

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

In the Matter of the Statement of Issues Against:

Case No. 5083

BRENDAN JOHN KELLY

951 Prospect Avenue
Vallejo, CA 94592

Pharmacist Intern Applicant

Respondent.

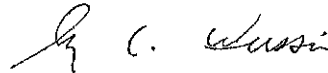
DECISION AND ORDER

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 May 14, 2014.

It is so ORDERED on May 7, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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Attorney General of California
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 5083

12 **BRENDAN JOHN KELLY**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13
14 Respondent.

15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

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

23 2. Respondent Brendan John Kelly ("Respondent") is represented in this proceeding by
24 attorney Jeff Kravitz, whose address is: 6747 Fair Oaks Boulevard
25 Carmichael, CA 95608

26 3. On or about May 6, 2013, Respondent filed an application dated May 2, 2013, with
27 the Board of Pharmacy to obtain a Pharmacist Intern license.
28

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory
3 requirements for issuance of a license a Pharmacist Intern License will be issued to Respondent.
4 The License will be immediately revoked. However, the revocation will be stayed and the
5 Respondent placed on two (2) years probation on the following terms and conditions.

6 **1. Obey All Laws**

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

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

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

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

21 **2. Report to the Board**

22 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
23 designee. The report shall be made either in person or in writing, as directed. Among other
24 requirements, respondent shall state in each report under penalty of perjury whether there has
25 been compliance with all the terms and conditions of probation. Failure to submit timely reports
26 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
27 in submission of reports as directed may be added to the total period of probation. Moreover, if
28

1 the final probation report is not made as directed, probation shall be automatically extended until
2 such time as the final report is made and accepted by the board.

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

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

13 **5. Notice to Employers**

14 During the period of probation, respondent shall notify all present and prospective
15 employers of the decision in case number 5083 and the terms, conditions and restrictions imposed
16 on respondent by the decision, as follows:

17 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
18 respondent undertaking any new employment, respondent shall cause his direct supervisor,
19 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
20 tenure of employment) and owner to report to the board in writing acknowledging that the listed
21 individual(s) has/have read the decision in case number 5083, and terms and conditions imposed
22 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
23 submit timely acknowledgment(s) to the board.

24 If respondent works for or is employed by or through a pharmacy employment service,
25 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
26 licensed by the board of the terms and conditions of the decision in case number 5083 in advance
27 of the respondent commencing work at each licensed entity. A record of this notification must be
28 provided to the board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
2 (15) days of respondent undertaking any new employment by or through a pharmacy employment
3 service, respondent shall cause his direct supervisor with the pharmacy employment service to
4 report to the board in writing acknowledging that he has read the decision in case number 5083
5 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
6 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

14 **6. Probation Monitoring Costs**

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

19 **7. Status of License**

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

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

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

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

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

15 **9. Notification of a Change in Name, Residence Address, Mailing Address or**
16 **Employment**

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

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

24 **10. Tolling of Probation**

25 Except during periods of suspension, respondent shall, at all times while on probation, be
26 employed as a pharmacist intern in California for a minimum of 15 hours per calendar month.
27 Any month during which this minimum is not met shall toll the period of probation, i.e., the
28 period of probation shall be extended by one month for each month during which this minimum is

1 not met. During any such period of tolling of probation, respondent must nonetheless comply
2 with all terms and conditions of probation.

3 Should respondent, regardless of residency, for any reason (including vacation) cease
4 practicing as a pharmacist intern for a minimum of 15 hours per calendar month in California,
5 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
6 must further notify the board in writing within ten (10) days of the resumption of practice. Any
7 failure to provide such notification(s) shall be considered a violation of probation.

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

11 "Cessation of practice" means any calendar month during which respondent is
12 not practicing as a pharmacist intern for at least 15 hours, as defined by Business and
13 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
14 month during which respondent is practicing as a pharmacist for at least 15 hours as a
15 pharmacist intern as defined by Business and Professions Code section 4000 et seq.

16 **11. Violation of Probation**

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

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

1 **12. Completion of Probation**

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

4 **13. Pharmacists Recovery Program (PRP)**

5 Within thirty (30) days of any positive drug test mandated by term 14, below, respondent
6 shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately
7 thereafter enroll, successfully participate in, and complete the treatment contract and any
8 subsequent addendums as recommended and provided by the PRP and as approved by the board
9 or its designee. This terms is only required in the event of a positive drug test. The costs for PRP
10 participation shall be borne by the respondent.

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

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

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

20 Any confirmed positive test for any drug not lawfully prescribed by a licensed practitioner
21 as part of a documented medical treatment shall result in the automatic suspension of practice by
22 respondent and shall be considered a violation of probation. Respondent may not resume the
23 practice of pharmacy until notified by the board in writing.

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

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

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

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

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

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

15 **14. Random Drug Screening**

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

1 shall be considered a violation of probation and shall result in the automatic suspension of
2 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
3 notified by the board in writing.

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

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

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

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

20 **15. Abstain from Drugs**

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

1 possession or use of controlled substances, or their associated paraphernalia not supported by the
2 documentation timely provided, and/or any physical proximity to persons using illicit substances,
3 shall be considered a violation of probation.

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

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

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney, Jeff Kravitz. I understand the stipulation and the effect it will have
15 on my Pharmacy Intern application and license. I enter into this Stipulated Settlement and
16 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
17 Decision and Order of the Board of Pharmacy.

18
19 DATED: 4/4/2014


20 BRENDAN JOHN KELLY
Respondent

21 I have read and fully discussed with Respondent Brendan John Kelly the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24 DATED: 4-4-14


25 Jeff Kravitz
Attorney for Respondent

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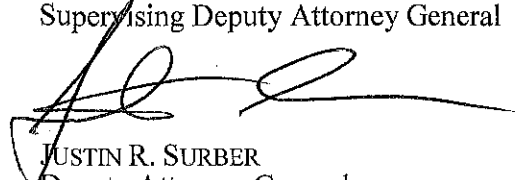
ENDORSEMENT

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

Dated: 4/9/14

Respectfully submitted,

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



JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 5083

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 5083

12 **BRENDAN JOHN KELLY**

STATEMENT OF ISSUES

13 Respondent.
14

15
16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about May 6, 2013, the Board of Pharmacy, Department of Consumer Affairs
21 received an application for registration as an intern pharmacist from Brendan John Kelly
22 (Respondent). On or about May 2, 2013, Brendan John Kelly certified under penalty of perjury to
23 the truthfulness of all statements, answers, and representations in the application. The Board
24 denied the application on October 16, 2013.

25 JURISDICTION

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

1 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
2 Procedure."

3 6. Section 4301 of the Code states:

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

7
8 "(j) The violation of any of the statutes of this state, or any other state, or of the United
9 States regulating controlled substances and dangerous drugs.

10 CAUSE FOR DENIAL OF APPLICATION

11 (Violation of Drug Laws)

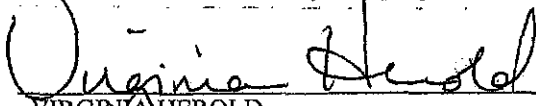
12 7. Respondent's application is subject to denial under sections 4300 and 480(a)(3) of the
13 code in conjunction with 4301(j) of the code in that Respondent was involved in unprofessional
14 conduct that would be cause for discipline if performed by an intern pharmacist. On or about
15 May 20, 2012, Respondent possessed marijuana and lysergic acid diethylamide (aka LSD) in
16 violation of the Laws of Alabama and the United States.

17 PRAYER

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

- 20 1. Denying the application of Brendan John Kelly for a Pharmacy Intern License;
21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: 3/17/14

23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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