

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

In the Matter of the Accusation Against:

Case No. 4788

DANIEL JOHN OPATZ
5451 Burlingame Avenue
Buena Park, CA 90621

Pharmacist License No. RPH 37645

Respondent.

DECISION AND ORDER

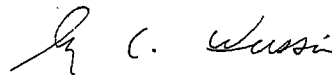
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 16, 2014.

It is so ORDERED on September 9, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

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

12 In the Matter of the Accusation Against:

13 **DANIEL JOHN OPATZ**
14 **5451 Burlingame Avenue**
15 **Buena Park, CA 90621**

16 **Pharmacist License No. RPH 37645**

17 Respondent.

Case No. 4788

OAH No. 2013110050

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

22 PARTIES

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

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 4788.

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

6 CONTINGENCY

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

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

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

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

28 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 37645 issued to Respondent
3 Daniel John Opatz (Respondent) is revoked. However, the revocation is stayed and Respondent
4 is placed on probation for five (5) years on the following terms and conditions.

5 **1. Obey All Laws**

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

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

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

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

20 **2. Report to the Board**

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

1 **3. 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 its
4 designee. Failure to appear for any scheduled interview without prior notification to board staff,
5 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
6 the period of probation, shall be considered a violation of probation.

7 **4. 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 **5. 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 **6. Notice to Employers**

15 During the period of probation, respondent shall notify all present and prospective
16 employers of the decision in case number 4788 and the terms, conditions and restrictions imposed
17 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 case number 4788, and terms and conditions imposed
23 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
24 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 case number 4788 in advance
28

1 of the respondent commencing work at each licensed entity. A record of this notification must be
2 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 employment
5 service, respondent shall cause his direct supervisor with the pharmacy employment service to
6 report to the board in writing acknowledging that he has read the decision in case number 4788
7 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
8 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

22 **8. Reimbursement of Board Costs**

23 As a condition precedent to successful completion of probation, respondent shall pay to the
24 board its costs of investigation and prosecution in the amount of \$4,803.00. Respondent shall
25 make said payments under a payment plan approved by the board.

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

1 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
2 reimburse the board its costs of investigation and prosecution.

3 **9. Probation Monitoring Costs**

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

8 **10. Status of License**

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

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

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

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

24 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
25 the board within ten (10) days of notification by the board that the surrender is accepted.

26 Respondent may not reapply for any license from the board for three (3) years from the effective
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
28

1 of the date the application for that license is submitted to the board, including any outstanding
2 costs.

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

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

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

12 **13. Tolling of Probation**

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

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

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

27 "Cessation of practice" means any calendar month during which respondent is
28 not practicing as a pharmacist for at least 40 hours, as defined by Business and

1 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
2 month during which respondent is practicing as a pharmacist for at least 40 hours as a
3 pharmacist as defined by Business and Professions Code section 4000 et seq.

4 **14. Violation of Probation**

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

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

17 **15. Completion of Probation**

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

20 **16. Suspension**

21 As part of probation, respondent is suspended from the practice of pharmacy for 180
22 consecutive days beginning the effective date of this decision.

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

1 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
2 and devices or controlled substances.

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

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

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

11 **17. Remedial Education**

12 Within 60 days of the effective date of this decision, respondent shall submit to the board or
13 its designee, for prior approval, an appropriate program of remedial education related to
14 prescription drug abuse, pain management, and corresponding responsibility. The program of
15 remedial education shall consist of at least 10 hours per year for 3 years, which shall be
16 completed within 4 years of the effective date of this decision at respondent's own expense. All
17 remedial education shall be in addition to, and shall not be credited toward, continuing education
18 (CE) courses used for license renewal purposes.

19 Failure to timely submit or complete the approved remedial education shall be considered a
20 violation of probation. The period of probation will be automatically extended until such
21 remedial education is successfully completed and written proof, in a form acceptable to the board,
22 is provided to the board or its designee.

23 Following the completion of each course, the board or its designee may require the
24 respondent, at his own expense, to take an approved examination to test the respondent's
25 knowledge of the course. If the respondent does not achieve a passing score on the examination,
26 this failure shall be considered a violation of probation. Any such examination failure shall
27 require respondent to take another course approved by the board in the same subject area.

28 ///

1 **18. 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 suspended
5 until a supervisor is approved by the board or its designee. The supervision shall be, as required
6 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 4788 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 that
19 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
20 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
21 commences, submit notification to the board in writing stating the direct supervisor and
22 pharmacist-in-charge have read the decision in case number 4788 and is familiar with the level of
23 supervision as determined by the board. Respondent shall not practice pharmacy and his license
24 shall be automatically suspended until the board or its designee approves a new supervisor.
25 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 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 any
13 licensed premises in which he holds an interest at the time this decision becomes effective unless
14 otherwise specified in this order.

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

16 **19. 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 **20. Separate File of Records**

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

28 ///

1 **21. Report of Controlled Substances**

2 Respondent shall submit quarterly reports to the board detailing the total acquisition and
3 disposition of such controlled substances as the board may direct. Respondent shall specify the
4 manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a
5 manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report
6 on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the
7 board no later than ten (10) days following the end of the reporting period. Failure to timely
8 prepare or submit such reports shall be considered a violation of probation.

9 **22. Criminal Probation/Parole Reports**

10 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
11 board, in writing, within ten (10) days of the issuance or modification of those conditions.
12 Respondent shall provide the name of his probation/parole officer to the board, in writing, within
13 ten (10) days after that officer is designated or a replacement for that officer is designated.
14 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten
15 (10) days after respondent receives a copy of such a report. Failure to timely make any of the
16 submissions required hereby shall be considered a violation of probation.

17 **23. Tolling of Suspension**

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

25 Respondent must notify the board in writing within ten (10) days of departure, and must
26 further notify the board in writing within ten (10) days of return. The failure to provide such
27 notification(s) shall constitute a violation of probation. Upon such departure and return,
28 respondent shall not resume the practice of pharmacy until notified by the board that the period of

1 suspension has been satisfactorily completed.

2 24. Ethics Course

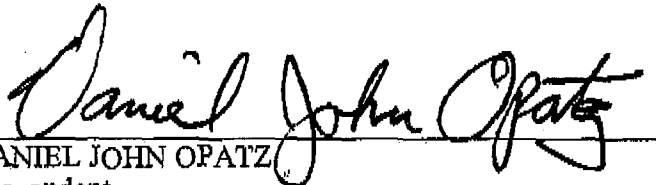
3 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
4 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
5 Failure to initiate the course during the first year of probation, and complete it within the second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

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

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Ronald D. MacGregor. I understand the stipulation and the effect
12 it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
13 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
14 of the Board of Pharmacy.

15
16 DATED: 7-25-14

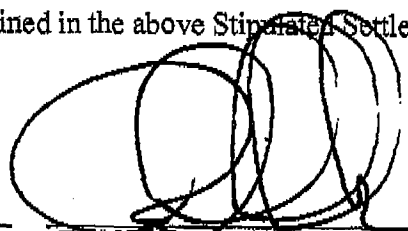

DANIEL JOHN OPATZ
Respondent

17
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

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

DATED: 7.25.14



RONALD B. MACGREGOR
Attorney for Respondent

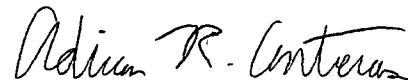
ENDORSEMENT

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

Dated: 7/25/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



ADRIAN R. CONTRERAS
Deputy Attorney General
Attorneys for Complainant

SD2013705536
70908956.doc

Exhibit A

Accusation No. 4788

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

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

12 In the Matter of the Accusation Against:

Case No. 4788

13 **DANIEL JOHN OPATZ**
14 **5451 Burlingame Avenue**
Buena Park, CA 90621

A C C U S A T I O N

15 **Pharmacist License No. RPH 37645**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about April 4, 1983, the Board of Pharmacy issued Pharmacist License Number
23 RPH 37645 to Daniel John Opatz (Respondent). The Pharmacist License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless
25 renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

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

10 "(1) Suspending judgment.

11 "(2) Placing him or her upon probation.

12 "(3) Suspending his or her right to practice for a period not exceeding one year.

13 "(4) Revoking his or her license.

14 "(5) Taking any other action in relation to disciplining him or her as the board in its
15 discretion may deem proper.

16 "...

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

22 5. Section 4300.1 of the Code states:

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

28 ///

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

7 "(d) The Legislature hereby finds and declares that the application of this section has been
8 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
9 554, and that the holding in that case has placed a significant number of statutes and regulations
10 in question, resulting in potential harm to the consumers of California from licensees who have
11 been convicted of crimes. Therefore, the Legislature finds and declares that this section
12 establishes an independent basis for a board to impose discipline upon a licensee, and that the
13 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
14 constitute a change to, but rather are declaratory of, existing law."

15 9. Section 493 of the Code states:

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

25 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
26 'registration.'"

27 ///

28 ///

1 10. Section 4301 of the Code states:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ". . .

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

9 "(g) Knowingly making or signing any certificate or other document that falsely represents
10 the existence or nonexistence of a state of facts.

11 ". . .

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

14 ". . .

15 "(l) The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

21 The board may inquire into the circumstances surrounding the commission of the crime, in order
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
26 of this provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.

4 "(p) Actions or conduct that would have warranted denial of a license.

5 "..."

6 11. Section 4324 of the Code states:

7 "(a) Every person who signs the name of another, or of a fictitious person, or falsely makes,
8 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
9 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
10 state prison, or by imprisonment in the county jail for not more than one year.

11 "..."

12 REGULATORY PROVISIONS

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

14 "..."

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

19 "(1) Nature and severity of the act(s) or offense(s).

20 "(2) Total criminal record.

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

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

24 "(5) Evidence, if any, of rehabilitation submitted by the licensee.

25 13. California Code of Regulations, title 16, section 1770 states:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare.”

4 **COSTS**

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

11 **DRUGS**

12 15. Hydrocodone is marketed under numerous trade names, including Vicodin and
13 Norco. Hydrocodone/APAP is a Schedule III controlled substance pursuant to Health and Safety
14 Code section 11056, subdivision (e), and is a dangerous drug pursuant to Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(July 19, 2012, Criminal Conviction for Forging a Prescription on December 9, 2010)**

17 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
18 (l) of the Code in that he was convicted of a crime substantially related to the qualifications,
19 functions, and duties of a licensee. The circumstances are as follows:

20 17. On or about July 19, 2012, in a criminal proceeding entitled *People v. Opatz*, in
21 Orange County Superior Court, case number 12NF0272, Respondent was convicted on his plea of
22 guilty of violating Code section 4324, subdivision (a), forging a prescription, a misdemeanor.

23 18. As a result of the conviction, Respondent was sentenced to three years informal
24 probation, and ordered to pay fines and fees and complete thirty days of community service.

25 19. The facts that led to the conviction are that on or about December 9, 2010,
26 Respondent, while working as a pharmacist at Ride Aid Pharmacy, forged multiple prescriptions
27 of hydrocodone/APAP for a former coworker of his, Michelle E. Afterwards, he filled the
28 prescriptions and gave them to Michelle.

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

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Act of Moral Turpitude or Dishonesty)

20. Respondent is subject to disciplinary action under Code section 4301, subdivision (f) in that Respondent committed forgery, an act of moral turpitude or dishonesty. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 16-19.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Knowingly Making a Document That Falsely Represents the Existence of a State of Facts)

21. Respondent is subject to disciplinary action under Code section 4301, subdivision (g) in that Respondent knowingly made a document that falsely represents the existence or nonexistence of a state of facts. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 16-19.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violation of Law Regulating Controlled Substances and Dangerous Drugs)

22. Respondent is subject to disciplinary action under Code section 4301, subdivision (j) in that Respondent violated Code section 4324, subdivision (a), a law regulating controlled substances and dangerous drugs. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 16-19.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Act Warranting Denial of Licensure)

23. Respondent is subject to disciplinary action under section 4301, subdivision (p), in that he committed an act that would have warranted denial of a license by forging a prescription, an act enumerated in Code section 480, subdivision (a)(2), which is cause for denial of a license to an applicant who committed an act of dishonesty with the intent to substantially benefit another. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 16-19.

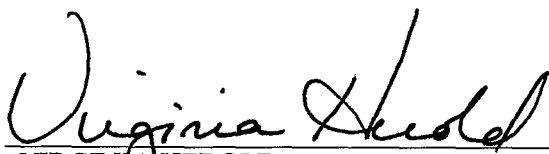
///

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 or suspending Pharmacist License Number RPH 37645, issued to Daniel John Opatz;
2. Ordering Daniel John Opatz to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/3/13



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

SD2013705536
70744402.doc