatically  
5 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,  
6 as required by the Board or its designee, either:

7           Continuous – At least 75% of a work week

8           Substantial - At least 50% of a work week

9           Partial - At least 25% of a work week

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

11          Within thirty (30) days of the effective date of this decision, Respondent shall have his  
12 supervisor submit notification to the Board in writing stating that the supervisor has read the  
13 decision in case number 4103 and is familiar with the required level of supervision as determined  
14 by the Board or its designee. It shall be the Respondent's responsibility to ensure that his  
15 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
16 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
17 acknowledgements to the Board shall be considered a violation of probation.

18          If Respondent changes employment, it shall be the Respondent's responsibility to ensure  
19 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
20 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)  
21 days after employment commences, submit notification to the Board in writing stating the direct  
22 supervisor and pharmacist-in-charge have read the decision in case number 4103 and is familiar  
23 with the level of supervision as determined by the Board. Respondent shall not practice  
24 pharmacy and his License shall be automatically suspended until the Board or its designee  
25 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to  
26 submit timely acknowledgements to the Board shall be considered a violation of probation.

27          Within ten (10) days of leaving employment, Respondent shall notify the Board in writing.

28          During suspension, Respondent shall not enter any pharmacy area or any portion of the

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

8 During suspension, Respondent shall not engage in any activity that requires the  
9 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
10 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
11 designated representative for any entity licensed by the Board.

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

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

16 **22. No Ownership of Licensed Premises**

17 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
18 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
19 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell  
20 or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90)  
21 days following the effective date of this decision and shall immediately thereafter provide written  
22 proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide  
23 documentation thereof shall be considered a violation of probation.

24 **23. Ethics Course**

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Albert M. Ellis. I understand the stipulation and the effect it will have on my License. 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.

DATED:

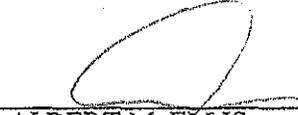
10/8/2012

  
ERIC DUANE OZIMY  
Respondent

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

DATED:

10/8/12

  
ALBERT M. ELLIS  
Attorney for Respondent

ENDORSEMENT

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

Dated:

10/10/12

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
ARTHUR D. TAGGART  
Supervising Deputy Attorney General

  
GEOFFREY S. ALLEN  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation/Petition to Revoke Probation No. 4103**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 GEOFFREY S. ALLEN  
Deputy Attorney General  
4 State Bar No. 193338  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5341  
Facsimile: (916) 327-8643  
7 E-mail: Geoffrey.Allen@doj.ca.gov  
*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/Petition to  
12 Revoke Probation Against,

Case No. 4103

13 **ERIC DUANE OZIMY**  
14 **3455 Oak Grove Circle**  
**Stockton, CA 95209**  
15 **Pharmacist License No. RPH 36956**

ACCUSATION AND PETITION TO  
REVOKE PROBATION

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 16, 1982, the Board of Pharmacy (Board) issued Pharmacist  
24 License Number RPH 36956 (License) to Eric Duane Ozimy (Respondent). The License will  
25 expire on February 29, 2012, unless renewed.

26 3. In a disciplinary action entitled "In the Matter of Accusation Against Eric Duane  
27 Ozimy," Case No. 3298, the Board issued a decision, effective November 18, 2010, in which  
28 Respondent's License was revoked. However, the revocation was stayed and Respondent's

1 License was placed on probation for a period of five (5) years with certain terms and conditions  
2 (Probation). A copy of that decision is attached as Exhibit I and is incorporated herein by this  
3 reference.

4 JURISDICTION

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

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

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

13 .....

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

20 .....

21 6. California Code of Regulations, title 16, section 1773, states that a pharmacist who is  
22 serving a period of probation shall comply with the conditions of his or her probation as ordered  
23 by the Board in an administrative action or by stipulation the parties.

24 DRUGS

25 7. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety  
26 Code section 11055 and is a dangerous drug within the meaning of Code section 4022, in that  
27 under federal law it requires a prescription to be administered.

28 8. Hydrocodone is a controlled substance pursuant to Health and Safety Code section  
11054 et. seq. and is a dangerous drug within the meaning of Code section 4022, in that under  
federal law it requires a prescription to be administered.

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1 licensee of the Board, or have access to or control the ordering, manufacturing or  
2 dispensing of dangerous drugs and controlled substances. Respondent shall not  
resume practice until notified by the Board.

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

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

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

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

12 12. Respondent's Probation is subject to revocation because he failed to comply with  
13 Probation Condition 18, referenced above. The facts and circumstances regarding this violation  
14 are as follows:

15 A. Respondent failed to participate in and complete the PRP. Respondent was  
16 terminated from the PRP on or about June 23, 2011. Respondent was terminated from the PRP  
17 based upon Respondent's two positive tests for use of controlled substances and/or dangerous  
18 drugs, and Respondent's failure to enroll in an inpatient treatment program as mandated.

19 SECOND CAUSE TO REVOKE PROBATION

20 (Abstain from Alcohol and/or Drugs)

21 13. At all times after the effective date of Respondent's Probation, Condition 20 stated:

22 Respondent shall completely abstain from the possession or use of alcohol,  
23 controlled substances, dangerous drugs and their associated paraphernalia except  
24 when the drugs are lawfully prescribed by a licensed practitioner as part of a  
documented medical treatment. Upon request of the Board or its designee,  
25 Respondent shall provide documentation from the licensed practitioner that the  
prescription for the drug was legitimately issued and is a necessary part of the  
26 treatment of the Respondent. Failure to timely provide such documentation shall  
be considered a violation of probation. Respondent shall ensure that he is not in  
27 the same physical location as individuals who are using illicit substances even if  
Respondent is not personally ingesting the drugs. Any possession or use of  
28 alcohol, controlled substances, or their associated paraphernalia not supported by  
the documentation timely provided, and/or any physical proximity to persons using  
illicit substances, shall be considered a violation of probation.



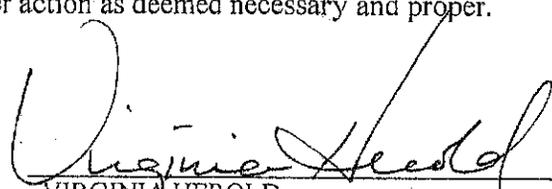
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PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3298 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. RPH 36956 issued to Eric Duane Ozimy;
2. Revoking or suspending Pharmacist License No. RPH 36956, issued to Eric Duane Ozimy;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/15/11



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

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# **Exhibit 1**

**Decision and Order**

**Board of Pharmacy Case No. 3298**

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

In the Matter of the Accusation Against:

Case No. 3298

ERIC DUANE OZIMY  
3455 Oak Grove Circle  
Stockton, California 95831

Registered Pharmacist No. RPH 36956  
Respondent.

DECISION AND ORDER

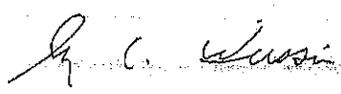
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 18, 2010.

It is so ORDERED on October 19, 2010.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 GEOFFREY S. ALLEN  
Deputy Attorney General  
4 State Bar No. 193338  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5341  
Facsimile: (916) 327-8643  
7 E-mail: Geoffrey.Allen@doj.ca.gov  
*Attorneys for Complainant*

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

In the Matter of the Accusation Against:

Case No. 3298

**ERIC DUANE OZIMY**  
3455 Oak Grove Circle  
Stockton, California 95831

OAH No. 2010011278

Registered Pharmacist No. RPH 36956

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

Respondent.

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

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Geoffrey S. Allen, Deputy Attorney General.

2. Respondent Eric Duane Ozimy (Respondent) is represented in this proceeding by attorney Albert M. Ellis, whose address is: Hakeem, Ellis, and Marengo, 3414 Brookside Rd., Ste. 110, Stockton, CA 95219.

///



CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

23  
24  
25       IT IS HEREBY ORDERED that Pharmacist License No. RPH 36956 issued to Respondent  
26 Eric Duane Ozimy is revoked. However, the revocation is stayed and Respondent is placed on  
27 probation for five (5) years on the following terms and conditions.

28     ///

1           1.    **Actual Suspension of License**

2           Respondent is suspended from the practice of pharmacy for thirty (30) days beginning the  
3 effective date of this decision.

4           2.    **Obey All Laws**

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

6           Respondent shall report any of the following occurrences to the Board, in writing, within  
7 seventy-two (72) hours of such occurrence:

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

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

19          3.    **Report to the Board**

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

28          ///

1           4.    **Interview with the Board**

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

7           5.    **Cooperate with Board Staff**

8           Respondent shall cooperate with the Board's inspection program and with the Board's  
9 monitoring and investigation of Respondent's compliance with the terms and conditions of his  
10 probation. Failure to cooperate shall be considered a violation of probation.

11          6.    **Continuing Education**

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

14          7.    **Notice to Employers**

15          During the period of probation, Respondent shall notify all present and prospective  
16 employers of the decision in Board case number 3298 and the terms, conditions and restrictions  
17 imposed on Respondent by the decision, as follows:

18                Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
19 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
21 tenure of employment) and owner to report to the Board in writing acknowledging that the listed  
22 individual(s) has/have read the decision in Board case number 3298, and terms and conditions  
23 imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
24 supervisor(s) submit timely acknowledgment(s) to the Board.

25                If Respondent works for or is employed by or through a pharmacy employment service,  
26 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
27 licensed by the Board of the terms and conditions of the decision in Board case number 3298 in  
28

1 advance of the Respondent commencing work at each licensed entity. A record of this  
2 notification must be provided to the Board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
4 (15) days of Respondent undertaking any new employment by or through a pharmacy  
5 employment service, Respondent shall cause his direct supervisor with the pharmacy employment  
6 service to report to the Board in writing acknowledging that he has read the decision in Board  
7 case number 3298 and the terms and conditions imposed thereby. It shall be Respondent's  
8 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
9 acknowledgment(s) to the Board.

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

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

17 ~~8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as~~  
18 ~~Designated Representative-in-Charge, or Serving as a Consultant~~

19 During the period of probation, Respondent shall not supervise any intern pharmacist, be  
20 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the  
21 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such  
22 unauthorized supervision responsibilities shall be considered a violation of probation.

23 9. Reimbursement of Board Costs

24 As a condition precedent to successful completion of probation, Respondent shall pay to the  
25 Board its costs of investigation and prosecution in the amount of \$2,249.50. Respondent shall  
26 make said payments as approved by the Board.

27 ///

28 ///

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

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

6           **10. Probation Monitoring Costs**

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

11           **11. Status of License**

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

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

19           **12. License Surrender While on Probation/Suspension**

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

27           Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license  
28 to the Board within ten (10) days of notification by the Board that the surrender is accepted.

1 Respondent may not reapply for any license from the Board for three (3) years from the effective  
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
3 of the date the application for that license is submitted to the Board, including any outstanding  
4 costs.

5 **13. Notification of a Change in Name, Residence Address, Mailing Address or**  
6 **Employment**

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

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

14 **14. Tolling of Probation**

15 Except during periods of suspension, Respondent shall, at all times while on probation, be  
16 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.

17 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
18 period of probation shall be extended by one month for each month during which this minimum is  
19 not met. During any such period of tolling of probation, Respondent must nonetheless comply  
20 with all terms and conditions of probation.

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

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

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

7 **15. Violation of Probation**

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

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

20 **16. Completion of Probation**

21 Upon written notice by the Board or its designee indicating successful completion of  
22 probation, Respondent's License will be fully restored.

23 **17. Suspension**

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 devices or controlled substances.

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

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

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

#### 12 18. 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  
19 of 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  
25 PRP. Any person terminated from the PRP program shall be automatically suspended by the  
26 Board. Respondent may not resume the practice of pharmacy until notified by the Board in  
27 writing.

28 ///

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
2 licensed practitioner as part of a documented medical treatment shall result in the automatic  
3 suspension of practice by Respondent and shall be considered a violation of probation.

4 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

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

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

#### 24 19. Random Drug Screening

25 Respondent, at his own expense, shall participate in random testing, including but not  
26 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
27 screening program as directed by the Board or its designee. Respondent may be required to  
28 participate in testing for the entire probation period and the frequency of testing will be

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

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

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

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

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

1           20.   **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           21.   **Community Services Program**

14           Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
15 Board or its designee, for prior approval, a community service program in which Respondent  
16 shall provide free health-care related services on a regular basis to a community or charitable  
17 facility or agency for at least two hundred (200) hours during the period of probation. Within  
18 thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board  
19 demonstrating commencement of the community service program. A record of this notification  
20 must be provided to the Board upon request. Respondent shall report on progress with the  
21 community service program in the quarterly reports. Failure to timely submit, commence, or  
22 comply with the program shall be considered a violation of probation.

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

24           Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
25 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
26 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the  
27 Respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs and  
28 who will coordinate and monitor any prescriptions for Respondent for dangerous drugs,

1 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a  
2 copy of the Board's Accusation and decision. A record of this notification must be provided to  
3 the Board upon request. Respondent shall sign a release authorizing the practitioner to  
4 communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse  
5 practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for  
6 the duration of probation regarding Respondent's compliance with this condition. If any  
7 substances considered addictive have been prescribed, the report shall identify a program for the  
8 time limited use of any such substances. The Board may require that the single coordinating  
9 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive  
10 medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease  
11 supervision by the approved practitioner, Respondent shall notify the Board immediately and,  
12 within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse  
13 practitioner, physician assistant, or psychiatrist of Respondent's choice to the Board or its  
14 designee for its prior approval. Failure to timely submit the selected practitioner or replacement  
15 practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly  
16 reports, shall be considered a violation of probation.

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

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

1 and controlled substances. Respondent shall not resume practice until notified by the Board.

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

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

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

### 10 23. Supervised Practice

11 During the period of probation, Respondent shall practice only under the supervision of a  
12 licensed pharmacist not on probation with the Board. Upon and after the effective date of this  
13 decision, Respondent shall not practice pharmacy and his license shall be automatically  
14 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,  
15 as required by the Board or its designee, either:

16 Continuous - At least 75% of a work week

17 Substantial - At least 50% of a work week

18 Partial - At least 25% of a work week

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

20 Within thirty (30) days of the effective date of this decision, Respondent shall have his  
21 supervisor submit notification to the Board in writing stating that the supervisor has read the  
22 decision in Board case number 3298 and is familiar with the required level of supervision as  
23 determined by the Board or its designee. It shall be the Respondent's responsibility to ensure that  
24 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
25 the Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
26 acknowledgements to the Board shall be considered a violation of probation.

27 If Respondent changes employment, it shall be the Respondent's responsibility to ensure  
28 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely

1 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)  
2 days after employment commences, submit notification to the Board in writing stating the direct  
3 supervisor and pharmacist-in-charge have read the decision in Board case number 3298 and is  
4 familiar with the level of supervision as determined by the Board. Respondent shall not practice  
5 pharmacy and his license shall be automatically suspended until the Board or its designee  
6 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to  
7 submit timely acknowledgements to the Board shall be considered a violation of probation.

8       Within ten (10) days of leaving employment, Respondent shall notify the Board in writing.

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

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

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

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

#### 25       24. Separate File of Records

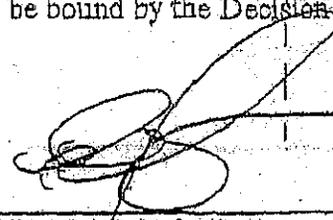
26       Respondent shall maintain and make available for inspection a separate file of all records  
27 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such  
28 file or make it available for inspection shall be considered a violation of probation.

ACCEPTANCE

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I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Albert M. Ellis. I understand the stipulation and the effect it will have on my License. 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.

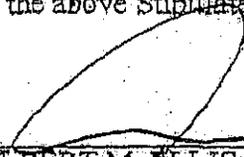
DATED: 8-12-10



ERIC DUANE OZIMY  
Respondent

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

DATED: 8/12/10



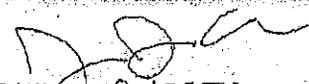
ALBERT M. ELLIS  
Attorney for Respondent

ENDORSEMENT

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

Dated: 8/12/10

Respectfully Submitted,  
EDMUND G. BROWN JR.  
Attorney General of California  
ARTHUR D. TAGGART  
Supervising Deputy Attorney General

  
GEOFFREY S. ALLEN  
Deputy Attorney General  
Attorneys for Complainant

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E-mail: Geoffrey.Allen@doj.ca.gov

7 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. 3298

12 **ERIC DUANE OZIMY**  
13 3455 Oak Grove Circle  
Stockton, California 95831

OAH Case No.

**A C C U S A T I O N**

14 Registered Pharmacist No. RPH 36956

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 16, 1982, the Board of Pharmacy issued Registered  
23 Pharmacist License Number RPH 36956 (License) to Eric Duane Ozimy (Respondent). The  
24 License will expire on February 28, 2010, unless renewed.

25 JURISDICTION

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

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

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

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

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

16                  (i) The conviction of a crime substantially related to the  
17                  qualifications, functions, and duties of a licensee under this chapter. The record  
18                  of conviction of a violation of Chapter 13 (commencing with Section 801) of Title  
19                  21 of the United States Code regulating controlled substances or of a violation of  
20                  the statutes of this state regulating controlled substances or dangerous drugs shall  
21                  be conclusive evidence of unprofessional conduct. In all other cases, the record  
22                  of conviction shall be conclusive evidence only of the fact that the conviction  
23                  occurred. The board may inquire into the circumstances surrounding the  
24                  commission of the crime, in order to fix the degree of discipline or, in the case of  
25                  a conviction not involving controlled substances or dangerous drugs, to determine  
26                  if the conviction is of an offense substantially related to the qualifications,  
27                  functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
28                  or a conviction following a plea of nolo contendere is deemed to be a conviction  
                  within the meaning of this provision. The board may take action when the time  
                  for appeal has elapsed, or the judgment of conviction has been affirmed on appeal  
                  or when an order granting probation is made suspending the imposition of  
                  sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
                  Code allowing the person to withdraw his or her plea of guilty and to enter a plea  
                  of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
                  information, or indictment.

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

1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 6. Respondent is subject to disciplinary action under Code section 4301,  
4 subd. (1) in that Respondent has been convicted of a crime substantially related to the  
5 qualifications, functions and duties of a pharmacist. The circumstances are as follows:

6 7. On or about, August 8, 2006, in the Superior Court of California, County  
7 of San Joaquin, in the case entitled, *People of the State of California v. Eric Duane Ozimy*  
8 (Super. Ct. San Joaquin County, 2006, Case No. ST042341A), Respondent was convicted on his  
9 plea of nolo contendere of violating Vehicle Code section 23152(a) (Driving Under the Influence  
10 of Alcohol or Drugs), a misdemeanor.

11 8. The circumstances of the crime are that on or about March 17, 2006,  
12 Officers Guerrero and Harris of the Stockton Police Department responded to a report of a  
13 vehicle collision with injury. Upon their arrival at the scene they discovered a solo vehicle  
14 collision had occurred involving Respondent who had struck and severed a tree and then struck a  
15 brick planter. Respondent requested medical treatment for facial injuries and body pain and was  
16 transported to the county hospital. Officer Asklof of the Stockton Police Department then  
17 arrived to assist Officers Guerrero and Harris. Officer Asklof proceeded to the hospital to  
18 interview Respondent. During the interview Respondent was incoherent and admitted to  
19 consuming alcoholic beverages prior to the crash. Officer Asklof observed Respondent's eyes  
20 to be bloodshot and watery, his speech was slurred, and he had an odor of alcohol on his breath.

21 Respondent was placed under arrest by the Stockton Police Department of violating Vehicle  
22 Code section 23152(a) (Driving Under the Influence of Alcohol or Drugs), a misdemeanor.

23 Respondent submitted a blood sample for testing. The results of the toxicology analysis showed  
24 a Blood Alcohol Content of 0.00% and a positive result for opiates, namely hydrocodone  
25 (Vicodin<sup>1</sup>) and zolpidem (Ambien<sup>2</sup>).

26 \_\_\_\_\_  
27 1. Vicodin is a brand name compound consisting of 5, 7.5 or 10 mg hydrocodone bitartrate  
28 also known as dihydrocodeinone, a Schedule III narcotic controlled substance as designated by  
Health and Safety Code section 11056(e)(4), and 325 or 500 mg acetaminophen per tablet, and



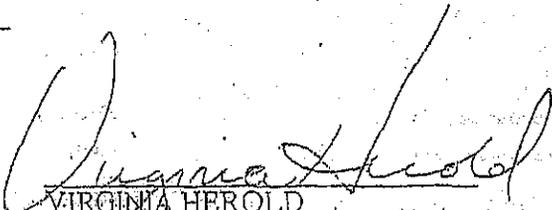
1 placed on probation for a period of five years. Respondent was also suspended from the practice  
2 of pharmacy for one year. Respondent's return to practice was contingent upon the approval of  
3 the Board and the successful completion of the Pharmacist Recovery Program.

4 PRAYER

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

- 7 1. Revoking or suspending Registered Pharmacist Number RPH 36956,  
8 issued to Eric Duane Ozimy.
- 9 2. Ordering Eric Duane Ozimy, to pay the Board of Pharmacy the reasonable  
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
11 Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

13  
14 DATED: 10/6/09

15  
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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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