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

In the Matter of the Accusation Against:

LESTER BOTILL

149 Crows Nest Court
Atwater, CA 95301

Pharmacist License No. RPH 28416

Respondent.

Case No. 5960

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 February 10, 2017.

It is so ORDERED on January 11, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D.
Board President
In the Matter of the Accusation Against:  

LESTER BOTILL  

149 Crows Nest Court  
Atwater, CA 95301  

Pharmacist License No. RPH 28416 

Respondent.

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

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Anahita S. Crawford, Deputy Attorney General.

2. Lester Botill (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

//

//
3. On or about July 31, 1973, the Board issued Pharmacist License No. RPH 28416 to Lester Botill (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5960 and will expire on November 30, 2016, unless renewed.

JURISDICTION

4. Accusation No. 5960 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 November 3, 2016. Respondent timely filed his Notice of Defense. A copy of Accusation No. 5960 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 5960. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. 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 be represented by counsel, at his own expense; 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.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 5960, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 28416 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.
CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands
and agrees that counsel for Complainant and the staff of the Board may communicate directly
with the Board regarding this stipulation and surrender, without notice to or participation by
Respondent. 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 Surrender 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.

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

12. This Stipulated Surrender of License and 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 Surrender of License and 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.

13. 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 Order:

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 28416, issued to Respondent
Lester Botill, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent’s Pharmacist License and the acceptance of the
surrendered license by the Board shall constitute the imposition of discipline against Respondent.
This stipulation constitutes a record of the discipline and shall become a part of Respondent’s
license history with the Board of Pharmacy.
2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the effective date of the Board’s Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate within ten (10) days of the effective date of this decision.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure.

5. Respondent may not apply for any license, permit, or registration from the board for three years from the effective date of this decision. Respondent stipulates that should he or she apply for any license from the board on or after the effective date of this decision, all allegations set forth in the Accusation shall be deemed to be true, correct and admitted by respondent when the board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board, including, but not limited to taking and passing the California Pharmacist Licensure Examination prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.

6. Respondent stipulates that should he or she apply for any license from the board on or after the effective date of this decision the investigation and prosecution costs in the amount of $4,039.50 shall be paid to the board prior to issuance of the new license.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11/27/12

LESTER BOTILL
Respondent
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant
Exhibit A

Accusation No. 5960
BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Lester Botill
149 Crows Nest Court
Atwater, CA 95301
Pharmacist License Number RPH 28416
Respondent.

Complainant alleges:

PARTIES

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

2. On or about July 31, 1973, the Board of Pharmacy issued Pharmacist License Number RPH 28416 to Lester Botill (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2016, unless renewed.

(LESTER BOTILL ACCUSATION)
JURISDICTION

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

4. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

6. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

7. Section 4301 of the Code states:

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

(i) The violation of any of the statutes of this state, or any other state, 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.

8. Section 4022 of the Code states

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.

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

(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.

9. Section 4327 of the Code states "Any person who, while on duty, sells, dispenses or
compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall
be guilty of a misdemeanor."

10. Section 4060 of the Code states

A person shall not 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, a physician assistant pursuant to Section 3502.1, a
naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section
4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any
controlled substance by a manufacturer, wholesaler, third-party logistics provider,
pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant,
if in stock in containers correctly labeled with the name and address of the supplier or
producer.
This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

11. Health and Safety Code section 11170 states "No person shall prescribe, administer, or furnish a controlled substance for himself."

12. Health and Safety Code section 11173 states "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

COST RECOVERY

13. Section 1253.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

14. Virtussin AC with Codeine, a brand name for guaifenesin with codeine, is a cough syrup and a Schedule V controlled substances under Health and Safety Code section 11058 and a dangerous drug under Business and Professions Code section 4022.

15. Phenergan VC with Codeine, the brand name for promethazine and phenylephrine with codeine, is a cough syrup and a Schedule V controlled substances under Health and Safety Code section 11058 and a dangerous drug under Business and Professions Code section 4022.

16. Phenergan with Codeine, the brand name for promethazine with codeine, is a cough syrup and a Schedule V controlled substances under Health and Safety Code section 11058 and a dangerous drug under Business and Professions Code section 4022.

FACTUAL BACKGROUND

17. On or about March 17, 2016, Lester Botill (Respondent) was the pharmacist-in-charge at Walgreens Pharmacy #06781, located in Atwater, California, and was administered a random drug test which revealed a positive result for metabolites of codeine and morphine. Respondent
signed a statement in which he said he consumed promethazine with codeine, without a valid
prescription, while working as pharmacist at Walgreens. Pharmacy audit and inventory logs for
the drug revealed shortages consistent with pilferage. Respondent was terminated on April 4,
2016.

FIRST CAUSE FOR DISCIPLINE
(Dangerous Use of Controlled Substance)

18. Respondent is subject to disciplinary action under section 4301, subsection (h) for
unprofessional conduct in that Respondent, while on duty and working as pharmacist-in-charge at
Walgreen's Pharmacy, self-administered a controlled substance without a valid prescription and in
a manner dangerous to himself or the public, as more fully set forth in paragraph 17, above.

SECOND CAUSE FOR DISCIPLINE
(Violation of Laws Governing Controlled Substances/Dangerous Drugs)

19. Respondent is subject to disciplinary action under section 4301, subsection (j) for
unprofessional conduct in that Respondent, while on duty as pharmacist-in-charge at Walgreen's,
obtained, possessed, furnished and/or administered a controlled substance to himself without a
valid prescription and by fraud, deceit or subterfuge, in violation of Code section 4060 and Health
and Safety Code sections 11170 and 11173, and as more fully set forth in paragraph 17, above.

THIRD CAUSE FOR DISCIPLINE
(Obtaining Controlled Substance by Fraud, Deceit, or Subterfuge)

20. Respondent is subject to disciplinary action under section 4301, subsection (f) for
unprofessional conduct in that Respondent, while on duty as pharmacist-in-charge at Walgreen's
removed a dangerous drug/controlled substances from pharmacy stock when no one was present,
and ingested it without a prescription or paying for the drug, as more fully set forth in paragraph
17, above.

FOURTH CAUSE FOR DISCIPLINE
(Violation of Laws Governing Pharmacy)

21. Respondent is subject to disciplinary action under section 4301, subsection (o) for
unprofessional conduct in that Respondent, while on duty as pharmacist-in-charge at Walgreen's
Pharmacy, sold, dispensed or compounded drugs while under the influence of a dangerous drug, in violation of Code section 4327, and as more fully set forth in paragraphs 17-20, above.

**DISCIPLINE CONSIDERATIONS**

22. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 28, 2001, in a prior disciplinary action entitled *In the Matter of the Accusation Against Lester Botill* before the Board of Pharmacy, in Case Number 2211-A. Respondent's license was suspended for 45 days and thereafter placed on probation for a period of 3 years under terms and conditions for diverting dangerous drugs from his employer Sutter Merced Medical Center Pharmacy to his other employer, Costco Pharmacy in Merced California, without authorization and without compensating Sutter Merced therefor. That decision is now final and is incorporated by reference as if fully set forth.

23. Complainant further alleges that on or about October 13, 2015, in a prior action, the Board of Pharmacy issued Citation Number CI 2015 67327 and ordered Respondent to pay a fine of $1,000.00 for dispensing a drug to the wrong patient. That Citation is now final and is incorporated by reference as if fully set forth.

**PRAYER**

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

1. Revoking or suspending Pharmacist License Number RPH 28416, issued to Lester Botill;

2. Ordering Lester Botill to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 1253; and,

//

//

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

DATED: 10/18/16

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