

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

In the Matter of the Accusation Against:

**ALVARADO MEDICAL PLAZA
PHARMACY INC.,
DBA ALVARADO MEDICAL PLAZA
PHARMACY
5555 Reservoir Drive, Ste. 114
San Diego, CA 92120**

**Pharmacy Permit No. PHY 38199
Sterile Compounding License No. LSC 99270,**

**WILLIAM NICHOLAS BURDINE
10831 Del Rio Road
Spring Valley, CA 91978**

Pharmacist License No. RPH 31975

Respondents.

Case No. 5612

OAH No. 2016070458

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 February 22, 2017.

It is so ORDERED on January 23, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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Attorneys for Complainant

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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. 5612

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13 **ALVARADO MEDICAL PLAZA**
PHARMACY INC.,
14 **DBA ALVARADO MEDICAL PLAZA**
PHARMACY
15 **5555 Reservoir Drive, Ste. 114**
San Diego, CA 92120

OAH No. 2016070458

STIPULATED SURRENDER OF
LICENSE AND ORDER

16 **Pharmacy Permit No. PHY 38199**
17 **Sterile Compounding License No. LSC**
99270,

18 and

19 **WILLIAM NICHOLAS BURDINE**
20 **10831 Del Rio Road**
Spring Valley, CA 91978

21 **Pharmacist License No. RPH 31975**

22 Respondents.
23

24
25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
26 entitled proceedings that the following matters are true:
27
28

1 PARTIES

2 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
3 (Board). She brought this action solely in her official capacity and is represented in this matter by
4 Kamala D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy
5 Attorney General.

6 2. William Nicholas Burdine and Alvarado Medical Plaza Pharmacy Inc., dba Alvarado
7 Medical Plaza Pharmacy (Respondents) are representing themselves in this proceeding and have
8 chosen not to exercise their right to be represented by counsel.

9 3. On or about December 1, 1992, the Board issued Pharmacy Permit No. PHY 38199 to
10 Alvarado Medical Plaza Pharmacy Inc., dba Alvarado Medical Pharmacy (Respondent Alvarado
11 Medical Plaza Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant
12 to the charges brought in First Amended Accusation No. 5612 and will expire on December 1,
13 2018, unless renewed.

14 4. On or about October 27, 2004, the Board issued Licensed Sterile Compounding
15 Permit No. LCS 99270 to Alvarado Medical Plaza Pharmacy Inc., dba Alvarado Medical Plaza
16 Pharmacy (Respondent). The Licensed Sterile Compounding Permit was in full force and effect
17 at all times relevant to the charges brought in First Amended Accusation No. 5612 and expired on
18 December 1, 2015.

19 5. On or about August 1, 1978, the Board issued Pharmacist License Number RPH
20 31975 to William Nicholas Burdine (Respondent Burdine). The Pharmacist License was in full
21 force and effect at all times relevant to the charges brought in First Amended Accusation No.
22 5612 and will expire on August 31, 2018, unless renewed.

23 JURISDICTION

24 6. First Amended Accusation No. 5612 was filed before the (Board), and is currently
25 pending against Respondents. The First Amended Accusation and all other statutorily required
26 documents were properly served on Respondents on July 22, 2016. Respondents timely filed
27 their Notices of Defense contesting the First Amended Accusation. A copy of First Amended
28 Accusation No. 5612 is attached as Exhibit A and incorporated by reference.

1 ADVISEMENT AND WAIVERS

2 7. Respondents have carefully read, and understand the charges and allegations in First
3 Amended Accusation No. 5612. Respondents also have carefully read, and understand the effects
4 of this Stipulated Surrender of License and Order.

5 8. Respondents are fully aware of their legal rights in this matter, including the right to a
6 hearing on the charges and allegations in the First Amended Accusation; the right to be
7 represented by counsel, at their own expense; the right to confront and cross-examine the
8 witnesses against them; the right to present evidence and to testify on its own behalf; the right to
9 the issuance of subpoenas to compel the attendance of witnesses and the production of
10 documents; the right to reconsideration and court review of an adverse decision; and all other
11 rights accorded by the California Administrative Procedure Act and other applicable laws.

12 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
13 every right set forth above.

14 CULPABILITY

15 10. Respondents admit the truth of each and every charge and allegation in First
16 Amended Accusation No. 5612, agree that cause exists for discipline and hereby surrender their
17 Pharmacy Permit No. PHY 38199, Licensed Sterile Compounding Permit No. LCS 99270 and
18 Pharmacist License No. RPH 31975 for the Board's formal acceptance.

19 11. Respondents understand that by signing this stipulation, they enable the Board to
20 issue an order accepting the surrender of their respective Pharmacy Permit, Licensed Sterile
21 Compounding Permit and Pharmacist License without further process.

22 CONTINGENCY

23 12. This stipulation shall be subject to approval by the Board. Respondents understand
24 and agrees that counsel for Complainant and the staff of the Board may communicate directly
25 with the Board regarding this stipulation and surrender, without notice to or participation by
26 Respondents. By signing the stipulation, Respondents understand and agree that they may not
27 withdraw its agreement or seek to rescind the stipulation prior to the time the Board considers and
28 acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated

1 Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
2 be inadmissible in any legal action between the parties, and the Board shall not be disqualified
3 from further action by having considered this matter.

4 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
5 copies of this Stipulated Surrender of License and Order, including Portable Document Format
6 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

15 **ORDER**

16 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 38199 and Licensed Sterile
17 Compounding Permit No. LCS 99270 issued to Respondent Alvarado Medical Plaza Pharmacy
18 Inc., dba Alvarado Medical Plaza Pharmacy (Respondent Alvarado Medical Plaza Pharmacy), is
19 surrendered and accepted by the Board of Pharmacy.

20 IT IS FURTHER HEREBY ORDERED that Pharmacist License No. RPH 31975, issued to
21 William Nicholas Burdine (Respondent Burdine), is surrendered and accepted by the Board of
22 Pharmacy.

23 1. The surrender of Respondents' Pharmacy Permit, Licensed Sterile Compounding
24 Permit and Pharmacist License and the acceptance of the surrendered licenses by the Board shall
25 constitute the imposition of discipline against Respondents. This stipulation constitutes a record
26 of the discipline and shall become a part of Respondents' license histories with the Board of
27 Pharmacy.

1 2. Respondent Alvarado Medical Plaza Pharmacy shall lose all rights and privileges as a
2 pharmacy and sterile compounding pharmacy in California as of the effective date of the Board's
3 Decision and Order.

4 3. Respondent Burdine shall lose all rights and privileges as a pharmacist in California
5 as of the effective date of the Board's Decision and Order.

6 4 Respondents shall cause to be delivered to the Board their pocket licenses and, if one
7 was issued, their wall certificate on or before the effective date of the Decision and Order.

8 5. If Respondents ever apply for licensure or petitions for reinstatement in the State of
9 California, the Board shall treat it as a new application for licensure. Respondents must comply
10 with all the laws, regulations and procedures for licensure in effect at the time the application or
11 petition is filed, and all of the charges and allegations contained in First Amended Accusation No.
12 5612 shall be deemed to be true, correct and admitted by Respondents when the Board determines
13 whether to grant or deny the application or petition.

14 6. Respondents stipulate that should they reapply for any license from the Board on or
15 after the effective date of the Decision, the investigative and prosecution costs of \$12,000.00 shall
16 be paid to the Board prior to the issuance of the new license(s). Respondents shall be jointly and
17 severally liable for the payment of these costs.

18 7. If Respondents should ever apply or reapply for a new license or certification, or
19 petition for reinstatement of a license, by any other health care licensing agency in the State of
20 California, all of the charges and allegations contained in First Amended Accusation No. 5612
21 shall be deemed to be true, correct, and admitted by Respondents for the purpose of any
22 Statement of Issues or any other proceeding seeking to deny or restrict licensure.

23 8. Respondent Alvarado Medical Plaza Pharmacy shall, within ten (10) days of the
24 effective date of the Board's order, arrange for the destruction of, the transfer to, sale of or
25 storage in a facility licensed by the Board of all controlled substances and dangerous drugs and
26 devices. Respondent Alvarado Medical Plaza Pharmacy shall further provide written proof of
27 such disposition and submit a completed Discontinuance of Business form according to Board
28 guidelines.

1 9. Respondent Alvarado Medical Plaza Pharmacy shall, within ten (10) days of the
2 effective date of the Board's Order, arrange for the continuation of care for ongoing patients of
3 the pharmacy, by at minimum, providing a written notice to ongoing patients that specifies the
4 anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable
5 of taking up the patients' care, and by cooperating as may be necessary in the transfer of records
6 or prescriptions for ongoing patients. Within five (5) days of satisfaction of this provision to the
7 pharmacy's ongoing patients, Respondent Alvarado Medical Plaza Pharmacy shall provide a
8 copy of the written notice to the board. For the purposes of this provision, "ongoing patients"
9 means those patients for whom the pharmacy has on file a prescription with one or more refills
10 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
11 days.

12 10. Respondents may not apply, reapply, or petition for any licensure or registration of
13 the Board for three (3) years from the effective date of the Decision and Order.

14 11. William Nicholas Burdine shall be prohibited from serving as a manager,
15 administrator, owner, member, officer, director, associate, or partner of any entity licensed by the
16 Board until the licenses are issued or reinstated.

17 ACCEPTANCE

18 I have carefully read the Stipulated Surrender of License and Order. I understand the
19 stipulation and the effect it will have on my Pharmacy Permit, Licensed Sterile Compounding
20 Permit and Pharmacist License. I enter into this Stipulated Surrender of License and Order
21 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
22 Board of Pharmacy.

23
24 DATED: 12-8-2016

William Nicholas Burdine
25 WILLIAM NICHOLAS BURDINE, as an
26 individual and as the authorized agent on behalf of
27 ALVARADO MEDICAL PLAZA PHARMACY
28 INC., DBA ALVARADO MEDICAL PLAZA
 PHARMACY
 Respondents

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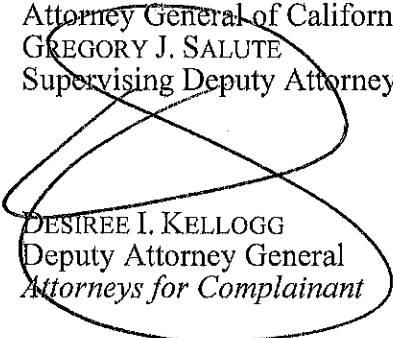
ENDORSEMENT

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

DATED: 12/8/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



DESIREE I. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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

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14 **ALVARADO MEDICAL PLAZA PHARMACY INC.,**
15 **DBA ALVARADO MEDICAL PLAZA PHARMACY**
16 **5555 Reservoir Drive, Ste. 114**
17 **San Diego, CA 92120**

FIRST AMENDED
ACCUSATION

18 **Pharmacy Permit No. PHY 38199**
19 **Sterile Compounding License No. LSC 99270,**

20 **and**

21 **WILLIAM NICHOLAS BURDINE**
22 **10831 Del Rio Road**
23 **Spring Valley, CA 91978**

24 **Pharmacist License No. RPH 31975**

25 Respondents.

26 Complainant alleges:

27 **PARTIES**

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

1 2. On or about December 1, 1992, the Board issued Pharmacy Permit Number PHY
2 38199 to Alvarado Medical Plaza Pharmacy Inc., doing business as Alvarado Medical Plaza
3 Pharmacy (Alvarado Medical Plaza Pharmacy). William N. Burdine is, and has been the
4 President of Alvarado Medical Plaza Pharmacy since December 1, 1992. The Pharmacy Permit
5 was in full force and effect at all times relevant to the charges brought herein and will expire on
6 December 1, 2016, unless renewed. William N. Burdine was the Pharmacist-in-Charge of
7 Alvarado Medical Plaza Pharmacy from December 1, 1992 to January 1, 2014.

8 3. On or about October 27, 2004, the Board issued Sterile Compounding License
9 Number LSC 99270 to Alvarado Medical Plaza Pharmacy. The Sterile Compounding License
10 was in full force and effect at all times relevant to the charges brought herein and expired on
11 December 1, 2015.

12 4. On or about August 1, 1978, the Board issued Pharmacist License Number RPH
13 31975 to William Nicholas Burdine (William Burdine). The Pharmacist License was in full force
14 and effect at all times relevant to the charges brought herein and will expire on August 31, 2016,
15 unless renewed.

16 **JURISDICTION**

17 5. This First Amended Accusation is brought before the Board under the authority of the
18 following laws. All section references are to the Business and Professions Code (Code) unless
19 otherwise indicated.

20 6. Section 4011 of the Code provides that the Board shall administer and enforce both
21 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
22 Act [Health & Safety Code, § 11000 et seq.].

23 7. Section 4300(a) of the Code states "Every license issued may be suspended or
24 revoked."

25 8. Section 4300.1 of the Code states:

26 The expiration, cancellation, forfeiture, or suspension of a board-issued license
27 by operation of law or by order or decision of the board or a court of law, the
28 placement of a license on a retired status, or the voluntary surrender of a license by a
licensee shall not deprive the board of jurisdiction to commence or proceed with any

1 investigation of, or action or disciplinary proceeding against, the licensee or to render
2 a decision suspending or revoking the license.

3 STATUTORY AND REGULATORY PROVISIONS

4 9. Section 482 of the Code states:

5 Each board under the provisions of this code shall develop criteria to evaluate
6 the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.

9 Each board shall take into account all competent evidence of rehabilitation
10 furnished by the applicant or licensee.

11 10. Section 490 of the Code provides, in pertinent part, that a board may suspend or
12 revoke a license on the ground that the licensee has been convicted of a crime substantially
13 related to the qualifications, functions, or duties of the business or profession for which the
14 license was issued.

15 11. Section 493 of the Code states:

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

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

28 12. Section 4113(c) of the Code states:

The pharmacist-in-charge shall be responsible for a pharmacy's compliance with
all state and federal laws and regulations pertaining to the practice of pharmacy.

13. Section 4169, subdivision (a)(1) of the Code states:

(a) A person or entity shall not do any of the following:

(1) Purchase, trade, sell, warehouse, distribute, or transfer dangerous
drugs or dangerous devices at wholesale with a person or entity that is not licensed
with the board as a wholesaler, third-party logistics provider, or pharmacy.

1 14. Section 4301 of the Code states:

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

6

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

10

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

13

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

29

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

35 15. Section 4306.5 of the Code states, in pertinent part:

36 Unprofessional conduct for a pharmacist may include any of the following:

37 Acts or omissions that involve, in whole or in part, the inappropriate exercise of
38 his or her education, training, or experience as a pharmacist, whether or not the act
or omission arises in the course of the practice of pharmacy or the ownership,

1 management, administration, or operation of a pharmacy or other entity licensed by
2 the board.

3 Acts or omissions that involve, in whole or in part, the failure to consult
4 appropriate patient, prescription, and other records pertaining to the performance of
5 any pharmacy function.

6 16. Section 4307 of the Code states:

7 (a) Any person who has been denied a license or whose license has been
8 revoked or is under suspension, or who has failed to renew his or her license while it
9 was under suspension, or who has been a manager, administrator, owner, member,
10 officer, director, associate, or partner of any partnership, corporation, firm, or
11 association whose application for a license has been denied or revoked, is under
12 suspension or has been placed on probation, and while acting as the manager,
13 administrator, owner, member, officer, director, associate, or partner had knowledge
14 of or knowingly participated in any conduct for which the license was denied,
15 revoked, suspended, or placed on probation, shall be prohibited from serving as a
16 manager, administrator, owner, member, officer, director, associate, or partner of a
17 licensee as follows:

18 (1) Where a probationary license is issued or where an existing license is
19 placed on probation, this prohibition shall remain in effect for a period not to exceed
20 five years.

21 (2) Where the license is denied or revoked, the prohibition shall continue
22 until the license is issued or reinstated.

23 (b) "Manager, administrator, owner, member, officer, director, associate, or
24 partner," as used in this section and Section 4308, may refer to a pharmacist or to any
25 other person who serves in that capacity in or for a licensee. . . .

26 17. Health and Safety Code section 11153(a) states:

27 A prescription for a controlled substance shall only be issued for a legitimate
28 medical purpose by an individual practitioner acting in the usual course of his or her
professional practice. The responsibility for the proper prescribing and dispensing of
controlled substances is upon the prescribing practitioner, but a corresponding
responsibility rests with the pharmacist who fills the prescription. Except as
authorized by this division, the following are not legal prescriptions: (1) an order
purporting to be a prescription which is issued not in the usual course of
professional treatment or in legitimate and authorized research; or (2) an order for
an addict or habitual user of controlled substances, which is issued not in the course
of professional treatment or as part of an authorized narcotic treatment program, for
the purpose of providing the user with controlled substances, sufficient to keep him
or her comfortable by maintaining customary use.

....

18. United States Code, title 21, section 331 states:

The following acts and the causing thereof are prohibited:

1 (d) The introduction or delivery for introduction into interstate commerce of
any article in violation of section 344, 350d, 355, or 360bbb-3 of this title.

2 19. California Code of Regulations, title 16, section 1716 states:

3 Pharmacists shall not deviate from the requirements of a prescription except
4 upon the prior consent of the prescriber or to select the drug product in accordance
with Section 4073 of the Business and Professions Code.

5 Nothing in this regulation is intended to prohibit a pharmacist from exercising
6 commonly-accepted pharmaceutical practice in the compounding or dispensing of a
prescription.

7 20. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

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

12 (2) Total criminal record.

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

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

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

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

17 For the purpose of denial, suspension, or revocation of a personal or facility
18 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
19 Professions Code, a crime or act shall be considered substantially related to the
20 qualifications, functions or duties of a licensee or registrant if to a substantial degree
it evidences present or potential unfitness of a licensee or registrant to perform the
21 functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

22 22. Section 1761 of title 16, California Code of Regulations states:

23 (a) No pharmacist shall compound or dispense any prescription which contains
24 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.
Upon receipt of any such prescription, the pharmacist shall contact the prescriber to
25 obtain the information needed to validate the prescription.

26 (b) Even after conferring with the prescriber, a pharmacist shall not compound
27 or dispense a controlled substance prescription where the pharmacist knows or has
objective reason to know that said prescription was not issued for a legitimate
28 medical purpose.

1 **COSTS**

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

8 **DRUGS**

9 24. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
10 section 11054(b)(M) and a dangerous drug pursuant to Business and Professions Code section
11 4022.

12 25. Phenergan with Codeine is the brand name for promethazine with codeine, a
13 Schedule V controlled substance pursuant to Health and Safety Code section 111058(c)(1) and is
14 a dangerous drug pursuant to Business and Professions Code section 4022.

15 26. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
16 to Health and Safety Code section 11057(d)(1) and a dangerous drug pursuant to Business and
17 Professions Code section 4022.

18 **FACTUAL ALLEGATIONS**

19 27. At all times relevant herein, William Burdine was the Pharmacist-in-Charge of
20 Alvarado Medical Plaza Pharmacy.

21 28. On or between May 2010 and June 2011, William Burdine, in the capacity of
22 President, owner, and pharmacist-in-charge of Alvarado Medical Plaza Pharmacy, purchased
23 approximately \$750,000.00 of prescription oncology drugs not approved by the Food and Drug
24 Administration (FDA), and not approved by Medicare for reimbursement. Respondents then sold
25 these unapproved drugs to doctors pre-mixed in infusion bags (compounded) without advising the
26 doctors of their true origin. Respondents knew the doctors would bill Medicare over \$1 million
27 dollars for these drugs. Respondents purchased approximately 278 FDA unapproved drugs from
28

1 Quality Specialty Products, a Canadian pharmaceutical wholesaler that is not licensed by the
2 Board.

3 29. From August 18, 2011 through January 24, 2012, Respondents filled 132
4 prescriptions for 10,350 tablets of alprazolam 2mg, 200 prescriptions for 39,300 tablets of
5 oxycodone 30mg, 45 prescriptions for 20,866 mls of promethazine with codeine and one
6 prescription for 60 tablets of alprazolam 1mg which were written by Dr. C.A. Dr. C.A.'s address
7 was listed on the prescriptions filled by Respondents as being 126 miles away from Alvarado
8 Medical Plaza Pharmacy. Alvarado Medical Plaza Pharmacy was a lengthy distance (typically
9 over 100 miles) from the patients' addresses listed on prescriptions written by Dr. C.A. who did
10 not specialize in pain management, respiratory diseases or anxiety disorders. Patients paid for the
11 majority of the controlled substance prescriptions in cash at Alvarado Medical Plaza Pharmacy
12 and did not seek reimbursement from an insurance company or government agency. Multiple
13 prescriptions were picked up by drivers. Multiple patients were receiving drugs written by
14 multiple prescribers filled at multiple pharmacies during the same time frame.

15 30. Dr. C.A.'s prescriptions for controlled substances were written in an identical fashion
16 for multiple patients as follows: One prescription for oxycodone 30mg with directions to take 2
17 tablets three times a day in a quantity of 180 and a second prescription for (a) alprazolam 2 mg
18 with directions to take 1 tablet twice a day in a quantity of 90; and (b) promethazine with codeine
19 with directions to take 1 teaspoon every 6 hours in a quantity of 16 ounces. This combination of
20 drugs can be lethal. There was no adjustments in the prescribing pattern for sex, age, weight,
21 renal or hepatic function, race, diagnosis, past medications used or any other patient related
22 factor. None of the "chronic pain patients" being treated by Dr. C.A. were receiving a long acting
23 pain medication to control their baseline pain. Initial prescriptions were written for oxycodone
24 30mg which is not a "starting dose" for pain management.

25 31. On or about October 8, 2014, criminal charges were filed against Dr. C.A. in *The*
26 *People of the State of California v. Clyde Arnold*, Los Angeles County Superior Court Case No.
27 BA425640, alleging Dr. C.A.'s violations of drug statutes for improper prescribing practices. On
28 or about December 15, 2014, The Medical Board of California filed an accusation against Dr.

1 C.A. for gross negligence, repeated negligent acts, incompetence, dishonest or corrupt acts,
2 prescribing to addicts, prescribing without performing physical examination or medical indication
3 or both, record keeping violations, excessive prescribing, violation of drug statutes and
4 unprofessional conduct.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(December 4, 2013 Criminal Convictions for Improper Importation of Merchandise**
7 **& Aiding an Abetting Against William Burdine)**

8 32. William Burdine has subjected his pharmacist license to discipline under sections 490
9 and 4301, subdivision (I) of the Code in that he was convicted of crimes that are substantially
10 related to the qualifications, duties, and functions of a pharmacist. The circumstances are as
11 follows:

12 a. On or about December 4, 2013, in a criminal proceeding entitled *United States*
13 *of America v. William Nicholas Burdine*, in United States District Court, Southern District of
14 California, case number 13cr4295-JLS, he was convicted on his plea of guilty to violating 18
15 U.S.C. section 545 – knowingly importing merchandise, to wit: prescription oncology drugs not
16 approved for use in the United States, and 18 U.S.C. section 2, aiding and abetting a felony.

17 b. As a result of the convictions, on February 21, 2014, William Burdine was
18 sentenced to probation for a term of five years on standard terms of supervised probation, and
19 special conditions that require that he submit to a Fourth Amendment waiver, complete 240 hours
20 of community service, provide complete disclosure of personal and business financial records,
21 comply with the orders and conditions as set forth by California Board of Pharmacy, submit to
22 electronic monitoring (home detention) for a period of eight months, and pay restitution in the
23 amount of \$1,004,282.04.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(December 4, 2013 Criminal Convictions for Healthcare Fraud & Aiding an Abetting**
26 **Against Alvarado Medical Plaza Pharmacy)**

27 33. Alvarado Medical Plaza Pharmacy has subjected its Pharmacy Permit and Licensed
28 Sterile Compounding License to discipline under sections 490 and 4301, subdivision (I) of the

1 Code in that it was convicted of crimes that are substantially related to the qualifications, duties,
2 and functions of a pharmacy. The circumstances are as follows:

3 a. On or about December 4, 2013, in a criminal proceeding entitled *United States*
4 *of America v. Alvarado Medical Plaza Pharmacy Inc.* (as a defendant organization), in United
5 States District Court, Southern District of California, case number 13cr4295-JLS, it was
6 convicted on its plea of guilty to violating 18 U.S.C. section 1347 – knowingly and willfully
7 executing a material scheme to defraud a healthcare benefit program, to wit: Medicare, in
8 connection with the delivery of and payment for health care benefits and services, by purchasing
9 approximately \$750,000.00 of prescription oncology drugs not approved by the FDA for use in
10 the United States, and not approved by Medicare for reimbursement from sources abroad, at
11 significant cost savings, and selling these unapproved drugs to doctors knowing that the doctors
12 would bill Medicare over \$1 million for these drugs as if they were actually drugs approved for
13 use in the United States, and approved for reimbursement by Medicare; and 18 U.S.C. section 2,
14 aiding and abetting a felony.

15 b. As a result of the convictions, on February 21, 2014, Alvarado Medical Plaza
16 Pharmacy was sentenced to probation for a term of five years on standard terms of supervised
17 probation, and special conditions that require it provide complete disclosure of personal and
18 business financial records, subject corporate records and premises to search by probation officer,
19 have an effective program to prevent and detect violations of law, and pay a fine of \$10,000.00.

20 THIRD CAUSE FOR DISCIPLINE

21 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

22 34. Respondents, jointly and severally, have subjected their licenses and permit to
23 discipline under section 4301, subdivision (f) of the Code for acts involving dishonesty, fraud,
24 deceit or corruption in that on or between May 2010 and June 2011, as described in paragraphs
25 27-28 and 32-33, above, they knowingly purchased unapproved by the FDA and not approved by
26 Medicare for reimbursement prescription oncology drugs, then sold these unapproved drugs to
27 doctors without advising the physicians of the true origin of the drugs and knowing the physicians
28 would bill Medicare over \$1 million dollars.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of Federal & State Laws & Regulations Governing Pharmacy)**

3 35. Respondents, jointly and severally, have subjected their licenses and permit to
4 discipline under section 4301, subdivisions (j) and (o) of the Code for unprofessional conduct in
5 that on or on or between, May 2010 and June 2011, as described in paragraphs 27-28 and 32-33,
6 above, Respondents violated, and aided and abetted in the violation of section 4169, subdivision
7 (a)(1) of the Code by purchasing dangerous drugs at wholesale with a person or entity that is not
8 licensed with the Board as a wholesaler; California Code of Regulations, title 16, section 1716 by
9 deviating from the requirements of a prescription; United States Code, title 21, section 331 by
10 improper importation of merchandise; United States Code, title 18, section 1347 for healthcare
11 fraud; United States Code, title 18, section 545 for knowingly importing prescription oncology
12 drugs not approved for use in the United States; and United States Code, title 18, section 2 for
13 aiding and abetting felonious criminal offenses.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Failing to Comply with Corresponding Responsibility**
16 **for Legitimate Controlled Substance Prescriptions)**

17 36. Respondents, jointly and severally, have subjected their licenses and permit to
18 discipline under Code section 4301(j), for violating Health and Safety Code section 11153(a), in
19 that they failed to comply with their corresponding responsibility to ensure that controlled
20 substances were dispensed for a legitimate medical purpose when Respondents furnished
21 prescriptions for controlled substances even though "red flags" were present, indicating those
22 prescriptions were not issued for a legitimate medical purpose, as set forth in paragraphs 27 and
23 29 through 31 above, which are incorporated herein by reference.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**
26 **Irregularities, Uncertainties, Ambiguities or Alterations)**

27 37. Respondents, jointly and severally, have subjected their licenses and permit to
28 discipline under Code section 4301(o), for violating title 16, California Code of Regulations,

1 sections 1761(a) and (b) in that they dispensed prescriptions for controlled substances, which
2 contained significant errors, omissions, irregularities, uncertainties, ambiguities or alterations, as
3 set forth in paragraphs 27 and 29 through 31 above, which are incorporated herein by reference.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Exercise or Implement Best Professional Judgment or Corresponding**
6 **Responsibility when Dispensing Controlled Substances**
7 **against Respondent William Burdine)**

8 38. William Burdine has subjected his license to disciplinary action under Code section
9 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that he failed
10 to exercise or implement his best professional judgment or corresponding responsibility when
11 dispensing controlled substances and purchasing and selling unapproved prescription oncology
12 drugs, as set forth in paragraphs 27 through 33 above, which are incorporated herein by reference.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct)**

15 39. Respondents, jointly and severally, have subjected their licenses and permit to
16 discipline action under Code section 4301 for unprofessional conduct in that they engaged in the
17 activities described in paragraphs 27 through 33 above, which are incorporated herein by
18 reference.

19 **OTHER MATTERS**

20 40. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
21 38199 and/or Sterile Compounding License No. LSC 99270, issued to Alvarado Medical Plaza
22 Pharmacy Inc., doing business as Alvarado Medical Plaza Pharmacy, Alvarado Medical Plaza
23 Pharmacy Inc. shall be prohibited from serving as a manager, administrator, owner, member,
24 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
25 PHY 38199 and/or Sterile Compounding License No. LSC 99270 are placed on probation or until
26 Pharmacy Permit Number PHY 38199 and/or Sterile Compounding License No. LSC 99270 are
27 reinstated if they are revoked.

28

1 41. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
2 38199 and/or Sterile Compounding License No. LSC 99270, issued to Alvarado Medical Plaza
3 Pharmacy Inc., doing business as Alvarado Medical Plaza Pharmacy, while William N. Burdine
4 has been an officer, and had knowledge of or knowingly participated in any conduct for which
5 the permit was disciplined, William Nicholas Burdine shall be prohibited from serving as a
6 manager, administrator, owner, member, officer, director, associate, or partner of any licensed or
7 permitted entity for five (5) years if Pharmacy Permit Number PHY 38199 and/or Sterile
8 Compounding License No. LSC 99270 are placed on probation, or until Pharmacy Permit
9 Number PHY 38199 and/or Sterile Compounding License No. LSC 99270 are reinstated, if
10 revoked.

11 42. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
12 RPH 31975 issued to William Nicholas Burdine shall be prohibited from serving as a manager,
13 administrator, owner, member, officer, director, associate, or partner of a licensee for five years
14 if Pharmacist License Number RPH 31975 is placed on probation or until Pharmacist License
15 Number RPH 31975 is reinstated if it is revoked.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Permit Number PHY 38199, issued to Alvarado
20 Medical Plaza Pharmacy Inc., doing business as Alvarado Medical Plaza Pharmacy;

21 2. Revoking or suspending Sterile Compounding License Number LSC 99270, issued to
22 Alvarado Medical Plaza Pharmacy Inc., doing business as Alvarado Medical Plaza Pharmacy;

23 3. Revoking or suspending Pharmacist License Number RPH 31975, issued to William
24 Nicholas Burdine;

25 4. Prohibiting Alvarado Medical Plaza Pharmacy Inc., doing business as Alvarado
26 Medical Plaza Pharmacy from serving as a manager, administrator, owner, member, officer,
27 director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY
28 38199 and/or Licensed Sterile Compounding Number LSC 99270 are placed on probation or

1 until Pharmacy Permit Number PHY 38199 and/or Sterile Compounding License Number LSC
2 99270 are reinstated if Pharmacy Permit Number PHY 38199 and/or Sterile Compounding
3 License Number LSC 99270 issued to Alvarado Medical Plaza Pharmacy Inc., doing business as
4 Alvarado Medical Plaza Pharmacy are revoked;

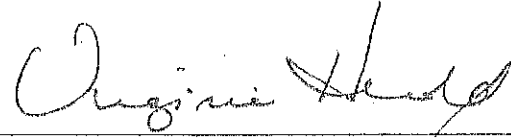
5 5. Prohibiting William Nicholas Burdine from serving as a manager, administrator,
6 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
7 Permit Number PHY 38199 and Sterile Compounding License Number LSC 99270 are placed
8 on probation or until Pharmacy Permit Number PHY 38199 and/or Sterile Compounding License
9 Number LSC 99270 are reinstated if Pharmacy Permit Number PHY 38199 and/or Sterile
10 Compounding License Number LSC 99270 issued to Alvarado Medical Plaza Pharmacy Inc.,
11 doing business as Alvarado Medical Plaza Pharmacy are revoked;

12 6. Prohibiting William Nicholas Burdine from serving as a manager, administrator,
13 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist
14 License Number RPH 31975 is placed on probation or until Pharmacist License Number RPH
15 31975 is reinstated if Pharmacist License Number RPH 31975 issued to William Nicholas
16 Burdine is revoked;

17 7. Ordering Alvarado Medical Plaza Pharmacy Inc., doing business as Alvarado
18 Medical Plaza Pharmacy and/or William Nicholas Burdine to pay the Board of Pharmacy the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3;

21 8. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 7/14/16



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

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