

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

In the Matter of the Accusation Against:

**MARCUS LYNN BRIGGS
16851 Eagle Peak Road
Riverside, CA 92504**

Pharmacist License No. RPH 45400

Respondent.

Case No. 5771

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 May 4, 2017.

It is so ORDERED on April 4, 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 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
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8 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5771

13 **MARCUS LYNN BRIGGS**
14 **16851 Eagle Peak Road**
Riverside, CA 92504

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacist License No. RPH 45400**

16 Respondent.

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

20 PARTIES

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

25 2. Respondent Marcus Lynn Briggs (Respondent) is represented in this proceeding by
26 attorney Christopher Koch, whose address is: 1891 California Avenue, Ste. 102, Corona, CA
27 92881.

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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 pharmacy 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 5771 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 5771, 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 5771 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 5771
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 \$3,285.00. These costs may be
20 paid in a payment plan approved by the Board.

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

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

26 **9. Probation Monitoring Costs**

27 Respondent shall pay any costs associated with probation monitoring as determined by the
28 Board each and every year of probation. Such costs shall be payable to the Board on a schedule

1 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
2 shall be considered a violation of probation.

3 **10. Status of License**

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

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

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

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

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

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

25 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
26 **Employment**

27 Respondent shall notify the Board in writing within ten (10) days of any change of
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
2 shall further notify the Board in writing within ten (10) days of a change in name, residence
3 address, mailing address, or phone number.

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

6 13. Tolling of Probation

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

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

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

21 "Cessation of practice" means any calendar month during which respondent is
22 not practicing as a pharmacist for at 40 hours, as defined by Business and Professions
23 Code section 4000 et seq. "Resumption of practice" means any calendar month
24 during which respondent is practicing as a pharmacist for at least 40 hours as a
25 pharmacist as defined by Business and Professions Code section 4000 et seq.

26 14. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the Board shall
28 have continuing jurisdiction over respondent, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the Board has taken other action as deemed
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
3 to impose the penalty that was stayed.

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

11 **15. Completion of Probation**

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

14 **16. Pharmacists Recovery Program (PRP)**

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

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

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

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

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall result in the automatic
3 suspension of practice by respondent and shall be considered a violation of probation.

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

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

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

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

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

21 17. Random Drug Screening

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

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

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

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

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

23 **18. Abstain from Drugs and Alcohol Use**

24 Respondent shall completely abstain from the possession or use of alcohol, controlled
25 substances, dangerous drugs and their associated paraphernalia except when the drugs are
26 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
27 request of the Board or its designee, Respondent shall provide documentation from the licensed
28 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the

1 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
2 violation of probation. Respondent shall ensure that he is not in the same physical location as
3 individuals who are using illicit substances even if Respondent is not personally ingesting the
4 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
5 not supported by the documentation timely provided, and/or any physical proximity to persons
6 using illicit substances, shall be considered a violation of probation.

7 **19. Prescription Coordination and Monitoring of Prescription Use**

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

28 If at any time an approved practitioner determines that respondent is unable to practice

1 safely or independently as a pharmacist, the practitioner shall notify the Board immediately by
2 telephone and follow up by written letter within three (3) working days. Upon notification from
3 the Board or its designee of this determination, Respondent shall be automatically suspended and
4 shall not resume practice until notified by the Board that practice may be resumed.

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

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

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

18 20. Supervised Practice

19 During the period of probation, Respondent shall practice only under the supervision of a
20 licensed pharmacist not on probation with the Board. Upon and after the effective date of this
21 decision, Respondent shall not practice pharmacy and his license shall be automatically
22 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,
23 as required by the Board or its designee, either:

24 Continuous – At least 75% of a work week

25 Substantial - At least 50% of a work week

26 Partial - At least 25% of a work week

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

28 Within thirty (30) days of the effective date of this decision, Respondent shall have his

1 supervisor submit notification to the Board in writing stating that the supervisor has read the
2 decision in case number 5771 and is familiar with the required level of supervision as determined
3 by the Board or its designee. It shall be the Respondent's responsibility to ensure that his
4 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
5 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
6 acknowledgements to the Board shall be considered a violation of probation.

7 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
8 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
9 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)
10 days after employment commences, submit notification to the Board in writing stating the direct
11 supervisor and pharmacist-in-charge have read the decision in case number 5771 and is familiar
12 with the level of supervision as determined by the Board. Respondent shall not practice
13 pharmacy and his license shall be automatically suspended until the Board or its designee
14 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
15 submit timely acknowledgements to the Board shall be considered a violation of probation.

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

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

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

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

21. No Ownership of Licensed Premises

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

22. Ethics Course

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

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

ACCEPTANCE

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

DATED: 2/26/17



MARCUS LYNN BRIGGS
Respondent

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

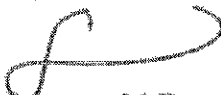
DATED: 2/28/17 
CHRISTOPHER KOCH
Attorney for Respondent

ENDORSEMENT

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

Dated: 3/2/17

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General


SHANNON M. BRUBAKER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 5771

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
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3 JAMES M. LEDAKIS
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Attorneys for Complainant
8

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

11
12 In the Matter of the Accusation Against:
13 **MARCUS LYNN BRIGGS**
16851 Eagle Peak Road
14 Riverside, CA 92504
15 Pharmacist License No. RPH 45400
16 Respondent.

Case No. 5771
FIRST AMENDED
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On or about August 10, 1992, the Board issued Pharmacist License Number RPH
23 45400 to Marcus Lynn Briggs (Respondent). The Pharmacist License was in full force and effect
24 at all times relevant to the charges brought herein and will expire on May 31, 2018, unless
25 renewed.

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JURISDICTION

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

4. Section 4300, subdivision (a) of the Code states: "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the 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 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

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

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

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

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

8. Section 493 of the Code states:

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

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discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

9. Section 4301 of the Code states:

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

...

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

...

(i) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of 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. . . .

REGULATORY PROVISIONS

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

(b) When considering the suspension or revocation of a facility or a personal 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 eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.

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

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

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

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the 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 functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COSTS

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

DRUG

13. Ambien, a brand name for zolpidem tartrate, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32), and is a dangerous drug pursuant to Business & Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(October 24, 2016 Criminal Conviction for Reckless Driving on May 22, 2015)

14. Respondent has subjected his license to discipline under sections 490 and 4301(1) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On October 24, 2016, in a criminal proceeding entitled *People of the State of California v. Marcus Briggs*, in San Bernardino County Superior Court, case number 16CR-004823, Respondent was convicted on his plea of nolo contendere to violating Vehicle Code

1 section 23103, reckless driving. The original charge of driving under the influence of a drug
2 (Veh. Code, § 23152(e)), was dismissed.

3 b. As a result of the conviction, Respondent was granted probation for 36 months,
4 and ordered to pay fees and fines.

5 c. The facts that led to the conviction are that on the afternoon of May 22, 2015, a
6 motorcycle patrol officer with the San Bernardino Police Department responded to a report of a
7 male parked in the middle of an intersection, and possibly under the influence. Upon contact, the
8 officer observed that Respondent was wearing a robe, he had red, watery eyes, his speech was
9 slurred, and he appeared confused. He stated he was on his way to McDonald's, but his car broke
10 down. Respondent agreed to perform field sobriety tests which he was unable to complete as
11 explained and demonstrated by the officer. Respondent was arrested for driving under the
12 influence. During a Drug Recognition Evaluation, Respondent had difficulty maintaining focus
13 and appeared to be in a sedated state. Respondent admitted consuming medications earlier in the
14 day, including Ambien (zolpidem tartrate) for sleep. A blood sample provided by Respondent
15 tested positive for zolpidem.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of a Controlled Substance)**

18 15. Respondent has subjected his license to disciplinary action under section 4301(h) of
19 the Code for unprofessional conduct in that on or about May 22, 2015, as described in paragraph
20 14, above, Respondent operated a motor vehicle while impaired by a controlled substance.

21 **PRAYER**

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

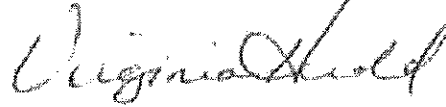
- 24 1. Revoking or suspending Pharmacist License Number RPH 45400, issued to Marcus
25 Lynn Briggs;
- 26 2. Ordering Marcus Lynn Briggs to pay the Board of Pharmacy the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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

DATED:

10/31/16



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

SD2016700401