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Attorneys for Complainant

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

11 In the Matter of the Petition to Revoke
Probation Against:
12
13 **ELIZABETH B. LOVE SMITH**
4386 West Point Loma Boulevard, Apt. J
14 San Diego, CA 92107
15 **Pharmacist License No. RPH 39152**
16 Respondent.

Case No. 4543

PETITION TO REVOKE PROBATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.
- 23 2. On or about March 13, 1985, the Board of Pharmacy issued Pharmacist License
24 Number RPH 39152 to Elizabeth B. Love Smith (Respondent). The Pharmacist License was in
25 effect at all times relevant to the charges brought herein and was suspended on April 6, 2012.
26 The Pharmacist License expired on February 28, 2013 and has not been renewed.

1 against, the licensee or to render a decision suspending or revoking the license.
2 that the suspension, expiration, surrender, cancellation of a license shall not
3 deprive the Board of jurisdiction to proceed with a disciplinary action during
4 the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 7. This Petition to revoke Probation is brought pursuant to Condition 15 of the Decision
7 and Order in Case No. 2436, referenced in paragraph 3 above, which states:

8 **15. Violation of Probation.** If Respondent violates probation in any respect,
9 the Board, after giving Respondent notice and an opportunity to be heard, may
10 revoke probation and carry out the disciplinary order which was stayed. If a
11 petition to revoke probation or an accusation is filed against Respondent during
12 probation, the Board shall have continuing jurisdiction, and the period of
13 probation shall be extended, until the petition to revoke probation is heard and
14 decided. If a Respondent has not complied with any term or condition of
15 probation, the board shall have continuing jurisdiction over Respondent, and
16 probation shall automatically be extended until all terms and conditions have
17 been met or the Board has taken other actions as deemed appropriate to treat the
18 failure to comply as a violation of probation, to terminate probation, and to
19 impose the penalty which was stayed.

20 FIRST CAUSE TO REVOKE PROBATION

21 (Failure to Report to the Board)

22 8. At all times after the effective date of the Decision and Order imposing probation on
23 Respondent's license, Condition 3 of the Order stated:

24 **3. Reporting to the Board.** Respondent shall report to the Board quarterly.
25 The report shall be made either in person or in writing, as directed. Respondent
26 shall state under penalty of perjury whether there has been compliance with all
27 the terms and conditions of probation. If the final probation report is not made
28 as directed, probation shall be extended automatically until such time as the
final report is made.

9. Respondent's probation is subject to revocation because she failed to comply with
Probation Condition 3 in that she failed to provide timely Quarterly Reports on:

- 23 a. April 10, 2005 for the period January 1, 2005 through March 31, 2005
- 24 b. April 10, 2007 for the period January 1, 2007 through March 31, 2007;
- 25 c. October 10, 2007 for the period July 1, 2007 through September 30, 2007;
- 26 d. January 10, 2011 for the period October 1, 2010 through December 31, 2010;
- 27 e. April 10, 2011 for the period January 1, 2011 through March 31, 2011;
- 28 f. July 10, 2011 for the period April 1, 2011 through June 30, 2011;

- 1 g. October 10, 2011 for the period July 1, 2011 through September 30, 2011; and,
2 h. January 1, 2012 for the period October 1, 2011 through December 31, 2011.

3 **SECOND CAUSE TO REVOKE PROBATION**

4 **(Failure to Submit Acknowledgment from Employer)**

5 10. At all times after the effective date of the Decision and Order imposing probation on
6 Respondent's license, Condition 7 of the Order stated:

7 **7. Notice to Employers.** Respondent shall notify all present and
8 prospective employers of the decision in case No. 2436 and the terms,
9 conditions and restrictions imposed on Respondent by the decision. Within
10 thirty (30) days of the effective date of this decision, and within fifteen (15)
11 days of Respondent undertaking new employment, Respondent shall cause
12 [her] employer to report to the Board in writing acknowledging the employer
13 has read the decision in case No. 2436.

14 ...
15 "Employment" within the meaning of this provision shall include any full-time,
16 part-time, temporary or relief service of pharmacy management service as a
17 pharmacist, whether the Respondent is considered an employee or independent
18 contractor.

19 11. Respondent's probation is subject to revocation because she failed to comply with
20 Probation Condition 7 in that Respondent failed to timely submit, or cause to be submitted, her
21 employer's report to the Board acknowledging that her employer has read the decision in Case
22 No. 2436.

23 **THIRD CAUSE TO REVOKE PROBATION**

24 **(Failure to Maintain 40 Hours Monthly Employment as a Pharmacist)**

25 12. At all times after the effective date of the Decision and Order imposing probation on
26 Respondent's license, Condition 14 of the Order stated, in pertinent part:

27 **14. Tolling of Probation.** Should Respondent, regardless of residency, for
28 any reason, cease practicing pharmacy for a minimum of 80 hours per calendar
month in California, Respondent must notify the board in writing within ten
(10) days of cessation of the practice of pharmacy or the resumption of the
practice of pharmacy.

"Cessation of practice" means any period of time exceeding 30 days in which
Respondent is not engaged in the practice of pharmacy as defined in Section
4052 of the Business and Professions Code.

Respondent shall work at least 40 hours per calendar month as a pharmacist and

1 at least an average of 80 hours per month in any six consecutive months.
2 Failure to do so will be a violation of probation.

3 13. Respondent's probation is subject to revocation because she failed to comply with
4 Probation Condition 14, in that Respondent failed to maintain employment as a pharmacist for a
5 minimum of 40 hours per calendar month for over four years.

6 **FOURTH CAUSE TO REVOKE PROBATION**

7 **(Failure to Participate in the Pharmacists Recovery Program)**

8 14. At all times after the effective date of the Decision and Order imposing probation on
9 Respondent's license, Condition 18 of the Order stated, in pertinent part:

10 **18. Rehabilitation Program.** Pharmacists Recovery Program (PRP).
11 Within 30 days of the effective date of this decision, respondent shall contact
12 the Pharmacists Recovery Program from evaluation and shall successfully
13 participate in and complete the treatment contract and any subsequent
14 addendums as recommended and provided by the PRP and as approved by the
15 Board.

16 ...
17 Respondent shall successfully participate in and complete his or her current
18 contract and any subsequent addendums with the PRP. Probation shall be
19 automatically extended until Respondent successfully completes his or her
20 treatment contract. Any person terminated from the program shall be
21 automatically suspended upon notice by the board. Respondent may not
22 resume the practice of pharmacy until notified by the board in writing. The
23 board shall retain jurisdiction to institute action to terminate probation for any
24 violation of this term.

25 15. Respondent's probation is subject to revocation because she failed to comply with
26 Probation Condition 18 in that on March 27, 2012, Respondent was terminated from the PRP
27 because she failed to comply with the requirements of her PRP contract as follows:

- 28
- a. Respondent failed to regularly attend daily 12-step meetings;
 - b. Respondent had multiple positive random drug tests for alcohol;
 - c. Respondent failed to maintain complete abstinence from all mind-altering substances,
as she had self-reported a relapse, having used Ultracet and Vicodin;
 - d. Respondent failed to report daily, as she missed 70 calls for random drug testing;
 - e. Respondent failed to attend Health Support Group meetings regularly; and,
 - f. Clinical assessors indicated that Respondent failed to derive benefit from the program
after multiple assessments.

1 **FIFTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Abstain From Drugs and Alcohol Use)**

3 16. At all times after the effective date of the Decision and Order imposing probation on
4 Respondent's license, Condition 23 of the Order stated:

5 **23. Abstain from Drugs and Alcohol Use.** Respondent shall completely
6 abstain from the possession or use of alcohol, controlled substances, dangerous
7 drugs and their associated paraphernalia except when the drugs are lawfully
8 prescribed by a licensed practitioner as part of a documented medical treatment.
Upon request of the board, respondent shall provide documentation from the
licensed practitioner that the prescription was legitimately issued and is a
necessary part of the treatment of the respondent.

9 17. Respondent's probation is subject to revocation because she failed to comply with
10 Probation Condition 23 in that Respondent failed to abstain from the use of alcohol, controlled
11 substances, or dangerous drugs. Respondent had multiple random drug tests with positive results
12 and Respondent self-reported relapse by using Ultracet and Vicodin during her enrollment in the
13 Pharmacists Recovery Program.

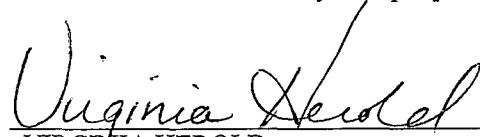
14 **PRAYER**

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

17 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2436
18 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
19 RPH 39152 issued to Elizabeth B. Love Smith;

20 2. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 5/28/13



23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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Exhibit A

**Decision and Order
Board of Pharmacy Case No. 2436**

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

In the Matter of the Accusation Against:

ELIZABETH LOVE SMITH, RPH
1103 Wilbur Avenue
San Diego, CA 62109

Pharmacist License No. RPH 39152

Respondent.

Case No. 2436

OAH No. L-2002030204

DECISION AND ORDER

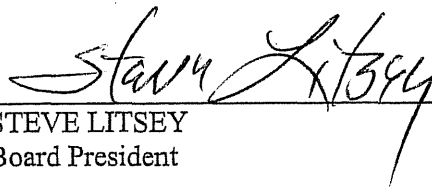
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 4, 2002.

It is so ORDERED June 4, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By:


STEVE LITSEY
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
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7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 ELIZABETH LOVE SMITH, RPH
13 1103 Wilbur Avenue
14 San Diego, CA 62109

15 Pharmacist License No. RPH 39152

16 Respondent.

Case No. 2436

OAH No. L-2002030204

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 PARTIES

21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Bill Lockyer, Attorney General of the State of California, by James M. Ledakis, Deputy
24 Attorney General.

25 2. Respondent ELIZABETH LOVE SMITH, RPh (Respondent) is
26 represented in this proceeding by attorney Wendy A. McGhee, Esq., whose address is 410 South
27 Melrose Drive, Suite 106, Vista, CA 92084, 7000 0520 0025 1945 1098.

28 /

1 9. Respondent agrees that her license is subject to discipline and she agrees
2 to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

3 RESERVATION

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

8 CONTINGENCY

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

19 12. The parties understand and agree that facsimile or other copies of this
20 Stipulated Settlement and Disciplinary Order, including the signatures thereto, shall have the
21 same force and effect as the originals.

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

25 **DISCIPLINARY ORDER**

26 IT IS HEREBY ORDERED that license number RPH 39152 issued to
27 Respondent ELIZABETH LOVE SMITH, RPh is revoked. However, the revocation is stayed
28 and Respondent is placed on probation for five (5) years on the following terms and conditions:

1 1. **Actual Suspension - Pharmacist.** As part of probation, Respondent is
2 suspended from the practice of pharmacy for 90 days, however, Respondent is given 90 days
3 credit for the one year she remained unemployed as a pharmacist. Therefore, Respondent has
4 completed her 90 day suspension.

5 2. **Obey All Laws.** Respondent shall obey all federal and state laws and
6 regulations substantially related or governing the practice of pharmacy.

7 3. **Reporting to the Board.** Respondent shall report to the Board quarterly.
8 The report shall be made either in person or in writing, as directed. Respondent shall state under
9 penalty of perjury whether there has been compliance with all the terms and conditions of
10 probation. If the final probation report is not made as directed, probation shall be extended
11 automatically until such time as the final report is made.

12 4. **Interview with the Board.** Upon receipt of reasonable notice, respondent
13 shall appear in person for interviews with the board upon request at various intervals at a location
14 to be determined by the board. Failure to appear for a scheduled interview without prior
15 notification to board staff shall be considered a violation of probation.

16 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
17 Board's inspection program and in the Board's monitoring and investigation of the Respondent's
18 compliance with the terms and conditions of Female probation. Failure to cooperate shall be
19 considered a violation of probation.

20 6. **Continuing Education.** Respondent shall provide evidence of efforts to
21 maintain skill and knowledge as a pharmacist as directed by the Board.

22 7. **Notice to Employers.** Respondent shall notify all present and prospective
23 employers of the decision in case No. 2436 and the terms, conditions and restrictions imposed on
24 Respondent by the decision. Within thirty (30) days of the effective date of this decision, and
25 within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause
26 Female employer to report to the Board in writing acknowledging the employer has read the
27 decision in case No. 2436.

28 If Respondent works for or is employed by or through a pharmacy employment

1 service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at
2 which she is to employed or used of the fact and terms of the decision in case number 2436 in
3 advance of the Respondent commencing work at the pharmacy.

4 "Employment" within the meaning of this provision shall include any full-time,
5 part-time, temporary or relief service or pharmacy management service as a pharmacist, whether
6 the Respondent is considered an employee or independent contractor.

7 **8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
8 **Charge.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a
9 preceptor, nor shall Respondent be the pharmacist-in-charge of any pharmacy licensed by the
10 Board.

11 **9. Reimbursement of Board Costs.** Respondent shall pay to the Board its
12 costs of investigation and prosecution in the amount of \$3,085.

13 The filing of bankruptcy by respondent shall not relieve the respondent of his or
14 her responsibility to reimburse the board its costs of investigation and prosecution.

15 **10. Probation Monitoring Costs.** Respondent shall pay the costs associated
16 with probation monitoring as determined by the Board each and every year of probation. Such
17 costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs
18 shall be considered a violation of probation.

19 **11. Status of License.** Respondent shall, at all times while on probation,
20 maintain an active current license with the Board, including any period during which suspension
21 or probation is tolled. If Respondent's license expires by operation of law or otherwise, upon
22 renewal or re-application, Respondent's license shall be subject to all terms of this probation not
23 previously satisfied.

24 Respondent shall, at all times while on probation, maintain a current license with
25 the Board. If Respondent submits an application to the Board, and the application is approved,
26 for a change of location, change or permit or change of ownership, the Board shall retain
27 continuing jurisdiction over the license, and the Respondent shall remain on probation as
28 determined by the Board or its designee.

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12. License Surrender while on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his or her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

13. Notification of Employment/Mailing Address Change.

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

14. Tolling of Probation.

Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in California, Respondent must notify the board in writing within ten (10) days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy.

"Cessation of practice" means any period of time exceeding thirty (30) days in which Respondent is not engaged in the practice of pharmacy as defined in section 4052 of the Business and Professions Code.

Respondent shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will be a

1 violation of probation. If respondent has not complied with this condition during the
2 probationary term, and respondent has presented sufficient documentation of his or her good
3 faith efforts to comply with this condition, and if no other conditions have been violated, the
4 board, in its discretion, may grant an extension of respondent's probation period up to one year
5 without further hearing in order to comply with this condition.

6 **15. Violation of Probation.** If Respondent violates probation in any respect,
7 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
8 and carry out the disciplinary order which was stayed. If a petition to revoke probation or an
9 accusation is filed against Respondent during probation, the Board shall have continuing
10 jurisdiction, and the period of probation shall be extended, until the petition to revoke probation
11 is heard and decided. If a Respondent has not complied with any term or condition of probation,
12 the Board shall have continuing jurisdiction over Respondent, and probation shall automatically
13 be extended until all terms and conditions have been met or the Board has taken other action as
14 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
15 probation, and to impose the penalty which was stayed.

16 **16. Completion of Probation.** Upon successful completion of probation,
17 Respondent's license will be fully restored.

18 **17. Adoption of Stipulation.** It is understood that, in deciding whether to
19 adopt this stipulation, the Board may receive oral and written presentation from, and make
20 inquiries of, complainant, her attorneys, the Board's attorneys, consulting experts, and the
21 Board's enforcement committee.

22 **18. Rehabilitation Program.** Pharmacist Recovery Program (PRP)
23 Within 30 days of the effective date of this decision, respondent shall contact the Pharmacists
24 Recovery Program for evaluation and shall successfully participate in and complete the treatment
25 contract and any subsequent addendums as recommended and provided by the PRP and as
26 approved by the board. The costs for PRP participation shall be borne by the respondent.

27
28 If respondent is currently enrolled in the PRP, said participation is now mandatory and is no

1 longer considered a self-referral under Business and Professions Code section 4363, as of the
2 effective date of this decision. Respondent shall successfully participate in and complete his or
3 her current contract and any subsequent addendums with the PRP. Probation shall be
4 automatically extended until respondent successfully completes his or her treatment contract.
5 Any person terminated from the program shall be automatically suspended upon notice by the
6 board. Respondent may not resume the practice of pharmacy until notified by the board in
7 writing. The board shall retain jurisdiction to institute action to terminate probation for any
8 violation of this term.

9 19. **Random Fluid Testing.** Within 30 days of the effective date of this
10 decision, respondent shall contact the Pharmacists Recovery Program for evaluation and shall
11 successfully participate in and complete the treatment contract and any subsequent addendums as
12 recommended and provided by the PRP and as approved by the board. The costs for PRP
13 participation shall be borne by the respondent.

14
15 If respondent is currently enrolled in the PRP, said participation is now mandatory and is
16 no longer considered a self-referral under Business and Professions Code section 4363, as of the
17 effective date of this decision. Respondent shall successfully participate in and complete his or
18 her current contract and any subsequent addendums with the PRP. Probation shall be
19 automatically extended until respondent successfully completes his or her treatment contract.
20 Any person terminated from the program shall be automatically suspended upon notice by the
21 board. Respondent may not resume the practice of pharmacy until notified by the board in
22 writing. The board shall retain jurisdiction to institute action to terminate probation for any
23 violation of this term.

24 20. **Supervised Practice.** Respondent shall practice only under the
25 supervision of a pharmacist not on probation to the Board.

26 Respondent shall not practice until the supervisor is approved by the board or its
27 designee. The supervision as required by the Board, may be:

28 Continuous - 75% to 100% of a work week

1 Substantial - At least 50% of a work week

2 Partial - At least 25% of a work week

3 Daily Review - Supervisor's review of probationer's daily activities within 24
4 days.

5 Within thirty (30) days of the effective date of this decision, Respondent shall
6 have his/her supervisor submit a report to the Board in writing stating the supervisor has read the
7 decision in case number 2436. If Respondent changes employment, Respondent shall have her
8 new supervisor, within fifteen (15) days after employment commences, submit a report to the
9 Board in writing stating the supervisor has read the decision in case number 2436. Within ten
10 (10), days of leaving employment, Respondent shall so notify the Board in writing.

11 21. **No Ownership of Premises.** Respondent shall not own, have any legal
12 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
13 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
14 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
15 entity licensed by the Board within 90 days following the effective date of this decision and shall
16 immediately thereafter provide written proof thereof to the Board.

17 22. **Random Drug Screening** (If PRP provision is required, this term is also
18 to be included to allow for continued fluid monitoring by the Board in cases where a respondent
19 successfully complete the PRP before completion of the probation period; terms also appropriate
20 for those cases where the evidence demonstrates that the respondent may have a problem with
21 chemical dependency (drugs, alcohol) but where the PRP is not required.)

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

27 If respondent is currently enrolled in the PRP, said participation is now mandatory and is no
28 longer considered a self-referral under Business and Professions Code section 4363, as of the

1 effective date of this decision. Respondent shall successfully participate in and complete his or
2 her current contract and any subsequent addendums with the PRP. Probation shall be
3 automatically extended until respondent successfully completes his or her treatment contract.
4 Any person terminated from the program shall be automatically suspended upon notice by the
5 board. Respondent may not resume the practice of pharmacy until notified by the board in
6 writing. The board shall retain jurisdiction to institute action to terminate probation for any
7 violation of this term.

8 23. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
9 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
10 associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner
11 as part of a documented medical treatment. Upon request of the board, respondent shall provide
12 documentation from the licensed practitioner that the prescription was legitimately issued and is
13 a necessary part of the treatment of the respondent.

14 ACCEPTANCE

15 I have carefully read the above Stipulated Settlement and Disciplinary Order and
16 have fully discussed it with my attorney, Wendy A. McGhee, Esq.. I understand the stipulation
17 and the effect it will have on my license number RPH 39152. I enter into this Stipulated
18 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
19 bound by the Decision and Order of the Board of Pharmacy.

20 DATED: April 24, 2002

21 Elizabeth Love Smith
22 ELIZABETH LOVE SMITH, RPH
 Respondent

23 I have read and fully discussed with Respondent ELIZABETH LOVE SMITH,
24 RPh the terms and conditions and other matters contained in the above Stipulated Settlement and
25 Disciplinary Order. I approve its form and content.

26 DATED: April 24, 2002

27 Wendy A. McGhee
28 WENDY A. MCGHEE, ESQ.
 Attorney for Respondent


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ENDORSEMENT

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

DATED: April 24, 2002.

BILL LOCKYER, Attorney General
of the State of California



JAMES M. LEDAKIS
Deputy Attorney General
Attorneys for Complainant

DOJ Docket Number: 03583110-SD2001AD0643

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
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6 Telephone: (619) 645-2105
Facsimile: (619) 645-2061
7
8 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

14 ELIZABETH LOVE SMITH, RPH
1103 Wilbur Avenue
15 San Diego, CA 92109
16 Pharmacist License No. RPH 39152

17 Respondent.

Case No. 2436

ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs.
24 2. On or about March 13, 1985, the Board of Pharmacy issued License No.
25 RPH 39152 to ELIZABETH LOVE SMITH, RPH ("Respondent"). It will expire on February
26 28, 2003.
27
28

1 JURISDICTION

2 3. This Accusation is brought before the Board of Pharmacy ("Board"),
3 under the authority of the following sections of the Business and Professions Code ("Code"):

4 4. Section 4022 of the Code states:

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
6 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

9 " . . .

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

12 5. Section 4301 of the Code states in pertinent part:

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

17 " . . .

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 licensee
20 or otherwise, and whether the act is a felony or misdemeanor or not.

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

23 "(h) The administering to oneself, of any controlled substance, or the use of any
24 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
25 or injurious to oneself, to a person holding a license under Chapter 9 (commencing with
26 Section 4000) of the Business and Professions Code, or to any other person or to the
27 public, or to the extent that the use impairs the ability of the person to conduct with safety
28 to the public the practice authorized by the license. . .

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"...

"l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under Chapter 9 (commencing with Section 4000) of the Business and Professions Code. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under Chapter 9 (commencing with Section 4000) of the Business and Professions Code. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

"...

6. Section 4059 of the Code states in pertinent part:

"(a) That no person shall furnish any dangerous drug or dangerous device except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . . .

7. Section 4060 of the Code states in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or

1 furnished pursuant to a drug order issued by a physician assistant pursuant to Section
2 3502.1 or a nurse practitioner pursuant to Section 2836.1 . . ."

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

7 9. This Accusation refers to the following sections of the Health & Safety
8 Code:

9 10. H & S Code section 11173 (a) states in pertinent part:

10 "No person shall obtain or attempt to obtain controlled substances, or procure or
11 attempt to procure the administration of or prescription for controlled substances, (1) by
12 fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material
13 fact."

14 11. Health & Safety Code (H&S Code) section 11170 states in pertinent part:

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

16 12. California Code of Regulations Section 1770 states in pertinent part:

17 "For purposes of denial, suspension, or revocation of a personal or facility license
18 pursuant to Division 1.5 (commencing with Section 475) of the Business & Professions
19 Code, a crime or act shall be considered substantially related to the qualifications,
20 functions, or duties of a licensee or registrant if to a substantial degree it evidences
21 present or potential unfitness of a licensee or registrant to perform the functions
22 authorized by his license or registration in a manner consistent with the public health,
23 safety, or welfare."

24 **DRUGS**

25 13. The following drugs are dangerous drugs under Business & Professions
26 Code section 4022 in that they can only be lawfully dispensed by prescription of an authorized
27 prescriber: Ambien, Bactrim DS, Entex LA, Relafen, and Vicodin.

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(a) Ambien is classified as a Schedule IV controlled substance under H&S Code section 11057 (d).

(b) Vicodin is classified as a Schedule III controlled Substance under H&S Code section 11056 (e).

(c) Bactrim DS, Entex LA and Relafen are all classified as dangerous drugs according to Business and Professions Code section 4022

CHARGES AND ALLEGATIONS

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct for Fraud and Deceit)

14. Respondent is subject to disciplinary action under section 4301 (f) for the commission of an act involving moral turpitude, dishonesty, fraud, deceit or corruption in that from June 25, 1999 through June 17, 2000, Respondent, admitted that she forged seven prescriptions for Ambien, Bactrim DS, Entex LA, Relafen and Vicodin for her own use while she worked as a pharmacist at Scripps Memorial Hospital Pharmacy.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct for Knowingly Making a False Representation of Fact)

15. Respondent is subject to disciplinary action under section 4301 (g) for knowingly making and signing forged prescriptions in order to obtain controlled substances, as more particularly set forth in paragraphs 13 and 14 and incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct for Violation of State Law Regulating Dangerous Drugs)

16. Respondent is subject to disciplinary action under section 4301 (j) in conjunction with H & S Code sections 11173(a) and 11170 as set forth in paragraphs 13 and 14 above and incorporated herein.

/

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct for Conviction of a Crime Substantially
3 Related to a Licensee's Qualifications, Functions and Duties)


4 17. Respondent is subject to disciplinary action under section 4301(l) in that she
5 admitted to a violation of H & S Code section 11368 by pleading guilty in the Superior Court of
6 California, County of San Diego, in Criminal Case No. 814879 to Count Five of said Complaint,
7 wherein Respondent did obtain a narcotic drug by a forged or altered prescription as set forth in
8 paragraphs 13 and 14 above which are incorporated by reference.

9 **PRAYER**

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

- 12 1. Revoking or suspending License Number RPH 39152, issued to
13 ELIZABETH LOVE SMITH, RPH;
- 14 2. Ordering ELIZABETH LOVE SMITH, RPH to pay the Board of
15 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 1/28/02

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20 
21 PATRICIA F. HARRIS
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

24 jml.11-7-01