

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

In the Matter of the Accusation Against:

**NEAL SHIGERU NISHIMOTO
38580 Lynxway
Palmdale, CA 93551**

Pharmacist License No. RPH 45627

Respondent.

Case No. 5760

OAH No. 2017020964

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 at 5:00 p.m. on November 1, 2017.

It is so ORDERED on October 2, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 THOMAS L. RINALDI
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
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11 In the Matter of the Accusation Against:

Case No. 5760

12 **NEAL SHIGERU NISHIMOTO**
38580 Lynxway
13 Palmdale, CA 93551

OAH No. 2017020964

14 **Pharmacist License No. RPH 45627**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.
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17 PARTIES

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

22 2. Respondent Neal Shigeru Nishimoto (Respondent) is represented in this proceeding
23 by attorney Jonathan K. Golden, Esq., whose address is: 1055 E. Colorado Blvd., Suite 225
24 Pasadena, CA 91106.

25 3. On or about August 19, 1992, the Board issued Pharmacist License No. RPH 45627
26 to Neal Shigeru Nishimoto (Respondent). The Pharmacist License was in full force and effect at
27 all times relevant to the charges brought in Accusation No. 5760, and will expire on October 31,
28 2017, unless renewed.

1 licensing agency is involved, and shall not be admissible in any other criminal or civil
2 proceeding.

3 CONTINGENCY

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

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

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

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

25 DISCIPLINARY ORDER

26 *IT IS HEREBY ORDERED* that Pharmacist License No. RPH 45627 issued to Respondent
27 Neal Shigeru Nishimoto is revoked. However, the revocation is stayed and Respondent is placed
28 on probation for five (5) years on the following terms and conditions.

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1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

2. Report to the Board

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

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board

1 staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee
2 during the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

4 Respondent shall cooperate with the Board's inspection program and with the Board's
5 monitoring and investigation of respondent's compliance with the terms and conditions of his
6 probation. Failure to cooperate shall be considered a violation of probation.

7 **5. Continuing Education**

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

10 **6. Notice to Employers**

11 During the period of probation, respondent shall notify all present and prospective
12 employers of the decision in case number 5760 and the terms, conditions and restrictions imposed
13 on respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
15 respondent undertaking any new employment, respondent shall cause his direct supervisor,
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
17 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
18 individual(s) has/have read the decision in case number 5760, and terms and conditions imposed
19 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
20 submit timely acknowledgment(s) to the Board.

21 If respondent works for or is employed by or through a pharmacy employment service,
22 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
23 licensed by the Board of the terms and conditions of the Decision in case number 5760 in advance
24 of the respondent commencing work at each licensed entity. A record of this notification must be
25 provided to the Board upon request.

26 Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen
27 (15) days of respondent undertaking any new employment by or through a pharmacy employment
28 service, respondent shall cause his direct supervisor with the pharmacy employment service to

1 report to the Board in writing acknowledging that he has read the decision in case number 5760
2 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
3 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

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

17 **8. Reimbursement of Board Costs**

18 As a condition precedent to successful completion of probation, respondent shall pay to the
19 Board its costs of investigation and prosecution in the amount of \$4,302.50. Respondent shall
20 make equal monthly payments to reimburse the entire amount of costs within the first twenty-four
21 (24) months of probation, as follows: The first payment in the amount of \$179.27 is due within
22 the first thirty (30) days following the effective date of the Decision and Order adopting this
23 stipulation. Thereafter, twenty-three (23) monthly payments each in the amount of \$179.27 shall
24 be due and received each month by the Board on or before the same date as the date assigned for
25 the effective date.

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

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

3 **9. Probation Monitoring Costs**

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

8 **10. Status of License**

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

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

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

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

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

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

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

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

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

12 **13. Pharmacists' Recovery Program (PRP)**

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

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

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

24 Probation shall be automatically extended until respondent successfully completes the PRP.
25 Any person terminated from the PRP program shall be automatically suspended by the Board.
26 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

27 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
28 licensed practitioner as part of a documented medical treatment shall result in the automatic

1 suspension of practice by respondent and shall be considered a violation of probation.

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

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

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

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

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

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

22 **14. Random Drug Screening**

23 Respondent, at his own expense, shall participate in random testing, including but not
24 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
25 screening program as directed by the Board or its designee. Respondent may be required to
26 participate in testing for the entire probation period and the frequency of testing will be
27 determined by the Board or its designee. At all times, respondent shall fully cooperate with the
28 board or its designee, and shall, when directed, submit to such tests and samples for the detection

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

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

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

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

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

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1 **15. Abstain from Drugs and Alcohol Use**

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

13 **16. Prescription Coordination and Monitoring of Prescription Use**

14 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
15 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
16 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
17 history use of alcohol, and who will coordinate and monitor any prescriptions for respondent for
18 dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall
19 be provided with a copy of the Board's Accusation and Decision and Order. A record of this
20 notification must be provided to the Board upon request. Respondent shall sign a release
21 authorizing the practitioner to communicate with the Board about respondent's treatment(s). The
22 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the
23 board on a quarterly basis for the duration of probation regarding respondent's compliance with
24 this condition. If any substances considered addictive have been prescribed, the report shall
25 identify a program for the time limited use of any such substances. The Board may require that
26 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a
27 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,
28 for any reason, cease supervision by the approved practitioner, respondent shall notify the Board

1 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
2 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the
3 Board or its designee for its prior approval. Failure to timely submit the selected practitioner or
4 replacement practitioner to the Board for approval, or to ensure the required reporting thereby on
5 the quarterly reports, shall be considered a violation of probation.

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

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

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

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

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

27 **17. Supervised Practice**

28 During the period of probation, respondent shall practice only under the supervision of a

1 licensed pharmacist not on probation with the Board. Upon and after the effective date of this
2 decision, respondent shall not practice pharmacy and his license shall be automatically suspended
3 until a supervisor is approved by the Board or its designee. The supervision shall be, as required
4 by the board or its designee, either:

5 Continuous – At least 75% of a work week

6 Substantial - At least 50% of a work week

7 Partial - At least 25% of a work week

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

9 Within thirty (30) days of the effective date of this decision, respondent shall have his
10 supervisor submit notification to the Board in writing stating that the supervisor has read the
11 decision in case number 5760 and is familiar with the required level of supervision as determined
12 by the Board or its designee. It shall be the respondent's responsibility to ensure that his
13 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
14 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
15 acknowledgements to the Board shall be considered a violation of probation.

16 If respondent changes employment, it shall be the respondent's responsibility to ensure that
17 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
18 the Board. Respondent shall have his new supervisor, within fifteen (15) days after employment
19 commences, submit notification to the Board in writing stating the direct supervisor and
20 pharmacist-in-charge have read the Decision in case number 5760 and is familiar with the level of
21 supervision as determined by the Board. Respondent shall not practice pharmacy and his license
22 shall be automatically suspended until the Board or its designee approves a new supervisor.
23 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
24 acknowledgements to the Board shall be considered a violation of probation.

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

26 During suspension, respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
28 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
3 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
4 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
5 and controlled substances. Respondent shall not resume practice until notified by the Board.

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

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

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

14 **18. No Ownership of Licensed Premises**

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

22 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
23 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
24 business, firm, partnership, or corporation licensed by the Board. If respondent currently owns or
25 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
26 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
27 or hereinafter licensed by the Board, respondent may continue to serve in such capacity or hold
28 that interest, but only to the extent of that position or interest as of the effective date of this

1 Decision. Violation of this restriction shall be considered a violation of probation.

2 **19. Criminal Probation/Parole Reports**

3 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
4 Board, in writing, within ten (10) days of the issuance or modification of those conditions.

5 Respondent shall provide the name of his probation/parole officer to the Board, in writing, within
6 ten (10) days after that officer is designated or a replacement for that officer is designated.

7 Respondent shall provide a copy of all criminal probation/parole reports to the Board within ten
8 (10) days after respondent receives a copy of such a report. Failure to timely make any of the
9 submissions required hereby shall be considered a violation of probation.

10 **20. Ethics Course**

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

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

17 **21. Tolling of Probation**

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

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

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

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

9 **22. Violation of Probation**

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

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

22 **23. Completion of Probation**

23 Upon written notice by the Board or its designee indicating successful completion of
24 probation, respondent's license will be fully restored.

25 ACCEPTANCE

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
27 discussed it with my attorney, Jonathan K. Golden, Esq. I understand the stipulation and the
28 effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Board of Pharmacy.

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4
5 DATED: 6/7/17 Neal Shigeru Nishimoto
6 NEAL SHIGERU NISHIMOTO
7 Respondent

8 I have read and fully discussed with Respondent Neal Shigeru Nishimoto the terms and
9 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
10 I approve its form and content.

11
12
13 DATED: 6/7/17 Jonathan K. Golden
14 JONATHAN K. GOLDEN, ESQ.
15 Attorney for Respondent

16 ENDORSEMENT

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

19 DATED: Respectfully submitted,
20 XAVIER BECERRA
21 Attorney General of California
22 THOMAS L. RINALDI
23 Supervising Deputy Attorney General

24 DESIREE TULLENERS
25 Deputy Attorney General
26 Attorneys for Complainant
27
28

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Board of Pharmacy.

3
4
5 DATED: _____
6 NEAL SHIGERU NISHIMOTO
7 Respondent

8 I have read and fully discussed with Respondent Neal Shigeru Nishimoto the terms and
9 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
10 I approve its form and content.

11
12
13 DATED: _____
14 JONATHAN K. GOLDEN, ESQ.
15 Attorney for Respondent

16 ENDORSEMENT

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

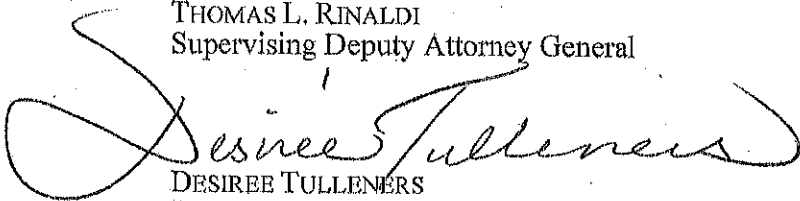
19 DATED: June 7, 2017 Respectfully submitted,
20 XAVIER BECERRA
21 Attorney General of California
22 THOMAS L. RINALDI
23 Supervising Deputy Attorney General
24 
25 DESIREE TULLENERS
26 Deputy Attorney General
27 Attorneys for Complainant
28

Exhibit A

Accusation No. 5760

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 MARC D. GREENBAUM
Supervising Deputy Attorney General
4 State Bar No. 138213
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2579
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 5760

13 **NEAL SHIGERU NISHIMOTO**
43543 20th St. West
Lancaster, CA 93536

A C C U S A T I O N

14 **Pharmacist License No. RPH 45627**

15 Respondent.

16
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 19, 1992, the Board of Pharmacy issued Pharmacist License
22 Number RPH 45627 to Neal Shigeru Nishimoto (Respondent). The Pharmacist License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on October
24 31, 2017, unless renewed.

25 **JURISDICTION**

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

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment.

11 ...
12 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
13 violation of or conspiring to violate any provision or term of this chapter or of the applicable
14 federal and state laws and regulations governing pharmacy, including regulations established by
15 the board or by any other state or federal regulatory agency.

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

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

24 COST RECOVERY

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Criminal Conviction)

3 9. Respondent is subject to disciplinary action under Code section 4301, subsection
4 (l), in that she has been convicted of crimes substantially related to the qualifications, functions,
5 and duties of a licensee. The circumstances are as follows:

6 10. On or about January 15, 2015, in Los Angeles County Superior Court Case No.
7 4AV06558, Respondent was convicted of having violated California Vehicle Code section
8 23152(b) (driving with excessive blood alcohol level). Respondent admitted to having a previous
9 conviction for a DUI offense in 2008. The conviction was based on an incident which occurred
10 on or about September 26, 2014, during which Respondent drove a vehicle when his blood
11 alcohol level was .19%.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Convictions Involving Dangerous Drugs or Alcohol)

14 11. Respondent is subject to disciplinary action under Code section 4301, subsection (k),
15 in that he has been convicted of more than one crime involving the use, consumption or self-
16 administration of dangerous drugs and/or alcoholic beverages, as set forth above in paragraph 10.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (Dangerous Use of Alcohol)

19 12. Respondent is subject to disciplinary action under Code section 4301, subsection (h),
20 in that he administered to himself, or used, alcoholic beverages to the extent or in a manner as to
21 be dangerous or injurious to herself, to a person holding a license under this chapter, or to any
22 other person or to the public, and/or to the extent that the use impaired his ability to conduct with
23 safety to the public the practice authorized by his license, as set forth above in paragraph 10.

24 **FOURTH CAUSE FOR DISCIPLINE**

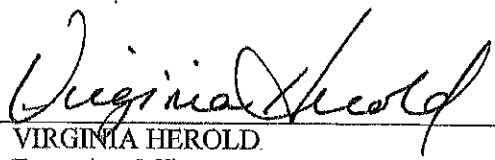
25 (Misrepresentation on Renewal Application)

26 13. Respondent is subject to disciplinary action under section 4301(g), in that he
27 knowingly made or signed a certificate or other document that falsely represented the existence or
28 nonexistence of a state of facts. The circumstances are as follows:

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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/3/16



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

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