

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

In the Matter of the Accusation Against:

TABITHA MARIE HICKMON-MITCHELL, Respondent

Registered Pharmacist License No. RPH 80308

Agency Case No. 7126

OAH No. 2021090422

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 April 27, 2022.

It is so ORDERED on March 28, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large initial "S" and "O".

Seung W. Oh, Pharm.D.
Board President

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Attorney General of California
2 MARICHELLE S. TAHIMIC
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9
10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13
14 In the Matter of the Accusation Against:
15 **TABITHA MARIE HICKMON-**
MITCHELL
16 **3308 Afton Road**
San Diego, CA 92123
17
18 **Registered Pharmacist License No. RPH**
80308
19
20 Respondent.

Case No. 7126
OAH No. 2021090422
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board). She brought this action solely in her official capacity and is represented in this matter by
27 Rob Bonta, Attorney General of the State of California, by Diane Von Der Ahe, Deputy Attorney
28 General.

1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 7126, if proven at a hearing, constitute cause for imposing discipline upon her Registered
4 Pharmacist License.

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

9 11. Respondent agrees that her Registered Pharmacist License is subject to discipline and
10 she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
11 below.

12 **CONTINGENCY**

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

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

25 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

3 15. The admissions made by Respondent herein are only for the purposes of this
4 proceeding, or any other proceedings in which the Director of Consumer Affairs, Board of
5 Pharmacy, or other government, regulatory, or professional licensing agency is involved, and
6 shall not be admissible in any other civil proceeding.

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

10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Registered Pharmacist License No. RPH 80308 issued to
12 Respondent Tabitha Marie Hickmon-Mitchell is revoked. However, the revocation is stayed and
13 Respondent is placed on probation for two (2) years on the following terms and conditions:

14 1. **Obey All Laws**

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

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

- 18 an arrest or issuance of a criminal complaint for violation of any provision of the
19 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
20 substances laws
21 a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
22 criminal proceeding to any criminal complaint, information or indictment
23 a conviction of any crime
24 the filing of a disciplinary pleading, issuance of a citation, or initiation of another
25 administrative action filed by any state or federal agency which involves
26 respondent's license or which is related to the practice of pharmacy or the
27 manufacturing, obtaining, handling, distributing, billing, or charging for any drug,
28 device or controlled substance.

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

2 **2. Report to the Board**

3 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
4 designee. The report shall be made either in person or in writing, as directed. Among other
5 requirements, respondent shall state in each report under penalty of perjury whether there has
6 been compliance with all the terms and conditions of probation.

7 Failure to submit timely reports in a form as directed shall be considered a violation of
8 probation. Any period(s) of delinquency in submission of reports as directed may be added to the
9 total period of probation. Moreover, if the final probation report is not made as directed,
10 probation shall be automatically extended until such time as the final report is made and accepted
11 by the board.

12 **3. Interview with the Board**

13 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
14 with the board or its designee, at such intervals and locations as are determined by the board or its
15 designee. Failure to appear for any scheduled interview without prior notification to board staff,
16 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
17 the period of probation, shall be considered a violation of probation.

18 **4. Cooperate with Board Staff**

19 Respondent shall timely cooperate with the board's inspection program and with the board's
20 monitoring and investigation of respondent's compliance with the terms and conditions of her
21 probation, including but not limited to: timely responses to requests for information by board
22 staff; timely compliance with directives from board staff regarding requirements of any term or
23 condition of probation; and timely completion of documentation pertaining to a term or condition
24 of probation. Failure to timely cooperate shall be considered a violation of probation.

25 **5. Continuing Education**

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

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

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 7126 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

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

16 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
17 respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b)
18 her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
19 compliance supervisor, and (c) the owner or owner representative of her employer, to report to the
20 board in writing acknowledging that the listed individual(s) has/have read the decision in case
21 number 7126, and terms and conditions imposed thereby. If one person serves in more than one
22 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
23 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
24 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
25 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
26 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
27 in case number 7126, and the terms and conditions imposed thereby.

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1 If respondent works for or is employed by or through an employment service, respondent
2 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
3 of the decision in case number 7126, and the terms and conditions imposed thereby in advance of
4 respondent commencing work at such licensed entity. A record of this notification must be
5 provided to the board upon request.

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

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

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

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

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

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

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

25 During the period of probation, respondent shall not supervise any intern pharmacist, be the
26 pharmacist-in-charge, designated representative-in-charge, responsible manager or other
27 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
28 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

1 **9. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, respondent shall pay to the
3 board its costs of investigation and prosecution in the amount of \$10,000.00. Respondent shall
4 make said payments as follows:

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

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

11 **10. Probation Monitoring Costs**

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

16 **11. Status of License**

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

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

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

26 Following the effective date of this decision, should respondent cease practice due to
27 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
28 respondent may relinquish her license, including any indicia of licensure issued by the board,

1 along with a request to surrender the license. The board or its designee shall have the discretion
2 whether to accept the surrender or take any other action it deems appropriate and reasonable.
3 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
4 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
5 become a part of the respondent's license history with the board.

6 Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall
7 license, including any indicia of licensure not previously provided to the board within ten (10)
8 days of notification by the board that the surrender is accepted if not already provided.
9 Respondent may not reapply for any license from the board for three (3) years from the effective
10 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
11 of the date the application for that license is submitted to the board, including any outstanding
12 costs.

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

14 Except during periods of suspension, respondent shall, at all times while on probation, be
15 employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any
16 month during which this minimum is not met shall extend the period of probation by one month.
17 During any such period of insufficient employment, respondent must nonetheless comply with all
18 terms and conditions of probation, unless respondent receives a waiver in writing from the board
19 or its designee.

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

1 It is a violation of probation for respondent's probation to be extended pursuant to the
2 provisions of this condition for a total period, counting consecutive and non-consecutive months,
3 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
4 probation period on its website.

5 **14. Violation of Probation**

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

12 If respondent violates probation in any respect, the board, after giving respondent notice
13 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
14 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
15 probation, or the preparation of an accusation or petition to revoke probation is requested from
16 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
17 probation shall be automatically extended until the petition to revoke probation or accusation is
18 heard and decided, and the charges and allegations in Accusation No. 7126 shall be deemed true
19 and correct.

20 **15. Completion of Probation**

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

23 **16. Remedial Education**

24 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
25 board or its designee, for prior approval, an appropriate program of remedial education related to
26 pharmacy law and prescription requirements. The program of remedial education shall consist of
27 at least 4 hours per year at respondent's own expense. A minimum of fifty percent of these hours
28 shall be conducted in an in-person or live webinar format. All remedial education shall be in

1 addition to, and shall not be credited toward, continuing education (CE) courses used for license
2 renewal purposes for pharmacists.

3 Failure to timely submit for approval or complete the approved remedial education shall be
4 considered a violation of probation. The period of probation will be automatically extended until
5 such remedial education is successfully completed and written proof, in a form acceptable to the
6 board, is provided to the board or its designee.

7 Following the completion of each course, the board or its designee may require the
8 respondent, at her own expense, to take an approved examination to test the respondent's
9 knowledge of the course. If the respondent does not achieve a passing score on the examination
10 that course shall not count towards satisfaction of this term. Respondent shall take another course
11 approved by the board in the same subject area.

12 **17. Ethics Course**

13 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
14 in a course in ethics, at respondent's expense, approved in advance by the board or its designee
15 that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall
16 provide proof of enrollment upon request. Within five (5) days of completion, respondent shall
17 submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll
18 in an approved ethics course, to initiate the course during the first year of probation, to
19 successfully complete it before the end of the second year of probation, or to timely submit proof
20 of completion to the board or its designee, shall be considered a violation of probation.

21 **18. No Ownership or Management of Licensed Premises**

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

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ACCEPTANCE

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

DATED: _____
TABITHA MARIE HICKMON-MITCHELL
Respondent

I have read and fully discussed with Respondent Tabitha Marie Hickmon-Mitchell the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____
ELIZABETH M. BRADY
Attorney for Respondent

ENDORSEMENT

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

DATED: _____
Respectfully submitted,
ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General

DIANE VON DER AHE
Deputy Attorney General
Attorneys for Complainant

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ACCEPTANCE

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

DATED: 2/24/22 *Tabitha Marie Hickmon-Mitchell*
TABITHA MARIE HICKMON-MITCHELL
Respondent

I have read and fully discussed with Respondent Tabitha Marie Hickmon-Mitchell the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: Feb. 24, 2022 *Elizabeth M. Brady*
ELIZABETH M. BRADY
Attorney for Respondent

ENDORSEMENT

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

DATED: 2/25/22

Respectfully submitted,
ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General

Diane Von Der Ahe
DIANE VON DER AHE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7126

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 DIANE VON DER AHE
Deputy Attorney General
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8 *Attorneys for Complainant*

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13 In the Matter of the Accusation Against:

Case No. 7126

14 **TABITHA MARIE HICKMON-MITCHELL**
15 **3308 Afton Road**
San Diego, CA 92123

ACCUSATION

16 **Registered Pharmacist License No. RPH 80308**

17 Respondent.
18

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, Department of Consumer Affairs.

23 2. On or about February 12, 2019, the Board of Pharmacy issued Registered Pharmacist
24 License Number RPH 80308 to Tabitha Marie Hickmon-Mitchell (Respondent). The Registered
25 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on January 31, 2023, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a), of the Code provides that every license issued by the
6 Board may be suspended or revoked.

7 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 4022 of the Code states:

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

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

20 (b) Any device that bears the statement: Caution: federal law restricts this
21 device to sale by or on the order of a _____, Rx only, or words of similar
22 import, the blank to be filled in with the designation of the practitioner licensed to use
23 or order use of the device.

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

26 7. Section 4026 of the Code states:

27 “Furnish” means to supply by any means, by sale or otherwise.

28 8. Section 4059 of the Code states:

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

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9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

...

10. Section 4301 of the Code states:

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

...

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

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

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or 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.

(p) Actions or conduct that would have warranted denial of a license.

11. Section 4306.5 of the Code states:

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

...

1 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or
2 implement his or her best professional judgment or corresponding responsibility with
3 regard to the dispensing or furnishing of controlled substances, dangerous drugs, or
4 dangerous devices, or with regard to the provision of services.

5 . . .

6 12. Section 4324 subsection (a) of the Code states, in pertinent part, that every person
7 who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters,
8 publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of
9 forgery.

10 13. Health and Safety Code section 11170 states:

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

13 14. Health and Safety Code section 11172 states:

14 No person shall antedate or postdate a prescription.

15 15. Health and Safety Code section 11173 states:

16 (a) No person shall obtain or attempt to obtain controlled substances, or procure or
17 attempt to procure the administration of or prescription for controlled substances, (1) by
18 fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material
19 fact.

20 (b) No person shall make a false statement in any prescription, order, report, or
21 record, required by this division.

22 . . .

23 (d) No person shall affix any false or forged label to a package or receptacle
24 containing controlled substances.

25 16. Health and Safety code section 11175 states:

26 No person shall obtain or possess a prescription that does not comply with this
27 division, nor shall any person obtain a controlled substance by means of a prescription
28 which does not comply with this division or possess a controlled substance obtained by
such a prescription.

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1 **DEFINITIONS**

2 17. Eszopiclone (brand name: Lunesta) is a Schedule IV controlled substance pursuant to
3 Health and Safety Code section 11057 and a dangerous drug pursuant to Business and Professions
4 Code section 4022. It is used to treat insomnia.

5 **COST RECOVERY**

6 18. Section 125.3 of the Code states, in pertinent part, that the Board may request the
7 administrative law judge to direct a licentiate 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. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **FACTUAL ALLEGATIONS**

12 19. On or about August 26, 2020, while working as a pharmacist at a CVS pharmacy in
13 El Cajon, Respondent falsified a phone-in prescription for fifteen tablets of eszopiclone.
14 Respondent then filled and verified this prescription under #Rx 653540, and sold the prescription
15 to herself. The prescriber listed denied authorizing the prescription. Respondent admitted in a
16 written statement on September 10, 2020 that she “rewrote an expired control filled it and sold it
17 to myself” out of convenience after her prescription expired.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Furnishing Dangerous Drug Without a Prescription)**

20 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
21 in conjunction with Code section 4059(a) and Health and Safety Code section 11170 for
22 furnishing to herself a dangerous drug without a prescription, as described in Paragraph 19 above
23 and incorporated herein as though set forth in full.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Possessing Controlled Substance Without a Prescription)**

26 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
27 in conjunction with Code section 4060 and Health and Safety Code section 11175 for possessing
28

1 a controlled substance without a prescription, as described in Paragraph 19 above and
2 incorporated herein as though set forth in full.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

5 22. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
6 (f), (g), (j), (o), and (p), in conjunction with Code section 4306.5 and Health and Safety Code
7 section 11172, for falsifying a prescription, as described in Paragraph 19 above and incorporated
8 herein as though set forth in full.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Forgery)**

11 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
12 in conjunction with Code section 4324 and Health and Safety Code section 11173, subdivisions
13 (a),(b), and (d), for falsifying a prescription, as described in Paragraph 19 above and incorporated
14 herein as though set forth in full.

15 **PRAYER**

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

18 1. Revoking or suspending Registered Pharmacist License Number RPH 80308, issued
19 to Tabitha Marie Hickmon-Mitchell;

20 2. Ordering Tabitha Marie Hickmon-Mitchell to pay the Board of Pharmacy the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 125.3; and,

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

24 DATED: 6/6/2021

Signature on File

25 ANNE SODERGREN
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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