

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

In the Matter of the Accusation Against:

**DANA D. DARLING  
2669 Crystal Downs  
Tulare, CA 93274**

**Pharmacist License No. RPH 40309**

Respondent.

Case No. 5897

OAH No. 2016120304


**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 June 8, 2017.

It is so ORDERED on May 9, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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Amy Gutierrez, Pharm.D.  
Board President

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

11 In the Matter of the Amended Accusation  
12 Against:

13 **DANA D. DARLING**  
14 **2669 Crystal Downs**  
**Tulare, CA 93274**

15 **Pharmacist License No. RPH 40309**

16 Respondent.

Case No. 5897

OAH No. 2016120304

17 **STIPULATED SETTLEMENT AND**  
18 **DISCIPLINARY ORDER**

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

21 PARTIES

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

26 2. Respondent Dana D. Darling (Respondent) is represented in this proceeding by  
27 attorney Adam B. Brown, whose address is: 3848 W. Carson Street, Suite 206  
28 Torrance, CA 90503.

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1           3.    On or about August 22, 1986, the Board issued Pharmacist License No. RPH 40309  
2 to Dana D. Darling (Respondent). The Pharmacist License was in full force and effect at all times  
3 relevant to the charges brought in Amended Accusation No. 5897, and will expire on February  
4 28, 2018, unless renewed.

5                                 JURISDICTION

6           4.    Amended Accusation No. 5897 was filed before the Board, and is currently pending  
7 against Respondent. The Amended Accusation and all other statutorily required documents were  
8 properly served on Respondent on March 3, 2017. Respondent timely filed her Notice of Defense  
9 contesting the Accusation.

10           5.   A copy of Amended Accusation No. 5897 is attached as exhibit A and incorporated  
11 herein by reference.

12                                 ADVISEMENT AND WAIVERS

13           6.   Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Amended Accusation No. 5897. Respondent has also carefully read,  
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16 Disciplinary Order.

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

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

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1 CULPABILITY

2 9. Respondent understands that the charges and allegations in Amended Accusation No.  
3 5897, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacist  
4 License.

5 10. For the purpose of resolving the Amended Accusation without the expense and  
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
7 establish a factual basis for the charges in the Amended Accusation and that those charges  
8 constitute cause for discipline. Respondent hereby gives up her right to contest that cause for  
9 discipline exists based on those charges.

10 CONTINGENCY

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

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

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

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacist License No. RPH 40309 issued to Respondent  
6 Dana D. Darling is revoked. However, the revocation is stayed and Respondent is placed on  
7 probation for five (5) years on the following terms and conditions.

8 **1. Suspension**

9 As part of probation, respondent is suspended from the practice of pharmacy pending a  
10 determination by the Pharmacists Recovery Program (PRP) that she safe is to practice.

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 devices or controlled substances.

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

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

24 **2. Obey All Laws**

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

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

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- 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.

**3. 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.

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

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**5. Cooperate with Board Staff**

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

**6. Continuing Education**

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

**7. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5897 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5897, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5897 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in case number 5897

1 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
2 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

16 **9. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, respondent shall pay to the  
18 board its costs of investigation and prosecution in the amount of \$8,500. Respondent shall make  
19 said payments on a payment plan approved by the board.

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

23 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to  
24 reimburse the board its costs of investigation and prosecution.

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**10. Probation Monitoring Costs**

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

**11. Status of License**

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

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

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

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

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

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

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1           **13. Notification of a Change in Name, Residence Address, Mailing Address or**  
2 **Employment**

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

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

10           **14. Tolling of Probation**

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

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

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

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

3 **15. Violation of Probation**

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

9 If respondent violates probation in any respect, the board, after giving respondent notice  
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
13 a petition to revoke probation or an accusation is filed against respondent during probation, the  
14 board shall have continuing jurisdiction and the period of probation shall be automatically  
15 extended until the petition to revoke probation or accusation is heard and decided, and the charges  
16 and allegations in the Amended Accusation shall be deemed true and correct.

17 **16. Completion of Probation**

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

20 **17. Pharmacists Recovery Program (PRP)**

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

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

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

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

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

13 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

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

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

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

4 **18. Random Drug Screening**

5 Respondent, at her own expense, shall participate in random testing, including but not  
6 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
7 screening program as directed by the board or its designee. Respondent may be required to  
8 participate in testing for the entire probation period and the frequency of testing will be  
9 determined by the board or its designee. At all times, respondent shall fully cooperate with the  
10 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
11 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
12 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
13 of probation. Upon request of the board or its designee, respondent shall provide documentation  
14 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
15 a necessary part of the treatment of the respondent. Failure to timely provide such documentation  
16 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
17 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
18 shall be considered a violation of probation and shall result in the automatic suspension of  
19 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until  
20 notified by the board in writing.

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

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

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

6           **19. Abstain from Drugs and Alcohol Use**

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

18           **20. Prescription Coordination and Monitoring of Prescription Use**

19           Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
20 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
21 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
22 history with the use of alcohol, and who will coordinate and monitor any prescriptions for  
23 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved  
24 practitioner shall be provided with a copy of the board's Accusation and decision. A record of  
25 this notification must be provided to the board upon request. Respondent shall sign a release  
26 authorizing the practitioner to communicate with the board about respondent's treatment(s). The  
27 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the  
28 board on a quarterly basis for the duration of probation regarding respondent's compliance with

1 this condition. If any substances considered addictive have been prescribed, the report shall  
2 identify a program for the time limited use of any such substances. The board may require that  
3 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a  
4 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,  
5 for any reason, cease supervision by the approved practitioner, respondent shall notify the board  
6 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement  
7 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the  
8 board or its designee for its prior approval. Failure to timely submit the selected practitioner or  
9 replacement practitioner to the board for approval, or to ensure the required reporting thereby on  
10 the quarterly reports, shall be considered a violation of probation.

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

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

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

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

1           **21. Supervised Practice**

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

7           Continuous – At least 75% of a work week

8           Substantial - At least 50% of a work week

9           Partial - At least 25% of a work week

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

11          Within thirty (30) days of the effective date of this decision, respondent shall have her  
12 supervisor submit notification to the board in writing stating that the supervisor has read the  
13 decision in case number 5897 and is familiar with the required level of supervision as determined  
14 by the board or its designee. It shall be the respondent's responsibility to ensure that her  
15 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
16 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
17 acknowledgements to the board shall be considered a violation of probation.

18          If respondent changes employment, it shall be the respondent's responsibility to ensure that  
19 her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
20 the board. Respondent shall have her new supervisor, within fifteen (15) days after employment  
21 commences, submit notification to the board in writing stating the direct supervisor and  
22 pharmacist-in-charge have read the decision in case number 5897 and is familiar with the level of  
23 supervision as determined by the board. Respondent shall not practice pharmacy and her license  
24 shall be automatically suspended until the board or its designee approves a new supervisor.  
25 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
26 acknowledgements to the board shall be considered a violation of probation.

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

28          During suspension, respondent shall not enter any pharmacy area or any portion of the



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

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

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

13 **22. No Ownership of Licensed Premises**

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

21 **23. Tolling of Suspension**

22 During the period of suspension, respondent shall not leave California for any period  
23 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess  
24 of the (10) days during suspension shall be considered a violation of probation. Moreover, any  
25 absence from California during the period of suspension exceeding ten (10) days shall toll the  
26 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days  
27 respondent is absent from California. During any such period of tolling of suspension,  
28 respondent must nonetheless comply with all terms and conditions of probation.

1 Respondent must notify the board in writing within ten (10) days of departure, and must  
2 further notify the board in writing within ten (10) days of return. The failure to provide such  
3 notification(s) shall constitute a violation of probation. Upon such departure and return,  
4 respondent shall not resume the practice of pharmacy until notified by the board that the period of  
5 suspension has been satisfactorily completed.

6 **24. Ethics Course**

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

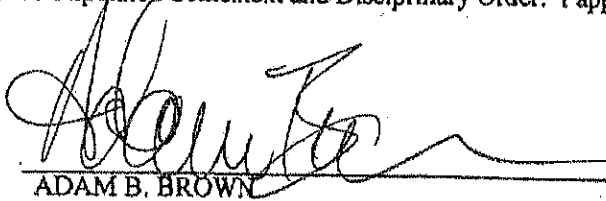
11 Respondent shall submit a certificate of completion to the board or its designee within five  
12 days after completing the course.

13 ACCEPTANCE

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

19  
20 DATED: 4/18/2017   
21 DANA D. DARLING  
22 Respondent

23 I have read and fully discussed with Respondent Dana D. Darling the terms and conditions  
24 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
25 its form and content.

26 DATED: 4-18-17   
27 ADAM B. BROWN  
28 Attorney for Respondent

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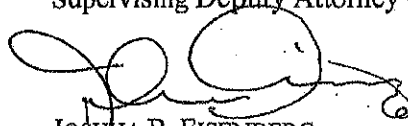
ENDORSEMENT

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

Dated: *April 19, 2017*

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
KENT D. HARRIS  
Supervising Deputy Attorney General



JOSHUA B. EISENBERG  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**Amended Accusation No. 5897**

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 JOSHUA B. EISENBERG  
Deputy Attorney General  
4 State Bar No. 279323  
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Sacramento, CA 94244-2550  
6 Telephone: (916) 327-1466  
Facsimile: (916) 327-8643  
7 E-mail: Joshua.Eisenberg@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **DANA D. DARLING, RPH**  
13 **2669 Crystal Downs**  
14 **Tulare, CA 93274**  
15 **Pharmacist License No. RPH 40309**  
16 Respondent.

Case No. 5897  
OAH No. 2016120304  
**AMENDED ACCUSATION**

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 (Board), Department of Consumer Affairs.  
21 2. On or about August 22, 1986, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 40309 to Dana D. Darling (Respondent). The Pharmacist License was in full force  
23 and effect at all times relevant to the charges brought herein and will expire on February 28, 2018,  
24 unless renewed.

25 **JURISDICTION**

- 26 3. This Amended Accusation is brought before the Board, under the authority of the  
27 following laws. All section references are to the Business and Professions Code unless otherwise  
28 indicated.

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4. Section 4300 of the Code states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

5. Code section 4300.1 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.

6. Section 4301 of the Code states, in pertinent part:

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.

7. Section 4327 of the Code states:

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

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1 COST RECOVERY

2 8. 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 FACTUAL ALLEGATIONS

9 9. At all times alleged herein, Respondent was a Registered Pharmacist and employed in  
10 her licensed capacity by Corcoran State Prison Hospital Pharmacy (Corcoran Prison Pharmacy), a  
11 prison operated and administered by the California Department of Corrections and Rehabilitation,  
12 located in Corcoran, California. The Corcoran Prison Pharmacy has compounding and dispensing  
13 of medications operations.

14 10. On or about October 19, 2015, November 23, 2015, and November 30, 2015,  
15 Respondent reported to work under the influence of alcohol. Respondent's colleagues, M. C.  
16 [male], A. J., and M. C. [female] observed that Respondent exhibited objective signs of being  
17 under the influence of an alcoholic beverage that is, odor of alcohol on her breath, bloodshot eyes,  
18 sleeping on the job, sleepiness, and flushed face.

19 11. On or about October 19, 2015 and November 30, 2015, Respondent's colleagues,  
20 mentioned above, observed Respondent's objective signs of being under the influence of an  
21 alcoholic beverage while Respondent was performing the duties and functions of a licensed  
22 pharmacist.

23 12. On or about November 23, 2015, B. M., Pharmacist-in-Charge, spoke with  
24 Respondent and observed that Respondent's "overall demeanor was off." He believed that  
25 Respondent might have shown some signs of impairment. Respondent admitted to B. M. that she  
26 was having personal problems and took several days off, returning to work after the Thanksgiving  
27 Holiday.

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1           13. On or about January 7, 2015, Respondent admitted to a Board inspector that she had  
2 been having "issues" for the past year, that it was "mostly a weekend problem," and that she  
3 sometimes would drink in the middle of the night. Respondent also admitted that she had had  
4 "problems" on and off throughout the years. Respondent refused to disclose her "triggers."

5           14. On or about January 16, 2017, Respondent was booked into the Corcoran Police  
6 Department jail for a violation of Vehicle Code sections 23152, subdivision (a) (driving under the  
7 influence of alcohol or drugs) and 23152, subdivision (b) (driving with a blood alcohol content of  
8 .08% or above). The circumstances of Respondent's arrest are as follows:

9           A. At 7:29 a.m., Officer Augustus of the Corcoran Police Department was  
10 dispatched to the Corcoran State Prison regarding a possible drunk driver. Upon arrival, the  
11 officer spoke with a correctional officer standing at the driver's side door of Respondent's  
12 vehicle, who informed the police officer that he had followed Respondent's vehicle from State  
13 Route 43 to the front gate of the prison, at which time he contacted the Corcoran Police  
14 Department.

15           B. Upon approaching the open driver's side door, the police officer could detect an  
16 odor of alcohol emitting from the interior of Respondent's vehicle. Respondent admitted that she  
17 drank a couple of Bud Light beers the prior night and had stopped consuming prior to 8:00 p.m.  
18 Respondent also stated that she takes Librium for alcoholism. The police officer reported that  
19 during this conversation, Respondent had a blank stare and was having a difficult time holding a  
20 conversation.

21           C. The police officer had Respondent perform field sobriety tests, which  
22 Respondent was unable to successfully complete. At approximately 7:50 a.m., Respondent was  
23 administered a PAS breath test, which displayed a result of .267% blood alcohol content. Based  
24 on the police officer's observations and evaluation of Respondent, he concluded that she was too  
25 intoxicated to safely operate a motor vehicle on a highway, and Respondent was placed under  
26 arrest.

27           15. On or about January 18, 2017, Respondent was arrested for a violation of Vehicle  
28 Code sections 23152, subdivision (a) (driving under the influence of alcohol or drugs) and 23152,



1 subdivision (b) (driving with a blood alcohol content of .08% or above), and was transported to  
2 the Tulare Police Department. The circumstances of Respondent's arrest are as follows:

3 A. At approximately 7:12 a.m., Officer Santos of the Tulare Police Department  
4 was dispatched regarding a non-injury traffic collision. Upon making contact with Respondent,  
5 the officer observed that Respondent appeared confused and had slow, lethargic speech.

6 B. Officer Garcia then contacted Respondent, noting that her speech was slurred,  
7 her eyes were watery, and there was a faint odor of alcohol emitted from the vehicle. Respondent  
8 admitted that she had one 12 ounce beer at home prior to leaving. Officer Garcia administered  
9 field sobriety tests, which Respondent was unable to successfully complete. Respondent was  
10 given the option to submit to either a blood or breath test based on suspicion of her driving under  
11 the influence. Respondent chose to have a blood sample taken, and was transported to the Tulare  
12 Police Department for processing and the administration of a blood test.

13 16. On or about February 1, 2017, Respondent was arrested and booked at the Tulare  
14 County Pre-Trial Facility for a violation of Penal Code section 647, subdivision (f) (disorderly  
15 conduct while under the influence of alcohol). The circumstances of Respondent's arrest are as  
16 follows:

17 A. Officer Balderas of the Visalia Police Department was dispatched on a report of  
18 an intoxicated subject. Upon arriving at the scene, the officer made contact with Respondent, who  
19 was seated in her vehicle. Upon contact, the officer could smell a strong odor of an unknown  
20 alcoholic beverage emitting from Respondent's breath and person. The officer observed that  
21 Respondent had slurred speech, bloodshot watery eyes, and was having difficulty standing and  
22 walking. Based on the officer's assessment that Respondent was not able to care for her own  
23 safety or the safety of others, as she was attempting to drive from the location, Respondent was  
24 arrested.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Used Alcoholic Beverages to an Extent or Manner - Dangerous or Injurious to Self or**  
3 **Others - Impaired Ability to Practice Safely)**

4 17. Respondent is subject to disciplinary action under Code section 4300 on the grounds  
5 of unprofessional conduct within the meaning of Code section 4301, subdivision (h), in that  
6 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself  
7 or others and impaired her ability to practice safely as a licensed pharmacist, as set forth in  
8 paragraphs 9 through 13, above, incorporated herein by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dispensed Drugs While Under the Influence of Alcohol)**

11 14. Respondent is subject to disciplinary action under Code section 4300 on the grounds  
12 of unprofessional conduct in conjunction with Code section 4327 in that Respondent performed  
13 the duties and functions of a licensed pharmacist by dispensing drugs when she reported to work  
14 at Corcoran Prison Pharmacy while under the influence of alcoholic beverages, as set forth in  
15 paragraphs 9 through 13, above, incorporated herein by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Used Alcoholic Beverages to an Extent or Manner - Dangerous or Injurious to Self or**  
18 **Others)**

19 18. Respondent is subject to disciplinary action under Code section 4300 on the grounds  
20 of unprofessional conduct within the meaning of Code section 4301, subdivision (h), in that  
21 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself  
22 or others and impaired her ability to practice safely as a licensed pharmacist, as set forth in  
23 paragraphs 14 through 16, above, incorporated herein by reference.

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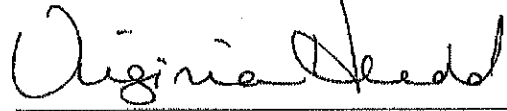
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**PRAYER**

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

1. Revoking or suspending Pharmacist License Number RPH 40309, issued to Dana D. Darling,;
2. Ordering Dana D. Darling to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/28/17



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

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