

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

In the Matter of the Accusation Against:

MICHAEL WILLIAM WITHERBY
21102 White Horse Lane
Huntington Beach, CA 92464

Pharmacist License No. RPH 38874,

Respondent.

Case No. 5163

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on June 30, 2017.

It is so ORDERED on May 31, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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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 Against:

Case No. 5163

12 **MICHAEL WILLIAM WITHERBY**
13 **21102 White Horse Lane**
14 **Huntington Beach, CA 92646**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Pharmacist License No. RPH 38874**

16 Respondent.

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

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
21 (Board). She brought this action solely in her official capacity and is represented in this matter by
22 Xavier Becerra, Attorney General of the State of California, by Diane de Kervor, Deputy
23 Attorney General.

24 2. Michael William Witherby (Respondent) is representing himself in this proceeding
25 and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 23, 1984, the Board issued Pharmacist License No. RPH 38874
27 to Michael William Witherby. The Pharmacist License was in full force and effect at all times
28

1 relevant to the charges brought in Accusation No. 5163 and will expire on May 31, 2018, unless
2 renewed.

3 4. On March 27, 2017, the Office of Administrative Hearings Issued a Stipulated
4 Interim Suspension of License suspending Respondent's Pharmacy Board License until final
5 disposition of the Accusation against Respondent. Accordingly, Respondent is suspended from
6 practice at this time.

7 JURISDICTION

8 5. Accusation No. 5163 was filed before the Board of Pharmacy (Board), and is
9 currently pending against Respondent. The Accusation and all other statutorily required
10 documents were properly served on Respondent on April 4, 2017. Respondent timely filed his
11 Notice of Defense contesting the Accusation. A copy of Accusation No. 5163 is attached as
12 Exhibit A and incorporated by reference.

13 ADVISEMENT AND WAIVERS

14 6. Respondent has carefully read, and understands the charges and allegations in
15 Accusation No. 5163. Respondent also has carefully read, and understands the effects of this
16 Stipulated Surrender of License and Order.

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

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

26 CULPABILITY

27 9. Respondent understands that the charges and allegations in Accusation No. 5163, if
28 proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License.

1 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
2 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
3 executed by an authorized representative of each of the parties.

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

6 **ORDER**

7 IT IS HEREBY ORDERED that Pharmacist License No. RPH 38874, issued to Respondent
8 Michael William Witherby, is surrendered and accepted by the Board of Pharmacy.

9 1. The surrender of Respondent's Pharmacist License and the acceptance of the
10 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
11 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
12 license history with the Board of Pharmacy.

13 2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the
14 effective date of the Board's Decision and Order.

15 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
16 issued, his wall certificate on or before the effective date of the Decision and Order.

17 4. If Respondent ever files an application for licensure or a petition for reinstatement in
18 the State of California, the Board shall treat it as a new application for licensure. Respondent
19 must wait three (3) years from the date of this order before he may petition or apply for licensure
20 from the Board. Respondent must comply with all the laws, regulations and procedures for
21 reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges
22 and allegations contained in Accusation No. 5163 shall be deemed to be true, correct and
23 admitted by Respondent when the Board determines whether to grant or deny the petition.

24 5. Respondent shall pay the agency its costs of investigation and enforcement in the
25 amount of \$8,101.75 prior to issuance of a new or reinstated license.

26 6. If Respondent should ever apply or reapply for a new license or certification, or
27 petition for reinstatement of a license, by any other health care licensing agency in the State of
28 California, all of the charges and allegations contained in Accusation, No. 5163 shall be deemed

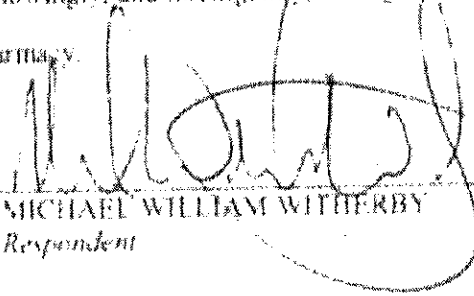
1 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
2 other proceeding seeking to deny or restrict licensure.

3 ACCEPTANCE

4 I have carefully read the Stipulated Surrender of License and Order. I understand the
5 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
6 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
7 by the Decision and Order of the Board of Pharmacy.

8
9 DATED

4/28/2017


MICHAEL WILLIAM WITHERBY
Respondent

10
11 ENDORSEMENT

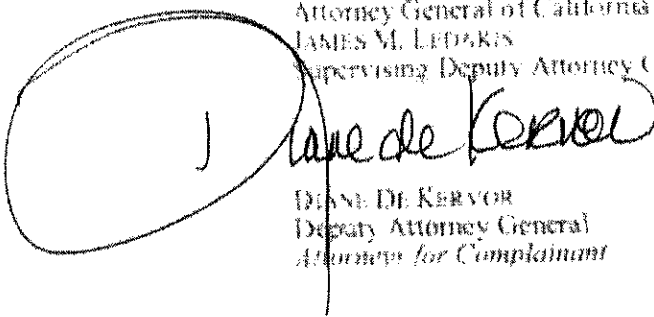
12 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
13 for consideration by the Board of Pharmacy of the Department of Consumer Affairs

14
15 Dated:

5/5/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


DIANE DE KERVOR
Deputy Attorney General
Attorney for Complainant

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Exhibit A
Accusation No. 5163

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11 In the Matter of the Accusation Against:

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13 **21102 White Horse Lane**
14 **Huntington Beach, CA 92646**

A C C U S A T I O N

15 **Pharmacist License No. RPH 38874**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 23, 1984, the Board of Pharmacy issued Pharmacist License
22 Number RPH 38874 to Michael William Witherby (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
24 2018, unless renewed.

25 3. On March 27, 2017, the Office of Administrative Hearings Issued a Stipulated
26 Interim Suspension of License suspending Respondent's Pharmacy Board License until final
27 disposition of the Accusation against Respondent. Accordingly, Respondent is suspended from
28 practice at this time.

1 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
2 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
3 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
4 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
5 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
6 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
7 shall not apply to the possession of any controlled substance by a manufacturer,
8 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
9 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
10 physician assistant, when in stock in containers correctly labeled with the name and
11 address of the supplier or producer.

12
13 Nothing in this section authorizes a certified nurse-midwife, a nurse
14 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
15 stock of dangerous drugs and devices.

16 11. Section 4301 of the Code states:

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

20

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

24

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

. . . .

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

. . . .

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

12. Section 4327 of the code states:

Any person who, while on duty, sells, dispenses or compounds any drug
while under the influence of any dangerous drug or alcoholic beverages shall be
guilty of a misdemeanor.

1 13. Health and Safety Code section 11170 provides that “no person shall prescribe,
2 administer, or furnish a controlled substance for himself.”

3 14. Health and Safety Code section 11171 provides that “no person shall prescribe,
4 administer, or furnish a controlled substance except under the conditions and in the manner
5 provided by this division.”

6 15. Health and Safety Code section 11173 states:

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

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

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

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

15 16. Health and Safety Code section 11175 states:

16 No person shall obtain or possess a prescription that does not comply with this
17 division, nor shall any person obtain a controlled substance by means of a
18 prescription which does not comply with this division or possess a controlled
substance obtained by such a prescription.

19 17. Health and Safety Code section 11180 states that “no person shall obtain or possess a
20 controlled substance obtained by a prescription that does not comply with this division.”

21 18. United States Code, title 21, section 843, subdivision (a)(3) states:

22 (a) It shall be unlawful for any person knowingly or intentionally – (3) to
23 acquire or obtain possession of a controlled substance by misrepresentation, fraud,
24 forgery, deception, or subterfuge.

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1 DRUGS

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3 BRAND NAME	4 GENERIC NAME	5 DANGEROUS DRUG PER B & PC 4022	6 CONTROLLED SUBSTANCE PER H & SC	7 INDICATIONS FOR USE
8 Demerol	9 Meperidine	10 Yes	11 11055	12 Severe pain
13 Versed	14 Midazolam	15 Yes	16 11057(d)(21)	17 Anesthesia, pain
18 MS Contin, Duramorph, etc.	19 Morphine	20 Yes	21 11055(b)(1)(L)	22 Severe pain
23 Duragesic, Sublimaze	24 Fentanyl	25 Yes	26 11055(c)(8)	27 Severe pain
28 Vimpat	Lacosamide	Yes	N/A	Seizures

FACTS

11 19. In October of 2016, Respondent was employed as a Pharmacist at Orange County
12 Global Medical Center (OCGMC) located at 1001 N. Tustin Avenue, Santa Ana, CA 92705.

13 20. On October 2, 2016, LW, the Director of Pharmacy at OCGMC at the time was
14 notified that Respondent's behavior on duty aroused suspicion of impairment. Respondent had
15 checked out meperidine and fentanyl vials from the pharmacy and then was missing from his post
16 for much of the day. One of the security cameras at the facility showed Respondent entering a
17 single coed restroom at 8:30am with a bin in his hand and exited at 9:08am.

18 21. Later that afternoon, the Manager of Security, House Supervisor, and LW interviewed
19 Respondent and confirmed that he was red in face, sweaty and dull and appeared to be impaired.
20 Respondent admitted to them that he "had a problem" and that he "was messed up." Respondent
21 admitted that he was taking Norco. Respondent also admitted that he took Meperidine from the
22 pharmacy at OCGMC without a prescription.

23 22. Respondent refused a drug test and he was released from his duties for the day and
24 the administration offered to pay for a cab to drive him home.

25 23. On October 4, 2016, Respondent was terminated from his position at the facility.

26 24. On October 13, 2016, LW reported the issue to the Pharmacy Board and the facility
27 also reported this matter to the Drug Enforcement Administration.
28

1 25. On October 31, 2016, a Pharmacy Board Inspector commenced an investigation of
2 the complaint. As part of her investigation, the Inspector interviewed Respondent. Respondent
3 reported to the Investigator that he had a neck injury in 1995 and then a re-injury in 2012 and had
4 been taking pain medication to address the pain when he became addicted to them. Respondent
5 reported that he had underwent an outpatient rehabilitation program at Hoag Hospital, had a
6 successful surgery, and the pain resolved. Respondent reported that he returned to work at Hoag
7 Hospital in August of 2012.

8 26. Respondent reported, however, that while he was working at Hoag Hospital, the
9 cravings returned and he started diverting injectable Fentanyl from the pharmacy. He admitted to
10 injecting 50-100 mg to himself anywhere from zero to multiple times per day. He was going
11 through withdrawals in the bathroom, was discovered by staff, and he was terminated from that
12 hospital in September of 2012.

13 27. Respondent reported that he put himself through a recovery program and started
14 working at OCGMC in November of 2012 as a clinical pharmacist in the OR, ICU and CCU.
15 Respondent admitted that after awhile he started taking the expired injectable Meperidine from
16 emergency kits and pocketing them. He was injecting himself with 50-100 mg Meperidine
17 anywhere from zero to multiple times per day. On the day he was caught at OCGMC, he
18 admitted to injecting himself with the medication in the facility restroom.

19 28. Respondent has signed a declaration admitting to the diversion of medication and
20 taking medication while on duty, as follows:

21 I, Michael Witherby, admit to diversion and + self administration of narcotics from
22 Hoag Hospital (Fentanyl = 2012) and also from Orange County Global (Meperidine =
23 2016) – both occasions resulted in termination. Drug use was escalated prior to
24 termination at both hospitals – dose range for Fentanyl 100-150 mg IV – 0 to multiple
times/day – Meperidine 50-100 mg IV 0-multiple times/day... I realize that whatever
occupation I decide upon will be in an environment devoid of any medications.

25 29. On December 31, 2016, the board sent an Inspector to OCGMC to investigate the
26 allegation. A review of the medications at the pharmacy confirmed that Meperidine had been
27 diverted from the facility.

28 ///

1 and Health and Safety Code section 11170. Specifically, on October 2, 2016 Respondent diverted
2 controlled substances, used those substances, and admitted to being under the influence of those
3 substances at work. The circumstances are further described in paragraphs 19 to 32 above, which
4 are incorporated herein by reference.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Diversion of Dangerous Drugs from Pharmacy)**

7 34. Respondent is subject to disciplinary action under section 4301(f), 4301(j) and
8 4301(o) in that he engaged in unprofessional conduct involving moral turpitude, dishonesty,
9 fraud, deceit, or corruption when he diverted dangerous drugs from the hospital pharmacy where
10 he worked in violation of Code section 4059. Specifically, from June 12, 2014 to August 6, 2014,
11 Respondent unlawfully diverted 2 bags of lacosamide 100mg/50ml NS without a prescriber's
12 authorization from OCGMC. The circumstances are further described in paragraphs 19 to 33
13 above and are incorporated herein by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct – Possession of Narcotics Without a Prescription)**

16 35. Respondent is subject to disciplinary action under section 4301(j) and 4301(o) in that
17 he engaged in unprofessional conduct when he possessed a controlled substance without a
18 prescription in violation of section 4060 and Health and Safety Code sections 11175 and 11180 .
19 Specifically, from January 1, 2013 to October 2, 2106, Respondent unlawfully diverted 776 vials
20 of meperidine 50mg /1ml, 604 vials of meperidine 75mg/1ml vial, 357 vials of meperidine
21 100mg/1ml vial, 1 bag of midazolam 100mg in 100ml NS, 1 vial of morphine 10mg/1ml vial, 1
22 syringe of morphine 30mg/30cc, 5 fentanyl Citrate NICU Syringe 5mcg/1 ml, 27 vials of fentanyl
23 Citrate 100mcg/1 ml vial, and 77 Amps of fentanyl Citrate 250mcg/5ml from the pharmacy where
24 he worked. The circumstances are further described in paragraphs 19 to 34 above, and are
25 incorporated herein by reference.

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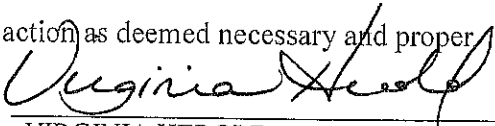
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PRAYER

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 or suspending Pharmacist License Number RPH 38874, issued to Michael William Witherby;
- 2. Ordering Michael William Witherby 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: 3/31/17



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

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