

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

In the Matter of the Accusation Against:

**KEVIN JOHN O'BRIEN,
Pharmacist License No. RPH 72475;**

Respondent

Agency Case No. 6962

OAH No. 2020110226

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 March 12, 2021.

It is so ORDERED on February 10, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", written in a cursive style.

By

Greg Lippe
Board President

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

12 In the Matter of the Accusation Against:

13 **KEVIN JOHN O'BRIEN**
14 **2801 Newhall St.**
Santa Clara, CA 95050

15 **Pharmacist License No. RPH 72475**

16 Respondent.
17

Case No. 6962

OAH No. 2020110226

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
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. Anne Sodergren (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 Heather Vo, Deputy Attorney
25 General.

26 2. Respondent Kevin John O'Brien (Respondent) is represented in this proceeding by
27 attorney Adam B. Brown, Esq., whose address is: 3848 W. Carson Street, Suite 206, Torrance,
28 CA 90503.

3. On or about March 19, 2015, the Board issued Pharmacist License No. RPH 72475 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 6962, and will expire on February 28, 2021, unless renewed.

JURISDICTION

4. On October 29, 2020, a Petition for an Interim Suspension Order was granted. Pursuant to that order, Pharmacist License No. RPH 72475 issued to Respondent, and all licensing rights appurtenant thereto, were suspended on an interim basis. By stipulation, parties agreed that the suspension of Pharmacist License No. RPH 72475 shall continue pending resolution of the Board's forthcoming disciplinary action.

5. Accusation No. 6962 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 25, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of the Order on Stipulation for Interim Suspension Order is attached as Exhibit A and Accusation No. 6962 is attached as Exhibit B. Said documents are incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 6962. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

10. Respondent understands and agrees that the charges and allegations in Accusation Case No. 6962, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License No. RPH 72475.

11. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his rights to contest those charges.

12. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

13. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 72475 issued to Respondent Kevin John O'Brien is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment

a conviction of any crime

the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves

respondent's 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 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.

4. Cooperate with Board Staff

Respondent shall timely 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 his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

1 **5. Continuing Education**

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

4 **6. Reporting of Employment and Notice to Employers**

5 During the period of probation, respondent shall notify all present and prospective
6 employers of the decision in case number 6962 and the terms, conditions and restrictions imposed
7 on respondent by the decision, as follows:

8 Within thirty (30) days of the effective date of this decision, and within ten (10) days of
9 undertaking any new employment, respondent shall report to the board in writing the name,
10 physical address, and mailing address of each of his employer(s), and the name(s) and telephone
11 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in- charge, designated
12 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
13 schedule, if known. Respondent shall also include the reason(s) for leaving the prior
14 employment. Respondent shall sign and return to the board a written consent authorizing the
15 board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and
16 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,
17 concerning respondent's work status, performance, and monitoring. Failure to comply with the
18 requirements or deadlines of this condition shall be considered a violation of probation.

19 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
20 respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b)
21 his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
22 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the
23 board in writing acknowledging that the listed individual(s) has/have read the decision in case
24 number 6962, and terms and conditions imposed thereby. If one person serves in more than one
25 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
26 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
27 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
28 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in

1 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
2 in case number 6962, and the terms and conditions imposed thereby.

3 If respondent works for or is employed by or through an employment service, respondent
4 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
5 of the decision in case number 6962, and the terms and conditions imposed thereby in advance of
6 respondent commencing work at such licensed entity. A record of this notification must be
7 provided to the board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of respondent undertaking any new employment by or through an employment service,
10 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service
11 to report to the board in writing acknowledging that he or she has read the decision in case
12 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to
13 ensure that these acknowledgment(s) are timely submitted to the board.

14 Failure to timely notify present or prospective employer(s) or failure to cause the identified
15 person(s) with that/those employer(s) to submit timely written acknowledgments to the board
16 shall be considered a violation of probation.

17 "Employment" within the meaning of this provision includes any full-time, part-time,
18 temporary, relief, or employment/management service position as a Pharmacist, or any position
19 for which a Pharmacist is a requirement or criterion for employment, whether the respondent is an
20 employee, independent contractor or volunteer.

21 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

22 Respondent shall further notify the board in writing within ten (10) days of any change in
23 name, residence address, mailing address, e-mail address or phone number.

24 Failure to timely notify the board of any change in employer, name, address, or phone
25 number shall be considered a violation of probation.

26 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

27 During the period of probation, respondent shall not supervise any intern pharmacist, be the
28 pharmacist-in-charge, designated representative-in-charge, responsible manager or other

1 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
2 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

3 **9. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, respondent shall pay to the
5 board its costs of investigation and prosecution in the amount of \$6,979.37.

6 Respondent shall be permitted to pay these costs in a payment plan approved by the board
7 or its designee, so long as full payment is completed no later than one (1) year prior to the end
8 date of probation.

9 **10. Probation Monitoring Costs**

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

14 **11. Status of License**

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

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

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

24 Following the effective date of this decision, should respondent cease practice due to
25 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
26 respondent may relinquish his license, including any indicia of licensure issued by the board,
27 along with a request to surrender the license. The board or its designee shall have the discretion
28 whether to accept the surrender or take any other action it deems appropriate and reasonable.

1 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
2 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
3 become a part of the respondent's license history with the board.

4 Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall
5 license, including any indicia of licensure not previously provided to the board within ten (10)
6 days of notification by the board that the surrender is accepted if not already provided.

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

11 **13. Practice Requirement – Extension of Probation**

12 Except during periods of suspension, respondent shall, at all times while on probation, be
13 employed as a Pharmacist in California for a minimum of 80 hours per calendar month. Any
14 month during which this minimum is not met shall extend the period of probation by one month.
15 During any such period of insufficient employment, respondent must nonetheless comply with all
16 terms and conditions of probation, unless respondent receives a waiver in writing from the board
17 or its designee.

18 If respondent does not practice as a Pharmacist in California for the minimum number of
19 hours in any calendar month, for any reason (including vacation), respondent shall notify the
20 board in writing within ten (10) days of the conclusion of that calendar month. This notification
21 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
22 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume
23 practice at the required level. Respondent shall further notify the board in writing within ten (10)
24 days following the next calendar month during which respondent practices as a Pharmacist in
25 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
26 considered a violation of probation.

27 It is a violation of probation for respondent's probation to be extended pursuant to the
28 provisions of this condition for a total period, counting consecutive and non-consecutive months,

1 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
2 probation period on its website.

3 **14. Violation of Probation**

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

10 If respondent violates probation in any respect, the board, after giving respondent notice
11 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
12 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
13 probation, or the preparation of an accusation or petition to revoke probation is requested from
14 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
15 probation shall be automatically extended until the petition to revoke probation or accusation is
16 heard and decided, and the charges and allegations in Accusation No. 6962 shall be deemed true
17 and correct.

18 **15. Completion of Probation**

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

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

22 By no later than ten (10) days after the effective date of this decision, respondent shall have
23 completed all of the following: contacted the Pharmacists Recovery Program (PRP) for
24 evaluation; enrolled in the PRP; completed, signed, and returned the treatment contract as well as
25 any addendums required or suggested by the PRP; successfully completed registration for any
26 drug or alcohol testing mandated by the treatment contract and/or by enrollment in the PRP; and
27 begun compliance with the drug or alcohol testing protocol(s). Respondent shall successfully
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1 participate in the PRP and complete the treatment contract and any addendums required or
2 suggested by the PRP. The costs for PRP participation shall be borne by the respondent.

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

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

10 Any of the following shall result in the automatic suspension of practice by respondent and
11 shall be considered a violation of probation:

12 Failure to contact, complete enrollment, and execute and return the treatment contract with
13 the PRP, including any addendum(s), within ten (10) days of the effective date of the decision as
14 directed by the PRP;

15 Failure to complete registration for any drug or alcohol testing mandated by the treatment
16 contract and/or by the PRP, and begin compliance with the testing protocol(s), within ten (10)
17 days of the effective date of the decision as directed by the PRP;

18 Failure to comply with testing protocols regarding daily check-in and/or failure to complete
19 a mandated test as directed by the PRP;

20 Any report from the PRP of material non-compliance with the terms and conditions of the
21 treatment contract and/or any addendum(s); or

22 Termination by the PRP for non-compliance, failure to derive benefit, or as a public risk.

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

24 Probation shall be automatically extended until respondent successfully completes the PRP.
25 The board will provide notice of any such suspension or extension of probation.

26 During any suspension, respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug
28 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or

1 any area where dangerous drugs and/or dangerous devices or controlled substances are
2 maintained. Respondent shall not practice as a Pharmacist nor do any act involving drug
3 selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor
4 shall respondent manage, administer, or be a consultant to any licensee of the board, or have
5 access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs
6 and/or dangerous devices or controlled substances.

7 During any suspension, respondent shall not engage in any activity that requires the
8 professional judgment of and/or licensure as a Pharmacist. Respondent shall not direct or control
9 any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or
10 retailing of dangerous drugs and/or dangerous devices or controlled substances.

11 Failure to comply with any requirement or deadline stated by this term shall be considered a
12 violation of probation.

13 **17. Drug and Alcohol Testing**

14 Respondent, at his own expense, shall participate in testing as directed by the board or its
15 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or
16 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),
17 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its
18 designee. All testing must be pursuant to an observed testing protocol, unless respondent is
19 informed otherwise in writing by the board or its designee. Respondent may be required to
20 participate in testing for the entire probation period and frequency of testing will be determined
21 by the board or its designee.

22 By no later than thirty (30) days after the effective date of this decision, respondent shall
23 have completed all of the following tasks: enrolled and registered with an approved drug and
24 alcohol testing vendor; provided that vendor with any documentation, and any information
25 necessary for payment by respondent; commenced testing protocols, including all required
26 contacts with the testing vendor to determine testing date(s); and begun testing. At all times,
27 respondent shall fully cooperate with the testing vendor, and with the board or its designee, with
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1 regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to
2 cooperate timely shall be considered a violation of probation.

3 Respondent may be required to test on any day, including weekends and holidays.

4 Respondent is required to make daily contact with the testing vendor to determine if a test is
5 required, and if a test is required must submit to testing on the same day.

6 Prior to any vacation or other period of absence from the area where the approved testing
7 vendor provides services, respondent shall seek and receive approval from the board or its
8 designee to use an alternate testing vendor to ensure testing can occur. Upon approval,
9 respondent shall enroll and register with the approved alternate drug testing vendor, provide to
10 that alternate vendor any documentation required by the vendor, including any necessary payment
11 by respondent. During the period of absence of the area, respondent shall commence testing
12 protocols with the alternate vendor, including required daily contacts with the testing vendor to
13 determine if testing is required, and required testing. Any failure to timely seek or receive
14 approval from the board or its designee, or to timely enroll and register with, timely commence
15 testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be
16 considered a violation of probation.

17 Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its
18 designee may require respondent to timely provide documentation from a licensed practitioner
19 authorized to prescribe the detected substance demonstrating that the substance was administered
20 or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such
21 documentation shall be provided by respondent within ten (10) days of being requested.

22 Any of the following shall be considered a violation of probation and shall result in
23 respondent being immediately suspended from practice as a Pharmacist until notified by the board
24 in writing that he may resume practice: failure to timely complete all of the steps required for
25 enrollment/registration with the drug testing vendor, including making arrangements for payment;
26 failure to timely commence drug testing protocols; failure to contact the drug testing vendor as
27 required to determine testing date(s); failure to test as required; failure to timely supply
28 documentation demonstrating that a detected substance was taken pursuant to a legitimate

1 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or
2 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the
3 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In
4 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a
5 controlled substance or dangerous drug absent documentation that the detected substance was
6 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee
7 shall inform respondent of the suspension and inform him to immediately leave work, and shall
8 notify respondent's employer(s) and work site monitor(s) of the suspension.

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

18 During any such suspension, respondent shall not engage in any activity that requires the
19 professional judgment of and/or licensure as a Pharmacist. Respondent shall not direct or control
20 any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or
21 retailing of dangerous drugs and/or dangerous devices.

22 Failure to comply with any such suspension shall be considered a violation of probation.
23 Failure to comply with any requirement or deadline stated by this term shall be considered a
24 violation of probation.

25 **18. Notification of Departure**

26 Prior to leaving the probationary geographic area designated by the board or its designee for
27 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
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1 writing of the dates of departure and return. Failure to comply with this provision shall be
2 considered a violation of probation.

3 **19. Abstain from Drugs and Alcohol**

4 Respondent shall completely abstain from the possession or use of alcohol, controlled
5 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated
6 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a
7 necessary part of treatment. Respondent shall ensure that he is not in the same physical location
8 as individuals who are using illicit substances even if respondent is not personally ingesting the
9 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled
10 substances, or their associated paraphernalia for which a legitimate prescription has not been
11 issued as a necessary part of treatment, or any physical proximity to persons using illicit
12 substances, shall be considered a violation of probation.

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

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

1 for any reason, cease supervision by the approved practitioner, respondent shall notify the board
2 or its designee immediately and, within thirty (30) days of ceasing supervision, submit the name
3 of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's
4 choice to the board or its designee for its prior approval. Failure to timely submit the selected
5 practitioner or replacement practitioner to the board or its designee for approval, or to ensure the
6 required quarterly reporting thereby, shall be considered a violation of probation.

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

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

23 During any suspension, respondent shall not engage in any activity that requires the
24 professional judgment and/or licensure as a Pharmacist. Respondent shall not direct or control
25 any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling, or
26 retailing of dangerous drugs and/or dangerous devices or controlled substances.

27 Failure to comply with any requirement or deadline stated by this term shall be considered a
28 violation of probation.

1 **21. Facilitated Group Recovery and/or Support Meetings**

2 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
3 attendance at a group recovery and/or support meeting that is run by a trained facilitator approved
4 in advance by the board or its designee. The required frequency of group meeting attendance
5 shall be determined by the board or its designee. Respondent shall continue regular attendance as
6 directed at an approved facilitated group meeting until the board or its designee advises the
7 respondent in writing that he may cease regular attendance. Respondent shall provide signed and
8 dated documentation of attendance as required with each quarterly report. Failure to attend as
9 required or to submit documentation of attendance shall be considered a violation of probation.

10 If respondent is required to participate in the PRP, compliance with this term can be
11 demonstrated through that program. Where respondent is enrolled in the PRP, participation as
12 required in a facilitated group meeting approved by the PRP shall be sufficient for satisfaction of
13 this requirement. Any deviation from participation requirements for the PRP-approved group
14 shall be considered a violation of probation.

15 **22. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

16 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
17 attendance at a recognized and established substance abuse recovery support group in California
18 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
19 or its designee. Respondent must attend the number of group meetings per week or month
20 directed by the board or its designee, which shall typically be at least one per week. Respondent
21 shall continue regular attendance and submit signed and dated documentation confirming
22 attendance with each quarterly report for the duration of probation. Failure to attend or submit
23 documentation thereof shall be considered a violation of probation.

24 Where respondent is enrolled in the PRP, participation as required in a recovery group
25 meeting approved by the PRP shall be sufficient for satisfaction of this requirement. Any
26 deviation from participation requirements for the PRP-approved group shall be considered a
27 violation of probation.

1 **23. Work Site Monitor**

2 Within ten (10) days of the effective date of this decision, respondent shall identify a work
3 site monitor, for prior approval by the board or its designee, who shall be responsible for
4 supervising respondent during working hours. Respondent shall be responsible for ensuring that
5 the work site monitor reports in writing to the board monthly or on another schedule as directed
6 by the board or its designee. Should the designated work site monitor suspect at any time during
7 the probationary period that respondent has abused alcohol or drugs, he or she shall notify the
8 board immediately.

9 In the event of suspected abuse, the monitor shall make at least oral notification within one
10 (1) business day of the occurrence, and shall be followed by written notification within two (2)
11 business days of the occurrence. If, for any reason, including change of employment, respondent
12 is no longer able to be monitored by the approved work site monitor, within ten (10) days
13 respondent shall designate a new work site monitor for approval by the board or its designee.
14 Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure
15 monthly reports are submitted to the board by the monitor, shall be considered a violation of
16 probation.

17 Within thirty (30) days of being approved by the board or its designee, the work site
18 monitor shall sign an affirmation that he or she has reviewed the terms and conditions of
19 respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at
20 least:

- 21 1) Have regular face-to-face contact with respondent in the work environment, at least
22 once per week or with greater frequency if required by the board or its designee;
23 2) Interview other staff in the office regarding respondent's behavior, if applicable; and
24 3) Review respondent's work attendance.

25 The written reports submitted to the board or its designee by the work site monitor shall
26 include at least the following information: respondent's name and license number; the monitor's
27 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-
28 face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on

any changes in respondent's behavior or personal habits; notes on any indicators that may lead to substance abuse; and the work site monitor's signature.

Respondent shall complete the required consent forms and sign an agreement with the work site monitor and the board to allow the board to communicate with the work site monitor.

24. 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 that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall provide proof of enrollment upon request. Within five (5) days of completion, respondent shall submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll in an approved ethics course, to initiate the course during the first year of probation, to successfully complete it before the end of the second year of probation, or to timely submit proof of completion to the board or its designee, shall be considered a violation of probation.

25. Supervised Practice

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, the name of a Pharmacist by and not on probation with the board, to serve as respondent's practice supervisor. As part of the documentation submitted, respondent shall cause the proposed practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 6962, and is familiar with the terms and conditions imposed thereby, including the level of supervision required by the board or its designee. This level will be determined by the board or its designee, will be communicated to the respondent on or before the effective date of this decision and shall be one of the following:

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

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

Respondent may practice only under the required level of supervision by an approved practice supervisor. If, for any reason, including change of employment, respondent is no longer

1 supervised at the required level by an approved practice supervisor, within ten (10) days of this
2 change in supervision respondent shall submit to the board or its designee, for prior approval, the
3 name of a Pharmacist by and not on probation with the board, to serve as respondent's
4 replacement practice supervisor. As part of the documentation submitted, respondent shall cause
5 the proposed replacement practice supervisor to report to the board in writing acknowledging that
6 he or she has read the decision in case number 6962, and is familiar with the terms and conditions
7 imposed thereby, including the level of supervision required.

8 Any of the following shall result in the automatic suspension of practice by a respondent
9 and shall be considered a violation of probation:

10 Failure to nominate an initial practice supervisor, and to have that practice supervisor report
11 to the board in writing acknowledging the decision, terms and conditions, and supervision level,
12 within thirty (30) days;

13 Failure to nominate a replacement practice supervisor, and to have that practice supervisor
14 report to the board in writing acknowledging the decision, terms and conditions, and supervision
15 level, within ten (10) days;

16 Practicing in the absence of an approved practice supervisor beyond the initial or
17 replacement nomination period; or

18 Any failure to adhere to the required level of supervision.

19 Respondent shall not resume practice until notified in writing by the board or its designee.

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

1 During any suspension, respondent shall not engage in any activity that requires the
2 professional judgment and/or licensure as a Pharmacist. Respondent shall not direct or control
3 any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or
4 retailing of dangerous drugs and/or dangerous devices or controlled substances.

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

6 **26. No Ownership or Management of Licensed Premises**

7 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
8 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
9 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
10 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
11 days following the effective date of this decision and shall immediately thereafter provide written
12 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
13 documentation thereof shall be considered a violation of probation.

14 **ACCEPTANCE**

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

20
21 DATED: _____

22 KEVIN JOHN O'BRIEN
23 *Respondent*
24
25
26
27
28

1 During any suspension, respondent shall not engage in any activity that requires the
2 professional judgment and/or licensure as a Pharmacist. Respondent shall not direct or control
3 any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or
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8 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
9 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
10 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
11 days following the effective date of this decision and shall immediately thereafter provide written
12 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
13 documentation thereof shall be considered a violation of probation.

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17 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
18 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
19 Board of Pharmacy.

20
21 DATED: _____

Signature page attached

KEVIN JOHN O'BRIEN
Respondent

1 During any suspension, respondent shall not engage in any activity that requires the
2 professional judgment and/or licensure as a Pharmacist. Respondent shall not direct or control
3 any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or
4 retailing of dangerous drugs and/or dangerous devices or controlled substances.

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


6 **26. No Ownership or Management of Licensed Premises**

7 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,
8 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
9 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
10 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
11 days following the effective date of this decision and shall immediately thereafter provide written
12 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
13 documentation thereof shall be considered a violation of probation.

14 **ACCEPTANCE**

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

20
21 DATED: 12/18/2020


22 KEVIN JOHN O'BRIEN
23 Respondent
24
25
26
27
28

1 I have read and fully discussed with Respondent Kevin John O'Brien the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: _____
6 ADAM B. BROWN
7 *Attorney for Respondent*

8 **ENDORSEMENT**


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

11 DATED: _____
12 Respectfully submitted,
13 XAVIER BECERRA
14 Attorney General of California
15 THOMAS L. RINALDI
16 Supervising Deputy Attorney General
17
18 HEATHER VO
19 Deputy Attorney General
20 *Attorneys for Complainant*

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1 I have read and fully discussed with Respondent Kevin John O'Brien the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 12-18-20


ADAM B. BROWN
Attorney for Respondent

7
8 **ENDORSEMENT**

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

11 DATED: 12/18/2020

12 Respectfully submitted,

13 XAVIER BECERRA
14 Attorney General of California
15 THOMAS L. RINALDI
16 Supervising Deputy Attorney General

17 

18 HEATHER VO
19 Deputy Attorney General
20 Attorneys for Complainant

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Exhibit A

Order on Stipulation for Interim Suspension Order

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

In the Matter of the Petition for Interim Suspension Order

Against:

KEVIN JOHN O'BRIEN,

Registered Pharmacist License No. RPH 72475

Respondent.

Agency Case No. 6962

OAH No. 2020090792

DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on October 23, 2020, by videoconference.

Deputy Attorney General Heather Vo represented petitioner Anne Sodergren, Executive Officer of the Board of Pharmacy.

Attorney Adam Brown, Brown and Brown Law Firm, represented respondent who was present at the hearing.

In accordance with Business and Professions Code section 494, subdivision (d), affidavits and other documentary evidence were received; oral and written arguments were presented, and the record was closed.

The matter was submitted for decision on October 23, 2020.

FACTUAL FINDINGS

1. On March 19, 2005, the Board of Pharmacy (Board) issued Registered Pharmacist License No. RPH 72475 to respondent, Kevin John O'Brien. The license was in full force and effect at all times relevant to the current matters and will expire on February 28, 2021, unless renewed.

2. Anne Sodergren in her official capacity as Executive Officer of the Board, signed a petition on September 18, 2020, initiating this matter. Petitioner alleges that respondent stole controlled substances from patients' prescriptions while working as a pharmacist for approximately one year.

Controlled Substances Theft

3. Respondent was employed at Rite Aid Pharmacy as a pharmacist. Video surveillance dated December 4, 2019, showed respondent filling a prescription, placing the contents of the vial onto a counting tray, and picking up a tablet and placing it into his pocket.

4. On December 13, 2019, respondent was confronted by his employer regarding missing prescription medications. Respondent admitted that he had been stealing one or two medications during every shift for the past year. When interviewed by a Santa Clara County deputy sheriff, respondent told the deputy he had been

stealing medications for personal use for approximately one year. Respondent told the deputy that he thought he was being smart about it and that he would not get caught. Respondent denied having stolen any medications on December 13, 2019, but had seven stolen pills in his pocket. Respondent used his working knowledge to take medications from patients who would not realize they had been short-changed.

5. Respondent was arrested for commercial burglary, a felony (Pen. Code, § 459), embezzlement, a misdemeanor (Pen. Code, § 503), and unlawful possession of a controlled substance, a misdemeanor (Health & Saf. Code, § 11350, subd. (a).)

6. Respondent stole controlled substances from an unknown number of patient's prescription for one year during his employment as a pharmacist at Rite Aid, endangering the health and safety of the patients.

7. Respondent offered proof that he is attending Narcotics Anonymous and engaging in therapy. On September 30, 2020, respondent began undergoing drug testing and provided eight negative tests.

LEGAL CONCLUSIONS

1. The Board may temporarily suspend respondent's license or impose license restrictions, upon proof that the licensee has violated the provisions of the Business and Professions Code and that permitting the licensee to continue as a pharmacist would endanger the public health, safety, or welfare. (Bus. & Prof. Code, § 494, subd. (a).)

2. Petitioner bears the burden of proving the facts necessary to support the suspension by a preponderance of the evidence. (Bus. & Prof. Code, § 494, subd. (e).) The factual findings above reflect that burden.

3. Business and Professions Code section 4301, subdivision (f), authorizes the Board to impose discipline upon a licensee who commits an act involving moral turpitude, dishonesty, fraud, deceit or corruption. Based on the matters as set forth in Factual Findings 3 through 6, respondent has engaged in unprofessional conduct by stealing medications from patient's prescriptions which involved moral turpitude, dishonesty, fraud, deceit or corruption.

4. Business and Professions Code section 4301, subdivision (h), authorizes the Board to impose discipline upon a licensee who administers to himself a controlled substance, or uses a dangerous drug or alcohol in a manner as to be dangerous or injurious to himself or to any other person or to the public, or to the extent that the use impairs the ability of the person to practice in a manner safe to the public. Respondent violated this statute by depriving patients of their prescribed medication and using them himself without a prescription as set forth in Factual Findings 3 through 6.

5. Business and Professions Code section 4301, subdivision (j), authorizes the Board to impose discipline upon a licensee who violates any of the statutes of this state, any other state, or of the United States regulating controlled substances and dangerous drugs. Respondent violated the statutes of this state and the United States regulating controlled substances and dangerous drugs as set forth in Factual Findings 3 through 6.

6. Business and Professions Code section 4301, subdivision (o), authorizes the Board to impose discipline upon a licensee who violates the laws and regulations governing pharmacy. As set forth in Factual Findings 3 through 6, respondent violated the laws and regulations governing pharmacy.

7. The matters stated in Factual Findings 3 through 6, and Legal Conclusions 3 through 6, establish that respondent has engaged in acts constituting a violation of the Business and Professions Code, and that permitting respondent to engage in the licensed activity would endanger the public health, safety, or welfare.

Considering the lengthy history of violations and the fact they were committed while working in the pharmacy, nothing short of an interim suspension will adequately protect the public.

ORDER

Registered Pharmacist License No. RPH 72475, held by respondent Kevin John O'Brien is suspended.

DATE: **10/29/2020**



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings

Exhibit B

Accusation No. 6962

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 JULIANNE MOSSLER
Deputy Attorney General
4 State Bar No. 243749
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1349
Facsimile: (510) 622-2270
7 E-mail: Julianne.Mossler@doj.ca.gov
Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 6962

14 **KEVIN JOHN O'BRIEN**
2801 Newhall St.,
15 Santa Clara, CA 95050

ACCUSATION

16 **Registered Pharmacist License No. RPH**
17 **72475**

18 Respondent.

19
20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

23 2. On or about March 19, 2005, the Board issued Pharmacist License Number RPH
24 72475 to Kevin John O'Brien (Respondent). The Pharmacist License was in full force and effect
25 at all times relevant to the charges brought in this Accusation and will expire on February 28,
26 2021, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board under the authority of the following

1 laws. All section references are to the Business and Professions Code (Code) unless otherwise
2 indicated.

3 4. Code section 4011 states, in pertinent part, that the Board shall administer and
4 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled
5 Substances Act [Health & Safety Code, § 11000 et seq.].

6 5. Code section 4300 states, in pertinent part, that every license issued may be
7 suspended or revoked.

8 6. Code section 4300.1 states:

9 The expiration, cancellation, forfeiture, or suspension of a board-issued license
10 by operation of law or by order or decision of the board or a court of law, the
11 placement of a license on a retired status, or the voluntary surrender of a license by a
12 licensee shall not deprive the board of jurisdiction to commence or proceed with any
13 investigation of, or action or disciplinary proceeding against, the licensee or to render
14 a decision suspending or revoking the license.

13 **STATUTORY PROVISIONS**

14 7. Code section 4301 states, in pertinent part:

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

18 ...

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

21 ...

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

26 ...

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

27 ...

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 abetting the violation of or conspiring to violate any provision or term of this chapter

or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

...

8. Section 4021 of the Code states:

“Controlled substance” means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

9. Section 4022 of the Code states, in pertinent part:

Dangerous drug or dangerous device means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: Caution: federal law prohibits dispensing without prescription, Rx only, or words of similar import.

...

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

10. Code section 4059 states, in pertinent part:

A person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11. Section 4060 of the Code states, in pertinent part:

No person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

12. Health and Safety Code section 11170 states, in pertinent part:

No person shall prescribe, administer, or furnish a controlled substance for himself.

13. Health and Safety Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of controlled substances, (a) by fraud, deceit, misrepresentation, or subterfuge; or (2) by concealment of a material fact.

REGULATORY PROVISIONS

14. 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

1 qualifications, functions or duties of a licensee or registrant if to a substantial degree
2 it evidences present or potential unfitness of a licensee or registrant to perform the
3 functions authorized by his license or registration in a manner consistent with the
4 public health, safety, or welfare.

5 **COST RECOVERY**

6 15. Code section 125.3 states, in pertinent part, that the Board may request the
7 administrative law judge to direct a licensee found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 **DRUGS**

11 16. *Valium* is a brand name of diazepam, and is used to treat anxiety. It is a Schedule IV
12 controlled substances pursuant to Health and Safety Code section 11057, and a dangerous drug
13 pursuant to Business and Professions Code section 4022.

14 17. *Adderall* is a brand name of dextroamphetamine/amphetamine combo, and is used to
15 treat attention deficit and hyperactivity disorders. It is a Schedule II controlled substances
16 pursuant to Health and Safety Code section 11055, and a dangerous drug pursuant to Business
17 and Professions Code section 4022.

18 18. *Neurontin* is a brand name of gabapentin, and is used to treat pain associated with
19 diabetic neuropathy. It is a dangerous drug pursuant to Business and Professions Code section
20 4022.

21 19. *Klonopin* is a trade name for Clonazepam, and is used to treat anxiety. It is a
22 Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and a
23 dangerous drug pursuant to Business and Professions Code section 4022.

24 **FACTUAL ALLEGATIONS**

25 20. On or about January 7, 2020, the Board received a *DEA-106 Report of Theft or Loss*
26 *of Controlled Substances* from Rite Aid Pharmacy reporting the loss of several controlled
27 substance medications. An internal investigation performed at Rite Aid revealed a Pharmacist
28 was diverting medications by taking tablets from prescriptions already filled for patients prior to
being picked up by the patient. The subsequent investigation substantiated the information from
Rite Aid and violations of pharmacy law occurred.

1 21. Specifically, on or about December 13, 2019, while working as a Pharmacist at Rite
2 Aid Pharmacy #5967, Respondent admitted to diverting dangerous drugs including controlled
3 substances in a written statement and to a loss prevention manager and police officer. In his
4 statement, Respondent admitted to diverting one or two tablets of controlled substances per shift
5 for approximately one year for self-medication. Video surveillance dated December 4, 2019,
6 showed Respondent diverting a dangerous drug by filling a prescription then dumping the
7 contents of the vial onto a counting tray, picking up a tablet and placing it into his pocket. On the
8 day he was arrested, Respondent had three valium, two Adderall, one gabapentin, and one
9 clonazepam that he had pilfered from prescriptions in his pocket.

10 **FIRST CAUSE FOR DISCIPLINE**
11 **(Unprofessional Conduct)**

12 22. Respondent's Pharmacist License is subject to disciplinary action in that he engaged
13 in unprofessional conduct. (Bus. & Prof. Code § 4301.) The facts are more fully set forth in
14 paragraphs 20 and 21, above.

15 **SECOND CAUSE FOR DISCIPLINE**
16 **(Unprofessional Conduct: Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

17 23. Respondent's Pharmacist License is subject to disciplinary action in that he engaged
18 in unprofessional conduct when he committed acts involving moral turpitude, dishonesty, fraud,
19 or deceit. (Bus. & Prof. Code § 4301, subd. (f).) The facts are more fully set forth in paragraphs
20 20 and 21, above.

21 **THIRD CAUSE FOR DISCIPLINE**
22 **(Unlawful Possession of a Controlled Substance)**

23 24. Respondent's Pharmacist License is subject to disciplinary action in that he
24 admittedly possessed controlled substances and dangerous drugs without a prescription. (Bus. &
25 Prof. Code §§ 4059, subd. (a), 4060.) The facts are more fully set forth in paragraphs 20 and 21,
26 above.

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**
2 **(Obtaining Controlled Substances by Fraud, Deceit or Subterfuge)**

3 25. Respondent's Pharmacist License is subject to disciplinary action in that he
4 admittedly obtained controlled substances and dangerous drugs by fraud, deceit or subterfuge, or
5 concealment of a material fact when he stole those drugs from his employer. (Health & Safety
6 Code § 11173, subd. (a).) The facts are more fully set forth in paragraphs 20 and 21, above.

7 **FIFTH CAUSE FOR DISCIPLINE**
8 **(Unprofessional Conduct: Administering or Furnishing Controlled Substances)**

9 26. Respondent's Pharmacist License is subject to disciplinary action in that he
10 admittedly furnished to himself controlled substances and dangerous drugs without a valid
11 prescription. (Bus. & Prof. Code §§ 4301, subd. (j), 4059, Health & Safety Code § 11170.) The
12 facts are more fully set forth in paragraphs 20 and 21, above.

13 **SIXTH CAUSE FOR DISCIPLINE**
14 **(Unprofessional Conduct: Self-Administration of Controlled Substance)**

15 27. Respondent's Pharmacist License is subject to disciplinary action in that he
16 admittedly self-administered controlled substances and dangerous drugs without a valid
17 prescription. (Bus. & Prof. Code § 4301, subd. (h), Health and Safety Code § 11170.) The facts
18 are more fully set forth in paragraphs 20 and 21, above.

19 **SEVENTH CAUSE FOR DISCIPLINE**
20 **(Unprofessional Conduct: Violation of Statutes Regulating Controlled Substances and
21 Dangerous Drugs)**

22 28. Respondent's Pharmacist License is subject to disciplinary action in that he engaged
23 in unprofessional conduct when he violated statutes regulating controlled substances and
24 dangerous drugs. (Bus. & Prof. Code §§ 4301, subds. (f), (j), (h) and (o), 4059, 4060, Health &
25 Safety Code §§ 11170, 11173, subd. (a).) The facts are more fully set forth in paragraphs 20 and
26 21, above.

27 **PRAYER**

28 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1 1. Revoking or suspending Pharmacist License Number RPH 72475, issued to Kevin
2 John O'Brien;

3 2. Ordering Kevin John O'Brien to pay the Board of Pharmacy the reasonable costs of
4 the investigation and enforcement of this case, pursuant to Business and Professions Code section
5 125.3; and,

6 3. Taking such other and further action as deemed necessary and proper.
7

8
9 DATED: 9/10/2020

Anne Sodergren

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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