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

10 In the Matter of the Accusation Against:

Case No. 6177

11 **SUTTER PHARMACY, INC., dba**
12 **SUTTER PHARMACY;**

SECOND AMENDED ACCUSATION

13 **BIJU G. GEORGE, OWNER, CHIEF**
14 **EXECUTIVE OFFICER, SECRETARY,**
AND TREASURER/CHIEF FINANCIAL
OFFICER;

15 **RANJIT SINGH, FORMER CHIEF**
16 **EXECUTIVE OFFICER;**

17 **ANU GOYAL, FORMER CHIEF**
18 **EXECUTIVE OFFICER;**

19 **ANSU GEORGE, FORMER SECRETARY;**

20 **470 Plumas Blvd., Ste. 103**
Yuba City, CA 95991

21 **Retail Pharmacy Permit No. PHY 47489;**

22 **And**

23 **BIJU G. GEORGE**
470 Plumas Blvd., Ste. 103
24 **Yuba City, CA 95991**

25 **Pharmacist License No. RPH 49255**

Respondents.

26 Complainant alleges:

27 **PARTIES**

28 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity

1 as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

2 2. On or about March 30, 2006, the Board issued Retail Pharmacy License Number
3 PHY 47489 to Sutter Pharmacy Inc. dba Sutter Pharmacy ("Respondent Sutter"). At all times
4 relevant to the charges brought herein, Respondent Sutter's corporate officers were Biju G.
5 George, Chief Executive Officer and Secretary (from September 7, 2017, to present), and
6 Treasurer/Chief Financial Officer (from March 30, 2006, to present); Ranjit Singh, Chief
7 Executive Officer (from March 30, 2006, to December 1, 2016); Anu Goyal, Chief Executive
8 Officer (from December 1, 2016, to September 7, 2017); and Ansu George, Secretary (from
9 March 30, 2006, to September 7, 2017). On or about March 30, 2016, Biju G. George
10 ("Respondent George") became the pharmacist-in-charge. The Retail Pharmacy License was in
11 full force and effect at all times relevant to the charges brought herein and will expire on March 1,
12 2019, unless renewed.

13 3. On or about March 18, 1997, the Board issued Registered Pharmacist License
14 Number RPH 49255 to Respondent George. The Registered Pharmacist License was in full force
15 and effect at all times relevant to the charges brought herein and will expire on May 31, 2020,
16 unless renewed.

17 JURISDICTION

18 4. This Accusation is brought before the Board under the authority of the following
19 laws. All section references are to the Business and Professions Code unless otherwise indicated.

20 5. Code section 4300 states, in pertinent part:

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

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

- 24 (1) Suspending judgment.
25 (2) Placing him or her upon probation.
26 (3) Suspending his or her right to practice for a period not exceeding
one year.
27 (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 . . .

28 ///

1 6. Code section 4300.1 states:

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

6 7. Code section 4307 states:

7 (a) Any person who has been denied a license or whose license has been
8 revoked or is under suspension, or who has failed to renew his or her license
9 while it was under suspension, or who has been a manager, administrator, owner,
10 member, officer, director, associate, partner, or any other person with
11 management or control of any partnership, corporation, trust, firm, or association
12 whose application for a license has been denied or revoked, is under suspension or
13 has been placed on probation, and while acting as the manager, administrator,
14 owner, member, officer, director, associate, partner, or any other person with
15 management or control had knowledge of or knowingly participated in any
16 conduct for which the license was denied, revoked, suspended, or placed on
17 probation, shall be prohibited from serving as a manager, administrator, owner,
18 member, officer, director, associate, partner, or in any other position with
19 management or control of a licensee as follows:

14 (1) Where a probationary license is issued or where an existing license
15 is placed on probation, this prohibition shall remain in effect for a period not to
16 exceed five years.

16 (2) Where the license is denied or revoked, the prohibition shall
17 continue until the license is issued or reinstated.

18 (b) Manager, administrator, owner, member, officer, director, associate,
19 partner, or any other person with management or control of a license as used in
20 this section and Section 4308, may refer to a pharmacist or to any other person
21 who serves in such capacity in or for a licensee.

20 (c) The provisions of subdivision (a) may be alleged in any pleading filed
21 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
22 of the Government Code. However, no order may be issued in that case except as
23 to a person who is named in the caption, as to whom the pleading alleges the
24 applicability of this section, and where the person has been given notice of the
25 proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1
26 of Division 3 of the Government Code. The authority to proceed as provided by
27 this subdivision shall be in addition to the board's authority to proceed under
28 Section 4339 or any other provision of law.

25 STATUTORY AND REGULATORY PROVISIONS

26 A. Business & Professions Code

27 8. Code section 4301 states, in pertinent part:

28 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:

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(j) The violation of any of the statutes of this state, or 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

9. Code section 4306.5 states, in pertinent part:

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

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

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

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function . . .

10. Section 4081 of the Code states:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

1 (c) The pharmacist-in-charge or representative-in-charge shall not be
2 criminally responsible for acts of the owner, officer, partner, or employee that
3 violate this section and of which the pharmacist-in-charge or representative-in-
4 charge had no knowledge, or in which he or she did not knowingly participate.

5
6 11. Section 4105 of the Code states:

7 (a) All records or other documentation of the acquisition and disposition of
8 dangerous drugs and dangerous devices by any entity licensed by the board shall
9 be retained on the licensed premises in a readily retrievable form.

10 (b) The licensee may remove the original records or documentation from the
11 licensed premises on a temporary basis for license-related purposes. However, a
12 duplicate set of those records or other documentation shall be retained on the
13 licensed premises.

14 (c) The records required by this section shall be retained on the licensed
15 premises for a period of three years from the date of making.

16 (d) Any records that are maintained electronically shall be maintained so that
17 the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is
18 not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler,
19 the designated representative on duty, shall, at all times during which the licensed
20 premises are open for business, be able to produce a hard copy and electronic
21 copy of all records of acquisition or disposition or other drug or
22 dispensing-related records maintained electronically.

23 (e)
24 (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon
25 written request, grant to a licensee a waiver of the requirements that the records
26 described in subdivisions (a), (b), and (c) be kept on the licensed premises.

27 (2) A waiver granted pursuant to this subdivision shall not affect the
28 board's authority under this section or any other provision of this chapter.

12. Code section 4113, subdivision (c), states that “[t]he pharmacist-in-charge shall be
responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
to the practice of pharmacy.”

B. Health & Safety Code

13. Health and Safety Code section 11153, subdivision (a), states:

A prescription for a controlled substance shall only be issued for a legitimate
medical purpose by an individual practitioner acting in the usual course of his or
her professional practice. The responsibility for the proper prescribing and
dispensing of controlled substances is upon the prescribing practitioner, but a
corresponding responsibility rests with the pharmacist who fills the prescription.
Except as authorized by this division, the following are not legal prescriptions: (1)
an order purporting to be a prescription which is issued not in the usual course of
professional treatment or in legitimate and authorized research; or (2) an order for
an addict or habitual user of controlled substances, which is issued not in the

1 course of professional treatment or as part of an authorized narcotic treatment
2 program, for the purpose of providing the user with controlled substances,
sufficient to keep him or her comfortable by maintaining customary use.

3 14. Health and Safety Code section 11159.2, states, in pertinent part:

4 (a) Notwithstanding any other provision of law, a prescription for a
5 controlled substance for use by a patient who has a terminal illness may be written
6 on a prescription form that does not meet the requirements of Section 11162.1 if
the prescription meets the following requirements:

- 7 (1) Contain the information specified in subdivision (a) of Section
11164.
8 (2) Indicate that the prescriber has certified that the patient is
9 terminally ill by the words "11159.2 exemption."

10 (b) A pharmacist may fill a prescription pursuant to this section when there
11 is a technical error in the certification required by paragraph (2) of subdivision
12 (a), provided that he or she has personal knowledge of the patient's terminal
illness, and subsequently returns the prescription to the prescriber for correction
within 72 hours.

13 (c) For purposes of this section, "terminally ill" means a patient who meets
14 all of the following conditions:

- 15 (1) In the reasonable medical judgment of the prescribing physician,
the patient has been determined to be suffering from an illness
16 that is incurable and irreversible.
17 (2) In the reasonable medical judgment of the prescribing physician,
the patient's illness will, if the illness takes its normal course,
18 bring about the death of the patient within a period of one year.
19 (3) The patient's treatment by the physician prescribing a controlled
substance pursuant to this section primarily is for the control of
20 pain, symptom management, or both, rather than for cure of the
illness.

21 ...

22 15. Health and Safety Code section 11162.1 states, in pertinent part:

23 (a) The prescription forms for controlled substances shall be printed with
24 the following features:

25 (1) A latent, repetitive "void" pattern shall be printed across the entire
front of the prescription blank; if a prescription is scanned or photocopied, the
26 word "void" shall appear in a pattern across the entire front of the prescription.

27 (2) A watermark shall be printed on the backside of the prescription
blank; the watermark shall consist of the words "California Security Prescription."

28

(6) A description of the security features included on each prescription

1 form.

2 (7)(A) Six quantity check off boxes shall be printed on the form so that the
3 prescriber may indicate the quantity by checking the applicable box where the
4 following quantities shall appear:

- 5 1-24
- 6 25-49
- 7 50-74
- 8 75-100
- 9 101-150
- 10 151 and over . . .

11 (8) Prescription blanks shall contain a statement printed on the bottom
12 of the prescription blank that the "Prescription is void if the number of drugs
13 prescribed is not noted."

14 (9) The preprinted name, category of licensure, license number,
15 federal controlled substance registration number, and address of the prescribing
16 practitioner.

17 (10) Check boxes shall be printed on the form so that the prescriber
18 may indicate the number of refills ordered.

19
20 (c)

21 (3) Forms ordered pursuant to this section shall not be valid
22 prescriptions without the name, category of licensure, license number, and federal
23 controlled substance registration number of the prescriber on the form.

24

25 16. Health and Safety Code section 11164 states, in pertinent part:

26 Except as provided in Section 11167, no person shall prescribe a controlled
27 substance, nor shall any person fill, compound, or dispense a prescription for a
28 controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II,
III, IV, or V, except as authorized by subdivision (b), shall be made on a
controlled substance prescription form as specified in Section 11162.1 and shall
meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in
ink and shall contain the prescriber's address and telephone number; the name of
the ultimate user or research subject, or contact information as determined by the
Secretary of the United States Department of Health and Human Services; refill
information, such as the number of refills ordered and whether the prescription is
a first-time request or a refill; and the name, quantity, strength, and directions for
use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for
whom the controlled substance is prescribed. If the prescriber does not specify
this address on the prescription, the pharmacist filling the prescription or an
employee acting under the direction of the pharmacist shall write or type the

1 address on the prescription or maintain this information in a readily retrievable
2 form in the pharmacy.

3 (b)

4 (1) Notwithstanding paragraph (1) of subdivision (a) of Section
5 11162.1, any controlled substance classified in Schedule III, IV, or V may be
6 dispensed upon an oral or electronically transmitted prescription, which shall be
7 produced in hard copy form and signed and dated by the pharmacist filling the
8 prescription or by any other person expressly authorized by provisions of the
9 Business and Professions Code. Any person who transmits, maintains, or receives
10 any electronically transmitted prescription shall ensure the security, integrity,
11 authority, and confidentiality of the prescription.

12 (2) The date of issue of the prescription and all the information
13 required for a written prescription by subdivision (a) shall be included in the
14 written record of the prescription; the pharmacist need not include the address,
15 telephone number, license classification, or federal registry number of the
16 prescriber or the address of the patient on the hard copy, if that information is
17 readily retrievable in the pharmacy.

18 (3) Pursuant to an authorization of the prescriber, any agent of the
19 prescriber on behalf of the prescriber may orally or electronically transmit a
20 prescription for a controlled substance classified in Schedule III, IV, or V, if in
21 these cases the written record of the prescription required by this subdivision
22 specifies the name of the agent of the prescriber transmitting the prescription.

23 (c) The use of commonly used abbreviations shall not invalidate an
24 otherwise valid prescription.

25 (d) Notwithstanding any provision of subdivisions (a) and (b),
26 prescriptions for a controlled substance classified in Schedule V may be for more
27 than one person in the same family with the same medical need.

28 C. Federal Regulation

17 17. Title 21, Code of Federal Regulations (“CFR”), section 1306.05, subsection (a) states,
18 “[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when
19 issued and shall bear the full name and address of the patient, the drug name, strength, dosage
20 form, quantity prescribed, directions for use, and the name, address and registration number of the
21 practitioner.”

22 D. California Regulations

23 18. Title 16, California Code of Regulations (“CCR”), section 1707.1 states:

24 (a) A pharmacy shall maintain medication profiles on all patients who
25 have prescriptions filled in that pharmacy except when the pharmacist has
26 reasonable belief that the patient will not continue to obtain prescription
27 medications from that pharmacy.

28 (1) A patient medication record shall be maintained in an
automated data processing or manual record mode such that the following

1 information is readily retrievable during the pharmacy's normal operating
2 hours.

3 (A) The patient's full name and address, telephone number, date
4 of birth (or age) and gender;

5 (B) For each prescription dispensed by the pharmacy:

6 1. The name, strength, dosage form, route of
7 administration, if other than oral, quantity and directions for use of
8 any drug dispensed;

9 2. The prescriber's name and where appropriate,
10 license number, DEA registration number or other unique
11 identifier;

12 3. The date on which a drug was dispensed or refilled;

13 4. The prescription number for each prescription; and

14 5. The information required by section 1717.

15 (C) Any of the following which may relate to drug therapy:
16 patient allergies, idiosyncrasies, current medications and relevant
17 prior medications including nonprescription medications and
18 relevant devices, or medical conditions which are communicated
19 by the patient or the patient's agent.

20 (D) Any other information which the pharmacist, in his or her
21 professional judgment, deems appropriate.

22 (2) The patient medication record shall be maintained for at
23 least one year from the date when the last prescription was filled.

24 19. Title 16, CCR, section 1761, subdivision (a), states:

25 No pharmacist shall compound or dispense any prescription which contains any
26 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon
27 receipt of any such prescription, the pharmacist shall contact the prescriber to obtain
28 the information needed to validate the prescription.

29 COST RECOVERY

30 20. Code section 125.3 provides, in pertinent part, that a Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case.

34 DRUG CLASSIFICATIONS

35 21. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
36 section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.

37 Oxycodone is used to treat pain. "Roxicodone" is a brand of oxycodone.

38 22. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code

1 section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

2 Alprazolam is used to treat anxiety. "Xanax" is a brand of alprazolam.

3 23. Promethazine with codeine is a Schedule V controlled substance pursuant to Health
4 and Safety Code section 11058, subdivision (c)(1), and a dangerous drug pursuant to Code
5 section 4022. Promethazine with codeine is used to treat cough. "Phenergan with codeine" is a
6 brand of promethazine with codeine.

7 24. Hydrocodone/acetaminophen is a Schedule III controlled substance pursuant to
8 Health and Safety Code section 11056, subdivision (e), and a Schedule II controlled substance
9 pursuant to Title 21, CFR, section 1308.12, subdivision (b)(1)(vi).¹ Hydrocodone/acetaminophen
10 is also a dangerous drug pursuant to Code section 4022. Hydrocodone/acetaminophen is used to
11 treat pain. "Norco" is a brand of hydrocodone/acetaminophen.

12 25. Carisoprodol is a Schedule IV Controlled Substance pursuant to Title 21, CFR,
13 section 1308.14, subdivision (c)(6), and a dangerous drug pursuant to Code section 4022.
14 Carisoprodol is used as a muscle relaxant. "Soma" is a brand of carisoprodol.

15 CURES PROGRAM

16 26. The Controlled Substance Utilization Review and Evaluation System ("CURES")
17 program was initiated in 1998 and required mandatory monthly pharmacy reporting of dispensed
18 Schedule II controlled substances. The program was amended in January 2005 to include
19 mandatory weekly reporting of Schedule II to IV medications. The data is collected statewide
20 and can be used by healthcare professionals, such as pharmacists and prescribers, to evaluate and
21 determine whether their patients are utilizing their controlled substances safely and appropriately.

22 27. The component of CURES which is accessible to pharmacists and prescribers is
23 called the Prescription Drug Monitoring Program ("PDMP"). Registration for access to the
24 PDMP has been available since February 2009. The data may be used to aid in determining
25 whether a patient sees multiple prescribers, frequents multiple pharmacies to fill controlled
26 substance prescriptions, and/or obtains early refills of controlled substance prescriptions.

27 ¹ Hydrocodone/acetaminophen was rescheduled to a Schedule II controlled substance
28 effective October 6, 2014.

FACTUAL ALLEGATIONS

1
2 28. On or about February 7, 2017, Board Inspector P.P. analyzed CURES data for
3 Respondent Sutter and found certain “red flags” or irregularities indicating that various doctors
4 were potentially issuing prescriptions for controlled substances for other than a legitimate medical
5 purpose and that Respondent Sutter was dispensing the drugs indiscriminately; i.e., without
6 exercising its corresponding responsibility with regard to the dispensing or furnishing of the
7 drugs. Those “red flags” included CURES data showing that Respondent Sutter dispensed larger
8 quantities of controlled substances than other nearby pharmacies, and that Respondent Sutter’s
9 top patients (i.e. patients who received 111 or more controlled substances) received more, on
10 average, controlled substances than other nearby pharmacies. Inspector P.P. also obtained the
11 names of patients who appeared to receive many controlled substances, patients who lived out of
12 state, and the top prescribers at Respondent Sutter.

13 29. On or about February 8, 2017, Board Inspectors P.P. and J.H. conducted an
14 inspection at Respondent Sutter, and were assisted by Respondent George and pharmacist A.G.
15 Inspector P.P. instructed Respondent George to conduct an on-hand count of all hydrocodone
16 drugs in stock because the CURES report showed that Respondent Sutter had dispensed over one
17 million doses of hydrocodone from February 1, 2014 through February 7, 2017, and Inspector
18 P.P. planned to conduct an audit. Inspector P.P. also obtained a dispensing report from
19 Respondent George for February 8, 2017, as well as the Biennial inventory Respondent George
20 had conducted on October 5, 2014, and included that information in the audit. During the
21 inspection, Inspector P.P. received and reviewed approximately forty-nine (49) patient profiles
22 with Respondent George. During the review of those patient profiles, Respondent George told
23 Inspector P.P. that “[t]here are no notes on the profiles but they could be on the prescription
24 blanks.” Also during the inspection, Respondent George informed Inspector P.P. that he had no
25 recollection of ever looking up any ICD 10 codes to verify them, and that he had no recollection
26 of calling prescribers to discuss pain management. During the inspection, Inspector P.P. also
27 reviewed Respondent Sutter’s controlled substance prescriptions for hospice patients, and found
28 that those prescriptions were initially received by either fax transmission or verbally. Respondent

1 Sutter did not reduce those hospice prescriptions to writing on a form developed by the pharmacy,
2 and did not receive the prescribers' signed orders or chart orders prior to dispensing the
3 prescriptions.

4 30. At the February 8, 2017, inspection, Inspector P.P. also requested the following from
5 Respondent George: (a) dispensing report for hydrocodone 5/325, 7.5/325, 10/325, and Zohydro
6 ER from October 5, 2014, through February 7, 2017; (b) acquisition records for the foregoing
7 hydrocodone products from October 5, 2014, through February 8, 2017; and (c) the outcome of
8 Respondent George's discussion with a doctor whose prescription forms did not contain a
9 physical address.

10 31. On or about February 9, 2017, Respondent George informed Inspector P.P. that "my
11 last Controlled substance inventory date was 05/26/15 at 8:35AM (I will be glad to scan a copy
12 and email you) if you are looking to tally the purchase vs dispensing 10/05/14 may not work."
13 Also, on or about February 14, 2017, Respondent George informed Inspector P.P. that
14 Respondent George's dispensing records only went back twenty-four months.

15 32. Over the course of approximately February 22, 2017, through approximately May 3,
16 2017, Respondent George provided Inspector P.P. with the following information:

- 17 a. A dispensing report for hydrocodone/apap 5/325, 7/325, 10/325 mg and Zohydro
18 ER products from October 5, 2014 to February 7, 2017;
- 19 b. Physician dispensing reports;
- 20 c. The CURES profile for seventeen patients who received controlled substances at
21 Respondent Sutter, and the pharmacist identification on the profiles;
- 22 d. The profile for patient B.B., because the one provided to Inspector P.P. at the time
23 of the inspection contained two dangerous drugs and no controlled substances
24 while the CURES report showed that Respondent Sutter had filled at least 70
25 controlled substances for B.B. between February 12, 2014, and June 9, 2016;
- 26 e. Hospice prescriptions from February 8, 2014, through February 8, 2017, and
- 27 f. Notes on patient files, which had not been on the patient files at the time of the
28 February 8, 2017, inspection.

33. Inspector P.P. reviewed the CURES report for Respondent Sutter, the top prescribers
for Respondent Sutter (none of whom were certified in pain management), and the information
and patient profiles provided by Respondent George. Inspector P.P. also interviewed Respondent

1 George about Respondent Sutter's service area, his knowledge concerning the patient profiles, the
2 patients who received controlled substances, and about Respondent Sutter's pharmacy practices.
3 Following her inspection of Respondent Sutter, interview of Respondent George, review of
4 CURES data, and review of documents provided by Respondent George, Inspector P.P. found the
5 following:

- 6 a. Between 2014 and 2017, Respondents dispensed numerous prescriptions for
7 oxycodone, hydrocodone/apap, alprazolam, diazepam, carisoprodol, tramadol,
8 methadone, promethazine with codeine, and oxycontin without regard to the
9 following irregularities or factors:
 - 10 i. Prescribers were not certified in pain management, and were family
11 physicians;
 - 12 ii. Prescribers' medical offices were located long distances from Respondent
13 Sutter Pharmacy;
 - 14 iii. Patients traveled long distances (including from out of state) to have
15 controlled substance prescriptions filled at Respondent Sutter;
 - 16 iv. Patients did not provide their address to Respondent Sutter;
 - 17 v. Respondents did not have any diagnosis or treatment on file for patients
18 who had controlled substance prescriptions filled at Respondent Sutter;
 - 19 vi. Patients had high dosages of controlled substance prescriptions;
- 20 b. That Respondent George and Respondent Sutter dispensed numerous prescriptions
21 for controlled substances when the prescriptions had no known legitimate medical
22 purpose;
- 23 c. That the pharmacist did not contact the prescribers for uncertain prescriptions,
24 specifically regarding their quantities, directions, and purpose;
- 25 d. That Respondent George and Respondent Sutter dispensed prescriptions which
26 contained errors therein, such as a prescription dispensed with too many refills, a
27 prescription dispensed without prescribed refills, and prescriber not listed on a
28 secure prescription blank;
- 29 e. That Respondent George and Respondent Sutter failed to maintain records of
30 acquisition and disposition for at least three years from the date of making;
- 31 f. That Respondent George and Respondent Sutter dispensed controlled substances
32 to patients when the patient's address was not known to the pharmacy;
- 33 g. That Respondent George and Respondent Sutter dispensed Schedule II Controlled
34 Substances without a hard-copy of the prescription; and
- 35 h. That Respondent George and Respondent Sutter failed to properly maintain a
36 patient profile.

1 **CAUSES FOR DISCIPLINE**

2 **A. Respondent Sutter Pharmacy**

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Dispensing Using Erroneous Prescriptions – Respondent Sutter)**

5 34. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
6 conduct under Code sections 4301 subdivisions (d), (j), and (o), in that Respondent violated Code
7 section 4113, Health and Safety Code section 11153, and Title 16, California Code of
8 Regulations, section 1761, by dispensing numerous prescriptions for controlled substances when
9 the prescriptions had no known legitimate medical purpose, by failing to contact the prescribers
10 for uncertain prescriptions (e.g. regarding their quantities, directions, and purpose), and by
11 dispensing prescriptions which contained errors therein (e.g. prescription dispensed with too
12 many refills, dispensed without prescribed refills, and prescriber not listed on a secure
13 prescription blank), as set forth in paragraphs 28 through 32, and their subparagraphs, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Records – Respondent Sutter)**

16 35. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
17 conduct under Code sections 4301, subdivisions (j) and (o), in that Respondent violated Code
18 sections 4081 subdivisions (a) and (b), 4105, and 4113, by failing to maintain records of the
19 acquisition and disposition of dangerous drugs, for at least three years from the date of making, as
20 set forth in paragraphs 28 through 32, and their subparagraphs, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Improperly Issuing Prescriptions – Respondent Sutter)**

23 36. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
24 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
25 section 4113, and Title 24, Code of Federal Regulations, section 1306.5 subdivision (a), by
26 dispensing controlled substances to patients when the patient's address was not known to
27 Respondents, and when the security blank lacked an address for the prescriber, as set forth in
28 paragraphs 28 through 32, and their subparagraphs, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(No Hard-Copy of Controlled Substance Prescriptions – Respondent Sutter)**

3 37. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
4 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
5 section 4113, and Health and Safety Code sections 11159.2 and 11164 by dispensing controlled
6 substances using prescriptions that were initially received by either fax transmission or verbally,
7 which Respondents did not reduce to writing on a form developed by the pharmacy, and which
8 Respondents did not receive the prescribers' signed orders or chart orders for prior to dispensing
9 the prescriptions, as set forth in paragraphs 28 through 32, and their subparagraphs, above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Dispensed Without Required Prescription Form – Respondent Sutter)**

12 38. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
13 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
14 section 4113, and Health and Safety Code section 11162.1 subdivision (a)(9), by dispensing
15 Schedule II controlled substance prescriptions pursuant to a secure form which did not contain the
16 address of the prescriber, as set forth in paragraphs 28 through 32, and their subparagraphs,
17 above.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Patient Profile – Respondent Sutter)**

20 39. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
21 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
22 section 4113, and Title 16 California Code of Regulations, section 1707.1 subdivision (a) when
23 the patient report that Respondents provided for patient B.B. contained two dangerous drugs and
24 no controlled substances while the CURES report showed that Respondent Sutter had filled at
25 least 70 controlled substances for B.B. between February 12, 2014, and June 9, 2016, as set forth
26 in paragraphs 28 through 32, and their subparagraphs, above.

27 ///

28 //

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Improperly Issuing Prescriptions – Respondent George)**

3 43. Respondent George is subject to disciplinary action for unprofessional conduct under
4 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
5 in-charge of Respondent Sutter, violated Code section 4113, and Title 24, Code of Federal
6 Regulations, section 1306.05 subdivision (a), by dispensing controlled substances to patients
7 when the patient’s address was not known to Respondents, and when the security blank lacked an
8 address for the prescriber, as set forth in paragraphs 28 through 32, and their subparagraphs,
9 above.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(No Hard-Copy of Controlled Substance Prescriptions – Respondent George)**

12 44. Respondent George is subject to disciplinary action for unprofessional conduct under
13 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
14 in-charge of Respondent Sutter, violated Code section 4113, and Health and Safety Code sections
15 11159.2 and 11164 by dispensing controlled substances using prescriptions that were initially
16 received by either fax transmission or verbally, which Respondents did not reduce to writing on a
17 form developed by the pharmacy, and which Respondents did not receive the prescribers’ signed
18 orders or chart orders for prior to dispensing the prescriptions, as set forth in paragraphs 28
19 through 32, and their subparagraphs, above.

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Dispensed Without Required Prescription Form – Respondent George)**

22 45. Respondent George is subject to disciplinary action for unprofessional conduct under
23 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
24 in-charge of Respondent Sutter, violated Code section 4113, and Health and Safety Code section
25 11162.1 subdivision (a)(9), by dispensing Schedule II controlled substance prescriptions pursuant
26 to a secure form which did not contain the address of the prescriber, as set forth in paragraphs 28
27 through 32, and their subparagraphs, above.

28 ///

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Patient Profile – Respondent George)**

3 46. Respondent George is subject to disciplinary action for unprofessional conduct under
4 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
5 in-charge of Respondent Sutter, violated Code section 4113, and Title 16 California Code of
6 Regulations, section 1707.1 subdivision (a) when the patient report that Respondents provided for
7 patient B.B. contained two dangerous drugs and no controlled substances while the CURES
8 report showed that Respondent Sutter had filled at least 70 controlled substances for B.B.
9 between February 12, 2014, and June 9, 2016, as set forth in paragraphs 28 through 32, and their
10 subparagraphs, above.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 **(Inappropriate Exercise of Respondent’s Education,
13 Training, or Experience as a Pharmacist – Respondent George)**

14 47. Respondent George is subject to disciplinary action for unprofessional conduct
15 pursuant to Code section 4301, as defined by Code section 4306.5, subdivision (a), for
16 inappropriately exercising his education, training or experience as a pharmacist, as set forth in
17 paragraphs 28 through 32, and their subparagraphs, above.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Exercise or Implement Best Professional Judgment
20 or Corresponding Responsibility – Respondent George)**

21 48. Respondent George is subject to disciplinary action for unprofessional conduct
22 pursuant to Code section 4301, as defined by Code section 4306.5, subdivision (b), for failing to
23 exercise or implement his best professional judgment or corresponding responsibility with regard
24 to the dispensing or furnishing of controlled substances, as set forth in paragraphs 28 through 32,
25 and their subparagraphs, above.

26 **OTHER MATTERS**

27 49. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
28 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, then Sutter Pharmacy Inc. dba
Sutter Pharmacy shall be prohibited from serving as a manager, administrator, owner, member,
officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number

1 PHY 47489 is placed on probation or until Pharmacy Permit Number PHY 47489 is reinstated if
2 it is revoked.

3 50. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
4 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, while Biju G. George has been
5 an owner and had knowledge of or knowingly participated in any conduct for which the licensee
6 was disciplined, then Biju G. George shall be prohibited from serving as a manager,
7 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
8 Pharmacy Permit Number PHY 47489 is placed on probation or until Pharmacy Permit Number
9 PHY 47489 is reinstated if it is revoked.

10 51. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
11 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, while Ranjit Singh has been a
12 manager, administrator, owner, member, officer, director, associate, or partner, and had
13 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
14 then Ranjit Singh shall be prohibited from serving as a manager, administrator, owner, member,
15 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
16 PHY 47489 is placed on probation or until Pharmacy Permit Number PHY 47489 is reinstated if
17 it is revoked.

18 52. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
19 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, while Anu Goyal has been a
20 manager, administrator, owner, member, officer, director, associate, or partner, and had
21 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
22 then Anu Goyal shall be prohibited from serving as a manager, administrator, owner, member,
23 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
24 PHY 47489 is placed on probation or until Pharmacy Permit Number PHY 47489 is reinstated if
25 it is revoked.

26 53. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
27 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, while Ansu George has been a
28 manager, administrator, owner, member, officer, director, associate, or partner, and had

1 knowledge of or knowingly participated in any conduct for which the licensee was disciplined,
2 then Ansu George shall be prohibited from serving as a manager, administrator, owner, member,
3 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
4 PHY 47489 is placed on probation or until Pharmacy Permit Number PHY 47489 is reinstated if
5 it is revoked.

6 **PRAYER**

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

9 1. Revoking or suspending Retail Pharmacy License Number PHY 47489, issued to
10 Sutter Pharmacy Inc. dba Sutter Pharmacy,

11 2. Revoking or suspending Registered Pharmacist License Number RPH 49255, issued
12 to Biju G. George;

13 3. Prohibiting Sutter Pharmacy Inc. dba Sutter Pharmacy from serving as a manager,
14 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
15 Pharmacy Permit Number PHY 47489 is placed on probation or until Pharmacy Permit Number
16 47489 is reinstated if Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter
17 Pharmacy is revoked;

18 4. Prohibiting Biju G. George from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
20 Number PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated
21 if Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is
22 revoked;

23 5. Prohibiting Ranjit Singh from serving as a manager, administrator, owner, member,
24 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
25 PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated if
26 Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is revoked;

27 6. Prohibiting Anu Goyal from serving as a manager, administrator, owner, member,
28 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number

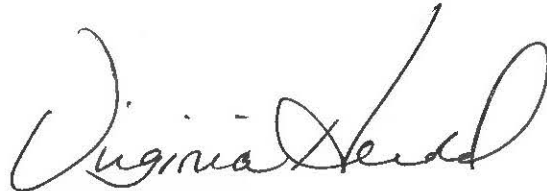
1 PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated if
2 Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is revoked;

3 7. Prohibiting Ansu George, from serving as a manager, administrator, owner, member,
4 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
5 PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated if
6 Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is revoked;

7 8. Ordering Sutter Pharmacy Inc. dba Sutter Pharmacy and Biju G. George, to pay the
8 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3;

10 9. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 10/27/18



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

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

10 In the Matter of the Accusation Against:
11 **SUTTER PHARMACY, dba SUTTER**
PHARMACY;
12
13 **BIJU G. GEORGE, OWNER, CHIEF**
EXECUTIVE OFFICER, SECRETARY,
14 **AND TREASURER/CHIEF FINANCIAL**
OFFICER;
15 **RANJIT SINGH, FORMER CHIEF**
EXECUTIVE OFFICER;
16 **ANU GOYLE, FORMER CHIEF**
17 **EXECUTIVE OFFICER;**
18 **ANSU GEORGE, FORMER SECRETARY;**
19 **470 Plumas Blvd., Ste. 103**
Yuba City, CA 95991
20 **Retail Pharmacy Permit No. PHY 47489;**
21
22 **And**
23 **BIJU G. GEORGE**
470 Plumas Blvd., Ste. 103
24 **Yuba City, CA 95991**
25 **Pharmacist License No. RPH 49255**
Respondents.

Case No. 6177
FIRST AMENDED ACCUSATION

26 Complainant alleges:

27 **PARTIES**

- 28 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity

1 as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

2 2. On or about March 30, 2006, the Board issued Retail Pharmacy License Number
3 PHY 47489 to Sutter Pharmacy Inc. dba Sutter Pharmacy ("Respondent Sutter"). At all times
4 relevant to the charges brought herein, Respondent Sutter's corporate officers were Biju G.
5 George, Chief Executive Officer and Secretary (from September 7, 2017, to present), and
6 Treasurer/Chief Financial Officer (from March 30, 2006, to present); Ranjit Singh, Chief
7 Executive Officer (from March 30, 2006, to December 1, 2016); Anu Goyle, Chief Executive
8 Officer (from December 1, 2016, to September 7, 2017); and Ansu George, Secretary (from
9 March 30, 2006, to September 7, 2017). On or about March 30, 2016, Biju G. George
10 ("Respondent George") became the pharmacist-in-charge. The Retail Pharmacy License was in
11 full force and effect at all times relevant to the charges brought herein and will expire on March 1,
12 2018, unless renewed.

13 3. On or about March 18, 1997, the Board issued Registered Pharmacist License
14 Number RPH 49255 to Respondent George. The Registered Pharmacist License was in full force
15 and effect at all times relevant to the charges brought herein and will expire on May 31, 2018,
16 unless renewed.

17 JURISDICTION

18 4. This Accusation is brought before the Board under the authority of the following
19 laws. All section references are to the Business and Professions Code unless otherwise indicated.

20 5. Code section 4300 states, in pertinent part:

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

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

- 24 (1) Suspending judgment.
- 25 (2) Placing him or her upon probation.
- 26 (3) Suspending his or her right to practice for a period not exceeding
one year.
- 27 (4) Revoking his or her license.
- 28 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper . . .

///

unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(j) The violation of any of the statutes of this state, or 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

9. Code section 4306.5 states, in pertinent part:

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

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

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

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function . . .

10. Section 4081 of the Code states:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory described in this section.

1 (c) The pharmacist-in-charge or representative-in-charge shall not be
2 criminally responsible for acts of the owner, officer, partner, or employee that
3 violate this section and of which the pharmacist-in-charge or representative-in-
4 charge had no knowledge, or in which he or she did not knowingly participate.

5
6 11. Section 4105 of the Code states:

7 (a) All records or other documentation of the acquisition and disposition of
8 dangerous drugs and dangerous devices by any entity licensed by the board shall
9 be retained on the licensed premises in a readily retrievable form.

10 (b) The licensee may remove the original records or documentation from the
11 licensed premises on a temporary basis for license-related purposes. However, a
12 duplicate set of those records or other documentation shall be retained on the
13 licensed premises.

14 (c) The records required by this section shall be retained on the licensed
15 premises for a period of three years from the date of making.

16 (d) Any records that are maintained electronically shall be maintained so that
17 the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is
18 not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler,
19 the designated representative on duty, shall, at all times during which the licensed
20 premises are open for business, be able to produce a hard copy and electronic
21 copy of all records of acquisition or disposition or other drug or
22 dispensing-related records maintained electronically.

23 (e)
24 (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon
25 written request, grant to a licensee a waiver of the requirements that the records
26 described in subdivisions (a), (b), and (c) be kept on the licensed premises.

27 (2) A waiver granted pursuant to this subdivision shall not affect the
28 board's authority under this section or any other provision of this chapter.

12. Code section 4113, subdivision (c), states that "[t]he pharmacist-in-charge shall be
responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
to the practice of pharmacy."

B. Health & Safety Code

13. Health and Safety Code section 11153, subdivision (a), states:

A prescription for a controlled substance shall only be issued for a legitimate
medical purpose by an individual practitioner acting in the usual course of his or
her professional practice. The responsibility for the proper prescribing and
dispensing of controlled substances is upon the prescribing practitioner, but a
corresponding responsibility rests with the pharmacist who fills the prescription.
Except as authorized by this division, the following are not legal prescriptions: (1)
an order purporting to be a prescription which is issued not in the usual course of
professional treatment or in legitimate and authorized research; or (2) an order for
an addict or habitual user of controlled substances, which is issued not in the

1 course of professional treatment or as part of an authorized narcotic treatment
2 program, for the purpose of providing the user with controlled substances,
3 sufficient to keep him or her comfortable by maintaining customary use.

4
5
6 14. Health and Safety Code section 11159.2, states, in pertinent part:

7 (a) Notwithstanding any other provision of law, a prescription for a
8 controlled substance for use by a patient who has a terminal illness may be written
9 on a prescription form that does not meet the requirements of Section 11162.1 if
10 the prescription meets the following requirements:

11 (1) Contain the information specified in subdivision (a) of Section
12 11164.

13 (2) Indicate that the prescriber has certified that the patient is
14 terminally ill by the words "11159.2 exemption."

15 (b) A pharmacist may fill a prescription pursuant to this section when there
16 is a technical error in the certification required by paragraph (2) of subdivision
17 (a), provided that he or she has personal knowledge of the patient's terminal
18 illness, and subsequently returns the prescription to the prescriber for correction
19 within 72 hours.

20 (c) For purposes of this section, "terminally ill" means a patient who meets
21 all of the following conditions:

22 (1) In the reasonable medical judgment of the prescribing physician,
23 the patient has been determined to be suffering from an illness
24 that is incurable and irreversible.

25 (2) In the reasonable medical judgment of the prescribing physician,
26 the patient's illness will, if the illness takes its normal course,
27 bring about the death of the patient within a period of one year.

28 (3) The patient's treatment by the physician prescribing a controlled
substance pursuant to this section primarily is for the control of
pain, symptom management, or both, rather than for cure of the
illness.

...

15. Health and Safety Code section 11162.1 states, in pertinent part:

23 (a) The prescription forms for controlled substances shall be printed with
24 the following features:

25 (1) A latent, repetitive "void" pattern shall be printed across the entire
26 front of the prescription blank; if a prescription is scanned or photocopied, the
27 word "void" shall appear in a pattern across the entire front of the prescription.

28 (2) A watermark shall be printed on the backside of the prescription
blank; the watermark shall consist of the words "California Security Prescription."

....

(6) A description of the security features included on each prescription

form.

1
2 (7)(A) Six quantity check off boxes shall be printed on the form so that the
prescriber may indicate the quantity by checking the applicable box where the
3 following quantities shall appear:

4 1-24
25-49
5 50-74
75-100
6 101-150
151 and over . . .

7 (8) Prescription blanks shall contain a statement printed on the bottom
8 of the prescription blank that the "Prescription is void if the number of drugs
prescribed is not noted."

9 (9) The preprinted name, category of licensure, license number,
10 federal controlled substance registration number, and address of the prescribing
practitioner.

11 (10) Check boxes shall be printed on the form so that the prescriber
12 may indicate the number of refills ordered.

13
(c)
. . . .

14 (3) Forms ordered pursuant to this section shall not be valid
prescriptions without the name, category of licensure, license number, and federal
15 controlled substance registration number of the prescriber on the form.

16

17 16. Health and Safety Code section 11164 states, in pertinent part:

18 Except as provided in Section 11167, no person shall prescribe a controlled
19 substance, nor shall any person fill, compound, or dispense a prescription for a
controlled substance, unless it complies with the requirements of this section.

20 (a) Each prescription for a controlled substance classified in Schedule II,
21 III, IV, or V, except as authorized by subdivision (b), shall be made on a
controlled substance prescription form as specified in Section 11162.1 and shall
22 meet the following requirements:

23 (1) The prescription shall be signed and dated by the prescriber in
ink and shall contain the prescriber's address and telephone number; the name of
24 the ultimate user or research subject, or contact information as determined by the
Secretary of the United States Department of Health and Human Services; refill
25 information, such as the number of refills ordered and whether the prescription is
a first-time request or a refill; and the name, quantity, strength, and directions for
26 use of the controlled substance prescribed.

27 (2) The prescription shall also contain the address of the person for
whom the controlled substance is prescribed. If the prescriber does not specify
28 this address on the prescription, the pharmacist filling the prescription or an
employee acting under the direction of the pharmacist shall write or type the

1 address on the prescription or maintain this information in a readily retrievable
2 form in the pharmacy.

3 (b)

4 (1) Notwithstanding paragraph (1) of subdivision (a) of Section
5 11162.1, any controlled substance classified in Schedule III, IV, or V may be
6 dispensed upon an oral or electronically transmitted prescription, which shall be
7 produced in hard copy form and signed and dated by the pharmacist filling the
8 prescription or by any other person expressly authorized by provisions of the
9 Business and Professions Code. Any person who transmits, maintains, or receives
10 any electronically transmitted prescription shall ensure the security, integrity,
11 authority, and confidentiality of the prescription.

12 (2) The date of issue of the prescription and all the information
13 required for a written prescription by subdivision (a) shall be included in the
14 written record of the prescription; the pharmacist need not include the address,
15 telephone number, license classification, or federal registry number of the
16 prescriber or the address of the patient on the hard copy, if that information is
17 readily retrievable in the pharmacy.

18 (3) Pursuant to an authorization of the prescriber, any agent of the
19 prescriber on behalf of the prescriber may orally or electronically transmit a
20 prescription for a controlled substance classified in Schedule III, IV, or V, if in
21 these cases the written record of the prescription required by this subdivision
22 specifies the name of the agent of the prescriber transmitting the prescription.

23 (c) The use of commonly used abbreviations shall not invalidate an
24 otherwise valid prescription.

25 (d) Notwithstanding any provision of subdivisions (a) and (b),
26 prescriptions for a controlled substance classified in Schedule V may be for more
27 than one person in the same family with the same medical need.

28 C. Federal Regulation

17 17. Title 21, Code of Federal Regulations ("CFR"), section 1306.05, subsection (a) states,
18
19 "[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when
20 issued and shall bear the full name and address of the patient, the drug name, strength, dosage
21 form, quantity prescribed, directions for use, and the name, address and registration number of the
22 practitioner."

23 D. California Regulations

24 18. Title 16, California Code of Regulations ("CCR"), section 1707.1 states:

25 (a) A pharmacy shall maintain medication profiles on all patients who
26 have prescriptions filled in that pharmacy except when the pharmacist has
27 reasonable belief that the patient will not continue to obtain prescription
28 medications from that pharmacy.

(1) A patient medication record shall be maintained in an
automated data processing or manual record mode such that the following

1 information is readily retrievable during the pharmacy's normal operating
2 hours.

3 (A) The patient's full name and address, telephone number, date
4 of birth (or age) and gender;

5 (B) For each prescription dispensed by the pharmacy:
6 1. The name, strength, dosage form, route of
7 administration, if other than oral, quantity and directions for use of
8 any drug dispensed;
9 2. The prescriber's name and where appropriate,
10 license number, DEA registration number or other unique
11 identifier;
12 3. The date on which a drug was dispensed or refilled;
13 4. The prescription number for each prescription; and
14 5. The information required by section 1717.

15 (C) Any of the following which may relate to drug therapy:
16 patient allergies, idiosyncrasies, current medications and relevant
17 prior medications including nonprescription medications and
18 relevant devices, or medical conditions which are communicated
19 by the patient or the patient's agent.

20 (D) Any other information which the pharmacist, in his or her
21 professional judgment, deems appropriate.

22 (2) The patient medication record shall be maintained for at
23 least one year from the date when the last prescription was filled.

24 19. Title 16, CCR, section 1761, subdivision (a), states:

25 No pharmacist shall compound or dispense any prescription which contains any
26 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon
27 receipt of any such prescription, the pharmacist shall contact the prescriber to obtain
28 the information needed to validate the prescription.

29 COST RECOVERY

30 20. Code section 125.3 provides, in pertinent part, that a Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case.

34 DRUG CLASSIFICATIONS

35 21. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
36 section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.

37 Oxycodone is used to treat pain. "Roxicodone" is a brand of oxycodone.

38 22. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code

1 section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

2 Alprazolam is used to treat anxiety. "Xanax" is a brand of alprazolam.

3 23. Promethazine with codeine is a Schedule V controlled substance pursuant to Health
4 and Safety Code section 11058, subdivision (c)(1), and a dangerous drug pursuant to Code
5 section 4022. Promethazine with codeine is used to treat cough. "Phenergan with codeine" is a
6 brand of promethazine with codeine.

7 24. Hydrocodone/acetaminophen is a Schedule III controlled substance pursuant to
8 Health and Safety Code section 11056, subdivision (e), and a Schedule II controlled substance
9 pursuant to Title 21, CFR, section 1308.12, subdivision (b)(1)(vi).¹ Hydrocodone/acetaminophen
10 is also a dangerous drug pursuant to Code section 4022. Hydrocodone/acetaminophen is used to
11 treat pain. "Norco" is a brand of hydrocodone/acetaminophen.

12 25. Carisoprodol is a Schedule IV Controlled Substance pursuant to Title 21, CFR,
13 section 1308.14, subdivision (c)(6), and a dangerous drug pursuant to Code section 4022.
14 Carisoprodol is used as a muscle relaxant. "Soma" is a brand of carisoprodol.

15 CURES PROGRAM

16 26. The Controlled Substance Utilization Review and Evaluation System ("CURES")
17 program was initiated in 1998 and required mandatory monthly pharmacy reporting of dispensed
18 Schedule II controlled substances. The program was amended in January 2005 to include
19 mandatory weekly reporting of Schedule II to IV medications. The data is collected statewide
20 and can be used by healthcare professionals, such as pharmacists and prescribers, to evaluate and
21 determine whether their patients are utilizing their controlled substances safely and appropriately.

22 27. The component of CURES which is accessible to pharmacists and prescribers is
23 called the Prescription Drug Monitoring Program ("PDMP"). Registration for access to the
24 PDMP has been available since February 2009. The data may be used to aid in determining
25 whether a patient sees multiple prescribers, frequents multiple pharmacies to fill controlled
26 substance prescriptions, and/or obtains early refills of controlled substance prescriptions.

27 ¹ Hydrocodone/acetaminophen was rescheduled to a Schedule II controlled substance
28 effective October 6, 2014.

FACTUAL ALLEGATIONS

1
2 28. On or about February 7, 2017, Board Inspector P.P. analyzed CURES data for
3 Respondent Sutter and found certain “red flags” or irregularities indicating that various doctors
4 were potentially issuing prescriptions for controlled substances for other than a legitimate medical
5 purpose and that Respondent Sutter was dispensing the drugs indiscriminately; i.e., without
6 exercising its corresponding responsibility with regard to the dispensing or furnishing of the
7 drugs. Those “red flags” included CURES data showing that Respondent Sutter dispensed larger
8 quantities of controlled substances than other nearby pharmacies, and that Respondent Sutter’s
9 top patients (i.e. patients who received 111 or more controlled substances) received more, on
10 average, controlled substances than other nearby pharmacies. Inspector P.P. also obtained the
11 names of patients who appeared to receive many controlled substances, patients who lived out of
12 state, and the top prescribers at Respondent Sutter.

13 29. On or about February 8, 2017, Board Inspectors P.P. and J.H. conducted an
14 inspection at Respondent Sutter, and were assisted by Respondent George and pharmacist A.G.
15 Inspector P.P. instructed Respondent George to conduct an on-hand count of all hydrocodone
16 drugs in stock because the CURES report showed that Respondent Sutter had dispensed over one
17 million doses of hydrocodone from February 1, 2014 through February 7, 2017, and Inspector
18 P.P. planned to conduct an audit. Inspector P.P. also obtained a dispensing report from
19 Respondent George for February 8, 2017, as well as the Biennial inventory Respondent George
20 had conducted on October 5, 2014, and included that information in the audit. During the
21 inspection, Inspector P.P. received and reviewed approximately forty-nine (49) patient profiles
22 with Respondent George. During the review of those patient profiles, Respondent George told
23 Inspector P.P. that “[t]here are no notes on the profiles but they could be on the prescription
24 blanks.” Also during the inspection, Respondent George informed Inspector P.P. that he had no
25 recollection of ever looking up any ICD 10 codes to verify them, and that he had no recollection
26 of calling prescribers to discuss pain management. During the inspection, Inspector P.P. also
27 reviewed Respondent Sutter’s controlled substance prescriptions for hospice patients, and found
28 that those prescriptions were initially received by either fax transmission or verbally. Respondent

1 Sutter did not reduce those hospice prescriptions to writing on a form developed by the pharmacy,
2 and did not receive the prescribers' signed orders or chart orders prior to dispensing the
3 prescriptions.

4 30. At the February 8, 2017, inspection, Inspector P.P. also requested the following from
5 Respondent George: (a) dispensing report for hydrocodone 5/325, 7.5/325, 10/325, and Zohydro
6 ER from October 5, 2014, through February 7, 2017; (b) acquisition records for the foregoing
7 hydrocodone products from October 5, 2014, through February 8, 2017; and (c) the outcome of
8 Respondent George's discussion with a doctor whose prescription forms did not contain a
9 physical address.

10 31. On or about February 9, 2017, Respondent George informed Inspector P.P. that "my
11 last Controlled substance inventory date was 05/26/15 at 8:35AM (I will be glad to scan a copy
12 and email you) if you are looking to tally the purchase vs dispensing 10/05/14 may not work."
13 Also, on or about February 14, 2017, Respondent George informed Inspector P.P. that
14 Respondent George's dispensing records only went back twenty-four months.

15 32. Over the course of approximately February 22, 2017, through approximately May 3,
16 2017, Respondent George provided Inspector P.P. with the following information:

- 17 a. A dispensing report for hydrocodone/apap 5/325, 7/325, 10/325 mg and Zohydro
18 ER products from October 5, 2014 to February 7, 2017;
- 19 b. Physician dispensing reports;
- 20 c. The CURES profile for seventeen patients who received controlled substances at
21 Respondent Sutter, and the pharmacist identification on the profiles;
- 22 d. The profile for patient B.B., because the one provided to Inspector P.P. at the time
23 of the inspection contained two dangerous drugs and no controlled substances
24 while the CURES report showed that Respondent Sutter had filled at least 70
25 controlled substances for B.B. between February 12, 2014, and June 9, 2016;
- 26 e. Hospice prescriptions from February 8, 2014, through February 8, 2017, and
- 27 f. Notes on patient files, which had not been on the patient files at the time of the
28 February 8, 2017, inspection.

26 33. Inspector P.P. reviewed the CURES report for Respondent Sutter, the top prescribers
27 for Respondent Sutter (none of whom were certified in pain management), and the information
28 and patient profiles provided by Respondent George. Inspector P.P. also interviewed Respondent

1 George about Respondent Sutter's service area, his knowledge concerning the patient profiles, the
2 patients who received controlled substances, and about Respondent Sutter's pharmacy practices.
3 Following her inspection of Respondent Sutter, interview of Respondent George, review of
4 CURES data, and review of documents provided by Respondent George, Inspector P.P. found the
5 following:

- 6 a. Between 2014 and 2017, Respondents dispensed numerous prescriptions for
7 oxycodone, hydrocodone/apap, alprazolam, diazepam, carisoprodol, tramadol,
8 methadone, promethazine with codeine, and oxycontin without regard to the
9 following irregularities or factors:
- 10 i. Prescribers were not certified in pain management, and were family
11 physicians;
 - 12 ii. Prescribers' medical offices were located long distances from Respondent
13 Sutter Pharmacy;
 - 14 iii. Patients traveled long distances (including from out of state) to have
15 controlled substance prescriptions filled at Respondent Sutter;
 - 16 iv. Patients did not provide their address to Respondent Sutter;
 - 17 v. Respondents did not have any diagnosis or treatment on file for patients
18 who had controlled substance prescriptions filled at Respondent Sutter;
 - 19 vi. Patients had high dosages of controlled substance prescriptions;
- 20 b. That Respondent George and Respondent Sutter dispensed numerous prescriptions
21 for controlled substances when the prescriptions had no known legitimate medical
22 purpose;
- 23 c. That the pharmacist did not contact the prescribers for uncertain prescriptions,
24 specifically regarding their quantities, directions, and purpose;
- 25 d. That Respondent George and Respondent Sutter dispensed prescriptions which
26 contained errors therein, such as a prescription dispensed with too many refills, a
27 prescription dispensed without prescribed refills, and prescriber not listed on a
28 secure prescription blank;
- e. That Respondent George and Respondent Sutter failed to maintain records of
acquisition and disposition for at least three years from the date of making;
- f. That Respondent George and Respondent Sutter dispensed controlled substances
to patients when the patient's address was not known to the pharmacy;
- g. That Respondent George and Respondent Sutter dispensed Schedule II Controlled
Substances without a hard-copy of the prescription; and
- h. That Respondent George and Respondent Sutter failed to properly maintain a
patient profile.

1 **CAUSES FOR DISCIPLINE**

2 **A. Respondent Sutter Pharmacy**

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Dispensing Using Erroneous Prescriptions – Respondent Sutter)**

5 34. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
6 conduct under Code sections 4301 subdivisions (d), (j), and (o), in that Respondent violated Code
7 section 4113, Health and Safety Code section 11153, and Title 16, California Code of
8 Regulations, section 1761, by dispensing numerous prescriptions for controlled substances when
9 the prescriptions had no known legitimate medical purpose, by failing to contact the prescribers
10 for uncertain prescriptions (e.g. regarding their quantities, directions, and purpose), and by
11 dispensing prescriptions which contained errors therein (e.g. prescription dispensed with too
12 many refills, dispensed without prescribed refills, and prescriber not listed on a secure
13 prescription blank), as set forth in paragraphs 27 through 32, and their subparagraphs, above.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Maintain Records – Respondent Sutter)**

16 35. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
17 conduct under Code sections 4301, subdivisions (j) and (o), in that Respondent violated Code
18 sections 4081 subdivisions (a) and (b), 4105, and 4113, by failing to maintain records of the
19 acquisition and disposition of dangerous drugs, for at least three years from the date of making, as
20 set forth in paragraphs 27 through 32, and their subparagraphs, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Improperly Issuing Prescriptions – Respondent Sutter)**

23 36. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
24 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
25 section 4113, and Title 24, Code of Federal Regulations, section 1306.5 subdivision (a), by
26 dispensing controlled substances to patients when the patient's address was not known to
27 Respondents, and when the security blank lacked an address for the prescriber, as set forth in
28 paragraphs 27 through 32, and their subparagraphs, above.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(No Hard-Copy of Controlled Substance Prescriptions – Respondent Sutter)**

3 37. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
4 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
5 section 4113, and Health and Safety Code sections 11159.2 and 11164 by dispensing controlled
6 substances using prescriptions that were initially received by either fax transmission or verbally,
7 which Respondents did not reduce to writing on a form developed by the pharmacy, and which
8 Respondents did not receive the prescribers' signed orders or chart orders for prior to dispensing
9 the prescriptions, as set forth in paragraphs 27 through 32, and their subparagraphs, above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Dispensed Without Required Prescription Form – Respondent Sutter)**

12 38. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
13 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
14 section 4113, and Health and Safety Code section 11162.1 subdivision (a)(9), by dispensing
15 Schedule II controlled substance prescriptions pursuant to a secure form which did not contain the
16 address of the prescriber, as set forth in paragraphs 27 through 32, and their subparagraphs,
17 above.

18 **SIXTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Patient Profile – Respondent Sutter)**

20 39. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
21 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
22 section 4113, and Title 16 California Code of Regulations, section 1707.1 subdivision (a) when
23 the patient report that Respondents provided for patient B.B. contained two dangerous drugs and
24 no controlled substances while the CURES report showed that Respondent Sutter had filled at
25 least 70 controlled substances for B.B. between February 12, 2014, and June 9, 2016, as set forth
26 in paragraphs 27 through 32, and their subparagraphs, above.

27 ///

28 //

1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Improperly Issuing Prescriptions – Respondent George)**

3 43. Respondent George is subject to disciplinary action for unprofessional conduct under
4 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
5 in-charge of Respondent Sutter, violated Code section 4113, and Title 24, Code of Federal
6 Regulations, section 1306.05 subdivision (a), by dispensing controlled substances to patients
7 when the patient’s address was not known to Respondents, and when the security blank lacked an
8 address for the prescriber, as set forth in paragraphs 27 through 32, and their subparagraphs,
9 above.

10 **TENTH CAUSE FOR DISCIPLINE**

11 **(No Hard-Copy of Controlled Substance Prescriptions – Respondent George)**

12 44. Respondent George is subject to disciplinary action for unprofessional conduct under
13 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
14 in-charge of Respondent Sutter, violated Code section 4113, and Health and Safety Code sections
15 11159.2 and 11164 by dispensing controlled substances using prescriptions that were initially
16 received by either fax transmission or verbally, which Respondents did not reduce to writing on a
17 form developed by the pharmacy, and which Respondents did not receive the prescribers’ signed
18 orders or chart orders for prior to dispensing the prescriptions, as set forth in paragraphs 27
19 through 32, and their subparagraphs, above.

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Dispensed Without Required Prescription Form – Respondent George)**

22 45. Respondent George is subject to disciplinary action for unprofessional conduct under
23 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
24 in-charge of Respondent Sutter, violated Code section 4113, and Health and Safety Code section
25 11162.1 subdivision (a)(9), by dispensing Schedule II controlled substance prescriptions pursuant
26 to a secure form which did not contain the address of the prescriber, as set forth in paragraphs 27
27 through 32, and their subparagraphs, above.

28 ///

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Patient Profile – Respondent George)**

3 46. Respondent George is subject to disciplinary action for unprofessional conduct under
4 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
5 in-charge of Respondent Sutter, violated Code section 4113, and Title 16 California Code of
6 Regulations, section 1707.1 subdivision (a) when the patient report that Respondents provided for
7 patient B.B. contained two dangerous drugs and no controlled substances while the CURES
8 report showed that Respondent Sutter had filled at least 70 controlled substances for B.B.
9 between February 12, 2014, and June 9, 2016, as set forth in paragraphs 27 through 32, and their
10 subparagraphs, above.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**

12 **(Inappropriate Exercise of Respondent’s Education,
13 Training, or Experience as a Pharmacist – Respondent George)**

14 47. Respondent George is subject to disciplinary action for unprofessional conduct
15 pursuant to Code section 4301, as defined by Code section 4306.5, subdivision (a), for
16 inappropriately exercising his education, training or experience as a pharmacist, as set forth in
17 paragraphs 27 through 32, and their subparagraphs, above.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Exercise or Implement Best Professional Judgment
20 or Corresponding Responsibility – Respondent George)**

21 48. Respondent George is subject to disciplinary action for unprofessional conduct
22 pursuant to Code section 4301, as defined by Code section 4306.5, subdivision (b), for failing to
23 exercise or implement his best professional judgment or corresponding responsibility with regard
24 to the dispensing or furnishing of controlled substances, as set forth in paragraphs 27 through 32,
25 and their subparagraphs, above.

26 **OTHER MATTERS**

27 49. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
28 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, then Sutter Pharmacy Inc. dba
Sutter Pharmacy shall be prohibited from serving as a manager, administrator, owner, member,
officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number

1 PHY 47489 is placed on probation or until Pharmacy Permit Number PHY 47489 is reinstated if
2 it is revoked.

3 50. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
4 PHY 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy, while Biju G. George has been
5 an owner and had knowledge of or knowingly participated in any conduct for which the licensee
6 was disciplined, then Biju G. George shall be prohibited from serving as a manager,
7 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
8 Pharmacy Permit Number PHY 47489 is placed on probation or until Pharmacy Permit Number
9 PHY 47489 is reinstated if it is revoked.

10 **PRAYER**

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

13 1. Revoking or suspending Retail Pharmacy License Number PHY 47489, issued to
14 Sutter Pharmacy Inc. dba Sutter Pharmacy,

15 2. Revoking or suspending Registered Pharmacist License Number RPH 49255, issued
16 to Biju G. George;

17 3. Prohibiting Sutter Pharmacy Inc. dba Sutter Pharmacy from serving as a manager,
18 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
19 Pharmacy Permit Number PHY 47489 is placed on probation or until Pharmacy Permit Number
20 47489 is reinstated if Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter
21 Pharmacy is revoked;

22 4. Prohibiting Biju G. George from serving as a manager, administrator, owner,
23 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
24 Number PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated
25 if Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is
26 revoked;

27 5. Prohibiting Ranjit Singh from serving as a manager, administrator, owner, member,
28 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number

1 PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated if
2 Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is revoked;

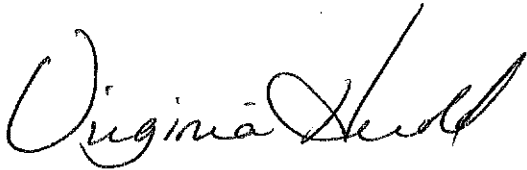
3 6. Prohibiting Anu Goyle from serving as a manager, administrator, owner, member,
4 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
5 PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated if
6 Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is revoked;

7 7. Prohibiting Ansu George, from serving as a manager, administrator, owner, member,
8 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
9 PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated if
10 Pharmacy Permit Number 47489 issued to Sutter Pharmacy Inc. dba Sutter Pharmacy is revoked;

11 8. Ordering Sutter Pharmacy Inc. dba Sutter Pharmacy and Biju G. George, to pay the
12 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Business and Professions Code section 125.3;

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

15
16
17 DATED: 4/5/18



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

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

12 In the Matter of the Accusation Against:

Case No. 6177

13 **SUTTER PHARMACY; BIJU G.**
14 **GEORGE, OWNER AND PHARMACIST-**
15 **IN-CHARGE**
16 **470 Plumas Blvd., Ste. 103**
17 **Yuba City, CA 95991**

A C C U S A T I O N

18 **Retail Pharmacy Permit No. PHY 47489**

19 **And**

20 **BIJU G. GEORGE**
21 **470 Plumas Blvd., Ste. 103**
22 **Yuba City, CA 95991**

23 **Pharmacist License No. RPH 49255**

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

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

29 2. On or about March 30, 2006, the Board issued Retail Pharmacy License Number
30 PHY 47489 to Sutter Pharmacy ("Respondent Sutter"). On or about March 30, 2016, Biju G.
31 George ("Respondent George") became the pharmacist-in-charge. The Retail Pharmacy License
32 was in full force and effect at all times relevant to the charges brought herein and will expire on

1 March 1, 2018, unless renewed.

2 3. On or about March 18, 1997, the Board issued Registered Pharmacist License
3 Number RPH 49255 to Respondent George. The Registered Pharmacist License was in full force
4 and effect at all times relevant to the charges brought herein and will expire on May 31, 2018,
5 unless renewed.

6 **JURISDICTION**

7 4. This Accusation is brought before the Board under the authority of the following
8 laws. All section references are to the Business and Professions Code unless otherwise indicated.

9 5. Code section 4300 states, in pertinent part:

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

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

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

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

16 (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 . . .

17 6. Code section 4300.1 states:

18 The expiration, cancellation, forfeiture, or suspension of a board-issued
19 license by operation of law or by order or decision of the board or a court of law,
20 the placement of a license on a retired status, or the voluntary surrender of a
21 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.

22 7. Code section 4307 states:

23 (a) Any person who has been denied a license or whose license has been
24 revoked or is under suspension, or who has failed to renew his or her license
while it was under suspension, or who has been a manager, administrator, owner,
25 member, officer, director, associate, partner, or any other person with
management or control of any partnership, corporation, trust, firm, or association
26 whose application for a license has been denied or revoked, is under suspension or
has been placed on probation, and while acting as the manager, administrator,
27 owner, member, officer, director, associate, partner, or any other person with
management or control had knowledge of or knowingly participated in any
28 conduct for which the license was denied, revoked, suspended, or placed on
probation, shall be prohibited from serving as a manager, administrator, owner,

1 member, officer, director, associate, partner, or in any other position with
2 management or control of a licensee as follows:

3 (1) Where a probationary license is issued or where an existing license
4 is placed on probation, this prohibition shall remain in effect for a period not to
5 exceed five years.

6 (2) Where the license is denied or revoked, the prohibition shall
7 continue until the license is issued or reinstated.

8 (b) Manager, administrator, owner, member, officer, director, associate,
9 partner, or any other person with management or control of a license as used in
10 this section and Section 4308, may refer to a pharmacist or to any other person
11 who serves in such capacity in or for a licensee.

12 (c) The provisions of subdivision (a) may be alleged in any pleading filed
13 pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
14 of the Government Code. However, no order may be issued in that case except as
15 to a person who is named in the caption, as to whom the pleading alleges the
16 applicability of this section, and where the person has been given notice of the
17 proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1
18 of Division 3 of the Government Code. The authority to proceed as provided by
19 this subdivision shall be in addition to the board's authority to proceed under
20 Section 4339 or any other provision of law.

21 STATUTORY AND REGULATORY PROVISIONS

22 **A. Business & Professions Code**

23 8. Code section 4301 states, in pertinent part:

24 The board shall take action against any holder of a license who is guilty of
25 unprofessional conduct . . . Unprofessional conduct shall include, but is not
26 limited to, any of the following:

27 (d) The clearly excessive furnishing of controlled substances in violation of
28 subdivision (a) of Section 11153 of the Health and Safety Code.

(j) The violation of any of the statutes of this state, or 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

9. Code section 4306.5 states, in pertinent part:

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

(a) Acts or omissions that involve, in whole or in part, the inappropriate
exercise of his or her education, training, or experience as a pharmacist, whether
or not the act or omission arises in the course of the practice of pharmacy or the

1 ownership, management, administration, or operation of a pharmacy or other
2 entity licensed by the board.

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

8 (c) Acts or omissions that involve, in whole or in part, the failure to
9 consult appropriate patient, prescription, and other records pertaining to the
10 performance of any pharmacy function . . .

11 10. Section 4081 of the Code states:

12 (a) All records of manufacture and of sale, acquisition, or disposition of
13 dangerous drugs or dangerous devices shall be at all times during business hours
14 open to inspection by authorized officers of the law, and shall be preserved for at
15 least three years from the date of making. A current inventory shall be kept by
16 every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
17 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
18 or establishment holding a currently valid and unrevoked certificate, license,
19 permit, registration, or exemption under Division 2 (commencing with Section
20 1200) of the Health and Safety Code or under Part 4 (commencing with Section
21 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
22 of dangerous drugs or dangerous devices.

23 (b) The owner, officer, and partner of any pharmacy, wholesaler, or
24 veterinary food-animal drug retailer shall be jointly responsible, with the
25 pharmacist-in-charge or representative-in-charge, for maintaining the records and
26 inventory described in this section.

27 (c) The pharmacist-in-charge or representative-in-charge shall not be
28 criminally responsible for acts of the owner, officer, partner, or employee that
violate this section and of which the pharmacist-in-charge or representative-in-
charge had no knowledge, or in which he or she did not knowingly participate.

11. Section 4105 of the Code states:

20 (a) All records or other documentation of the acquisition and disposition of
21 dangerous drugs and dangerous devices by any entity licensed by the board shall
22 be retained on the licensed premises in a readily retrievable form.

23 (b) The licensee may remove the original records or documentation from the
24 licensed premises on a temporary basis for license-related purposes. However, a
25 duplicate set of those records or other documentation shall be retained on the
26 licensed premises.

27 (c) The records required by this section shall be retained on the licensed
28 premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that
the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is
not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler,
the designated representative on duty, shall, at all times during which the licensed

1 premises are open for business, be able to produce a hard copy and electronic
2 copy of all records of acquisition or disposition or other drug or
dispensing-related records maintained electronically.

3 (e)

4 (1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon
written request, grant to a licensee a waiver of the requirements that the records
described in subdivisions (a), (b), and (c) be kept on the licensed premises.

5 (2) A waiver granted pursuant to this subdivision shall not affect the
6 board's authority under this section or any other provision of this chapter.

7 12. Code section 4113, subdivision (c), states that "[t]he pharmacist-in-charge shall be
8 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
9 to the practice of pharmacy."

10 **B. Health & Safety Code**

11 13. Health and Safety Code section 11153, subdivision (a), states:

12 A prescription for a controlled substance shall only be issued for a legitimate
13 medical purpose by an individual practitioner acting in the usual course of his or
her professional practice. The responsibility for the proper prescribing and
14 dispensing of controlled substances is upon the prescribing practitioner, but a
corresponding responsibility rests with the pharmacist who fills the prescription.
15 Except as authorized by this division, the following are not legal prescriptions: (1)
an order purporting to be a prescription which is issued not in the usual course of
16 professional treatment or in legitimate and authorized research; or (2) an order for
an addict or habitual user of controlled substances, which is issued not in the
17 course of professional treatment or as part of an authorized narcotic treatment
program, for the purpose of providing the user with controlled substances,
18 sufficient to keep him or her comfortable by maintaining customary use.

19 14. Health and Safety Code section 11159.2, states, in pertinent part:

20 (a) Notwithstanding any other provision of law, a prescription for a
21 controlled substance for use by a patient who has a terminal illness may be written
on a prescription form that does not meet the requirements of Section 11162.1 if
22 the prescription meets the following requirements:

23 (1) Contain the information specified in subdivision (a) of Section
11164.

24 (2) Indicate that the prescriber has certified that the patient is
25 terminally ill by the words "11159.2 exemption."

26 (b) A pharmacist may fill a prescription pursuant to this section when there
27 is a technical error in the certification required by paragraph (2) of subdivision
(a), provided that he or she has personal knowledge of the patient's terminal
28 illness, and subsequently returns the prescription to the prescriber for correction
within 72 hours.

1 (c) For purposes of this section, "terminally ill" means a patient who meets
2 all of the following conditions:

- 3 (1) In the reasonable medical judgment of the prescribing physician,
4 the patient has been determined to be suffering from an illness
5 that is incurable and irreversible.
- 6 (2) In the reasonable medical judgment of the prescribing physician,
7 the patient's illness will, if the illness takes its normal course,
8 bring about the death of the patient within a period of one year.
- 9 (3) The patient's treatment by the physician prescribing a controlled
substance pursuant to this section primarily is for the control of
pain, symptom management, or both, rather than for cure of the
illness.

10 15. Health and Safety Code section 11162.1 states, in pertinent part:

11 (a) The prescription forms for controlled substances shall be printed with
12 the following features:

13 (1) A latent, repetitive "void" pattern shall be printed across the entire
14 front of the prescription blank; if a prescription is scanned or photocopied, the
word "void" shall appear in a pattern across the entire front of the prescription.

15 (2) A watermark shall be printed on the backside of the prescription
blank; the watermark shall consist of the words "California Security Prescription."

16 (6) A description of the security features included on each prescription
17 form.

18 (7)(A) Six quantity check off boxes shall be printed on the form so that the
prescriber may indicate the quantity by checking the applicable box where the
19 following quantities shall appear:

- 20 1-24
25-49
21 50-74
75-100
22 101-150
151 and over . . .

23 (8) Prescription blanks shall contain a statement printed on the bottom
24 of the prescription blank that the "Prescription is void if the number of drugs
prescribed is not noted."

25 (9) The preprinted name, category of licensure, license number,
26 federal controlled substance registration number, and address of the prescribing
practitioner.

27 (10) Check boxes shall be printed on the form so that the prescriber
28 may indicate the number of refills ordered.

(c)

.....
(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

.....
16. Health and Safety Code section 11164 states, in pertinent part:

Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b)
(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision

1 specifies the name of the agent of the prescriber transmitting the prescription.

2 (c) The use of commonly used abbreviations shall not invalidate an
3 otherwise valid prescription.

4 (d) Notwithstanding any provision of subdivisions (a) and (b),
5 prescriptions for a controlled substance classified in Schedule V may be for more
6 than one person in the same family with the same medical need.

7 C. Federal Regulation

8 17. Title 21, Code of Federal Regulations ("CFR"), section 1306.05, subsection (a) states,
9 "[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when
10 issued and shall bear the full name and address of the patient, the drug name, strength, dosage
11 form, quantity prescribed, directions for use, and the name, address and registration number of the
12 practitioner."

13 D. California Regulations

14 18. Title 16, California Code of Regulations ("CCR"), section 1707.1 states:

15 (a) A pharmacy shall maintain medication profiles on all patients who
16 have prescriptions filled in that pharmacy except when the pharmacist has
17 reasonable belief that the patient will not continue to obtain prescription
18 medications from that pharmacy.

19 (1) A patient medication record shall be maintained in an
20 automated data processing or manual record mode such that the following
21 information is readily retrievable during the pharmacy's normal operating
22 hours.

23 (A) The patient's full name and address, telephone number, date
24 of birth (or age) and gender;

25 (B) For each prescription dispensed by the pharmacy:
26 1. The name, strength, dosage form, route of
27 administration, if other than oral, quantity and directions for use of
28 any drug dispensed;
2. The prescriber's name and where appropriate,
license number, DEA registration number or other unique
identifier;
3. The date on which a drug was dispensed or refilled;
4. The prescription number for each prescription; and
5. The information required by section 1717.

(C) Any of the following which may relate to drug therapy:
patient allergies, idiosyncrasies, current medications and relevant
prior medications including nonprescription medications and
relevant devices, or medical conditions which are communicated
by the patient or the patient's agent.

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(D) Any other information which the pharmacist, in his or her professional judgment, deems appropriate.

(2) The patient medication record shall be maintained for at least one year from the date when the last prescription was filled.

19. Title 16, CCR, section 1761, subdivision (a), states:

No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

COST RECOVERY

20. Code section 125.3 provides, in pertinent part, that a 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.

DRUG CLASSIFICATIONS

21. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022.

Oxycodone is used to treat pain. "Roxicodone" is a brand of oxycodone.

22. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Code section 4022.

Alprazolam is used to treat anxiety. "Xanax" is a brand of alprazolam.

23. Promethazine with codeine is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(1), and a dangerous drug pursuant to Code section 4022. Promethazine with codeine is used to treat cough. "Phenergan with codeine" is a brand of promethazine with codeine.

24. Hydrocodone/acetaminophen is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a Schedule II controlled substance pursuant to Title 21, CFR, section 1308.12, subdivision (b)(1)(vi).¹ Hydrocodone/acetaminophen

¹ Hydrocodone/acetaminophen was rescheduled to a Schedule II controlled substance effective October 6, 2014.

1 is also a dangerous drug pursuant to Code section 4022. Hydrocodone/acetaminophen is used to
2 treat pain. "Norco" is a brand of hydrocodone/acetaminophen.

3 25. Carisoprodol is a Schedule IV Controlled Substance pursuant to Title 21, CFR,
4 section 1308.14, subdivision (c)(6), and a dangerous drug pursuant to Code section 4022.
5 Carisoprodol is used as a muscle relaxant. "Soma" is a brand of carisoprodol.

6 CURES PROGRAM

7 26. The Controlled Substance Utilization Review and Evaluation System ("CURES")
8 program was initiated in 1998 and required mandatory monthly pharmacy reporting of dispensed
9 Schedule II controlled substances. The program was amended in January 2005 to include
10 mandatory weekly reporting of Schedule II to IV medications. The data is collected statewide
11 and can be used by healthcare professionals, such as pharmacists and prescribers, to evaluate and
12 determine whether their patients are utilizing their controlled substances safely and appropriately.

13 27. The component of CURES which is accessible to pharmacists and prescribers is
14 called the Prescription Drug Monitoring Program ("PDMP"). Registration for access to the
15 PDMP has been available since February 2009. The data may be used to aid in determining
16 whether a patient sees multiple prescribers, frequents multiple pharmacies to fill controlled
17 substance prescriptions, and/or obtains early refills of controlled substance prescriptions.

18 FACTUAL ALLEGATIONS

19 28. On or about February 7, 2017, Board Inspector P.P. analyzed CURES data for
20 Respondent Sutter and found certain "red flags" or irregularities indicating that various doctors
21 were potentially issuing prescriptions for controlled substances for other than a legitimate medical
22 purpose and that Respondent Sutter was dispensing the drugs indiscriminately; i.e., without
23 exercising its corresponding responsibility with regard to the dispensing or furnishing of the
24 drugs. Those "red flags" included CURES data showing that Respondent Sutter dispensed larger
25 quantities of controlled substances than other nearby pharmacies, and that Respondent Sutter's
26 top patients (i.e. patients who received 111 or more controlled substances) received more, on
27 average, controlled substances than other nearby pharmacies. Inspector P.P. also obtained the
28 names of patients who appeared to receive many controlled substances, patients who lived out of

1 state, and the top prescribers at Respondent Sutter.

2 29. On or about February 8, 2017, Board Inspectors P.P. and J.H. conducted an
3 inspection at Respondent Sutter, and were assisted by Respondent George and pharmacist A.G.
4 Inspector P.P. instructed Respondent George to conduct an on-hand count of all hydrocodone
5 drugs in stock because the CURES report showed that Respondent Sutter had dispensed over one
6 million doses of hydrocodone from February 1, 2014 through February 7, 2017, and Inspector
7 P.P. planned to conduct an audit. Inspector P.P. also obtained a dispensing report from
8 Respondent George for February 8, 2017, as well as the Biennial inventory Respondent George
9 had conducted on October 5, 2014, and included that information in the audit. During the
10 inspection, Inspector P.P. received and reviewed approximately forty-nine (49) patient profiles
11 with Respondent George. During the review of those patient profiles, Respondent George told
12 Inspector P.P. that “[t]here are no notes on the profiles but they could be on the prescription
13 blanks.” Also during the inspection, Respondent George informed Inspector P.P. that he had no
14 recollection of ever looking up any ICD 10 codes to verify them, and that he had no recollection
15 of calling prescribers to discuss pain management. During the inspection, Inspector P.P. also
16 reviewed Respondent Sutter’s controlled substance prescriptions for hospice patients, and found
17 that those prescriptions were initially received by either fax transmission or verbally. Respondent
18 Sutter did not reduce those hospice prescriptions to writing on a form developed by the pharmacy,
19 and did not receive the prescribers’ signed orders or chart orders prior to dispensing the
20 prescriptions.

21 30. At the February 8, 2017, inspection, Inspector P.P. also requested the following from
22 Respondent George: (a) dispensing report for hydrocodone 5/325, 7.5/325, 10/325, and Zohydro
23 ER from October 5, 2014, through February 7, 2017; (b) acquisition records for the foregoing
24 hydrocodone products from October 5, 2014, through February 8, 2017; and (c) the outcome of
25 Respondent George’s discussion with a doctor whose prescription forms did not contain a
26 physical address.

27 31. On or about February 9, 2017, Respondent George informed Inspector P.P. that “my
28 last Controlled substance inventory date was 05/26/15 at 8:35AM (I will be glad to scan a copy

1 and email you) if you are looking to tally the purchase vs dispensing 10/05/14 may not work.”

2 Also, on or about February 14, 2017, Respondent George informed Inspector P.P. that

3 Respondent George’s dispensing records only went back twenty-four months.

4 32. Over the course of approximately February 22, 2017, through approximately May 3,
5 2017, Respondent George provided Inspector P.P. with the following information:

- 6 a. A dispensing report for hydrocodone/apap 5/325, 7/325, 10/325 mg and Zohydro
7 ER products from October 5, 2014 to February 7, 2017;
- 8 b. Physician dispensing reports;
- 9 c. The CURES profile for seventeen patients who received controlled substances at
10 Respondent Sutter, and the pharmacist identification on the profiles;
- 11 d. The profile for patient B.B., because the one provided to Inspector P.P. at the time
12 of the inspection contained two dangerous drugs and no controlled substances
13 while the CURES report showed that Respondent Sutter had filled at least 70
14 controlled substances for B.B. between February 12, 2014, and June 9, 2016;
- 15 e. Hospice prescriptions from February 8, 2014, through February 8, 2017, and
- 16 f. Notes on patient files, which had not been on the patient files at the time of the
17 February 8, 2017, inspection.

18 33. Inspector P.P. reviewed the CURES report for Respondent Sutter, the top prescribers
19 for Respondent Sutter (none of whom were certified in pain management), and the information
20 and patient profiles provided by Respondent George. Inspector P.P. also interviewed Respondent
21 George about Respondent Sutter’s service area, his knowledge concerning the patient profiles, the
22 patients who received controlled substances, and about Respondent Sutter’s pharmacy practices.
Following her inspection of Respondent Sutter, interview of Respondent George, review of
CURES data, and review of documents provided by Respondent George, Inspector P.P. found the
following:

- 23 a. Between 2014 and 2017, Respondents dispensed numerous prescriptions for
24 oxycodone, hydrocodone/apap, alprazolam, diazepam, carisoprodol, tramadol,
25 methadone, promethazine with codeine, and oxycontin without regard to the
following irregularities or factors:
 - 26 i. Prescribers were not certified in pain management, and were family
physicians;
 - 27 ii. Prescribers’ medical offices were located long distances from Respondent
28 Sutter Pharmacy;

- 1 iii. Patients traveled long distances (including from out of state) to have
- 2 controlled substance prescriptions filled at Respondent Sutter;
- 3 iv. Patients did not provide their address to Respondent Sutter;
- 4 v. Respondents did not have any diagnosis or treatment on file for patients
- 5 who had controlled substance prescriptions filled at Respondent Sutter;
- 6 vi. Patients had high dosages of controlled substance prescriptions;
- 7 b. That Respondent George and Respondent Sutter dispensed numerous prescriptions
- 8 for controlled substances when the prescriptions had no known legitimate medical
- 9 purpose;
- 10 c. That the pharmacist did not contact the prescribers for uncertain prescriptions,
- 11 specifically regarding their quantities, directions, and purpose;
- 12 d. That Respondent George and Respondent Sutter dispensed prescriptions which
- 13 contained errors therein, such as a prescription dispensed with too many refills, a
- 14 prescription dispensed without prescribed refills, and prescriber not listed on a
- 15 secure prescription blank;
- 16 e. That Respondent George and Respondent Sutter failed to maintain records of
- 17 acquisition and disposition for at least three years from the date of making;
- 18 f. That Respondent George and Respondent Sutter dispensed controlled substances
- 19 to patients when the patient's address was not known to the pharmacy;
- 20 g. That Respondent George and Respondent Sutter dispensed Schedule II Controlled
- 21 Substances without a hard-copy of the prescription; and
- 22 h. That Respondent George and Respondent Sutter failed to properly maintain a
- 23 patient profile.

CAUSES FOR DISCIPLINE

A. Respondent Sutter Pharmacy

FIRST CAUSE FOR DISCIPLINE

(Dispensing Using Erroneous Prescriptions – Respondent Sutter)

23 34. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional

24 conduct under Code sections 4301 subdivisions (d), (j), and (o), in that Respondent violated Code

25 section 4113, Health and Safety Code section 11153, and Title 16, California Code of

26 Regulations, section 1761, by dispensing numerous prescriptions for controlled substances when

27 the prescriptions had no known legitimate medical purpose, by failing to contact the prescribers

28 for uncertain prescriptions (e.g. regarding their quantities, directions, and purpose), and by

 dispensing prescriptions which contained errors therein (e.g. prescription dispensed with too

1 many refills, dispensed without prescribed refills, and prescriber not listed on a secure
2 prescription blank), as set forth in paragraphs 27 through 32, and their subparagraphs, above.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Records – Respondent Sutter)**

5 35. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
6 conduct under Code sections 4301, subdivisions (j) and (o), in that Respondent violated Code
7 sections 4081 subdivisions (a) and (b), 4105, and 4113, by failing to maintain records of the
8 acquisition and disposition of dangerous drugs, for at least three years from the date of making, as
9 set forth in paragraphs 27 through 32, and their subparagraphs, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Improperly Issuing Prescriptions – Respondent Sutter)**

12 36. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
13 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
14 section 4113, and Title 24, Code of Federal Regulations, section 1306.5 subdivision (a), by
15 dispensing controlled substances to patients when the patient's address was not known to
16 Respondents, and when the security blank lacked an address for the prescriber, as set forth in
17 paragraphs 27 through 32, and their subparagraphs, above.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(No Hard-Copy of Controlled Substance Prescriptions – Respondent Sutter)**

20 37. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
21 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
22 section 4113, and Health and Safety Code sections 11159.2 and 11164 by dispensing controlled
23 substances using prescriptions that were initially received by either fax transmission or verbally,
24 which Respondents did not reduce to writing on a form developed by the pharmacy, and which
25 Respondents did not receive the prescribers' signed orders or chart orders for prior to dispensing
26 the prescriptions, as set forth in paragraphs 27 through 32, and their subparagraphs, above.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dispensed Without Required Prescription Form – Respondent Sutter)**

3 38. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
4 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
5 section 4113, and Health and Safety Code section 11162.1 subdivision (a)(9), by dispensing
6 Schedule II controlled substance prescriptions pursuant to a secure form which did not contain the
7 address of the prescriber, as set forth in paragraphs 27 through 32, and their subparagraphs,
8 above.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Patient Profile – Respondent Sutter)**

11 39. Respondent Sutter Pharmacy is subject to disciplinary action for unprofessional
12 conduct under Code sections 4301 subdivisions (j) and (o), in that Respondent violated Code
13 section 4113, and Title 16 California Code of Regulations, section 1707.1 subdivision (a) when
14 the patient report that Respondents provided for patient B.B. contained two dangerous drugs and
15 no controlled substances while the CURES report showed that Respondent Sutter had filled at
16 least 70 controlled substances for B.B. between February 12, 2014, and June 9, 2016, as set forth
17 in paragraphs 27 through 32, and their subparagraphs, above.

18 **B. Respondent Biju G. George**

19 40. Respondent George has been the designated Pharmacist-In-Charge for Respondent
20 Sutter Pharmacy under Code section 4113(a) since March 30, 2016. As Pharmacist-In-Charge for
21 Respondent Sutter, Respondent George was responsible for Respondent Sutter's compliance with
22 all state and federal laws and regulations pertaining to the practice of pharmacy under Code
23 section 4113(c).

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Dispensing Using Erroneous Prescriptions – Respondent George)**

26 41. Respondent George is subject to disciplinary action for unprofessional conduct under
27 Code section 4301 subdivisions (d), (j) and (o), and section 4306, in that Respondent, as
28 pharmacist-in-charge of Respondent Sutter, violated Code section 4113, Health and Safety Code

1 section 11153, and Title 16, California Code of Regulations, section 1761, by dispensing
2 numerous prescriptions for controlled substances when the prescriptions had no known legitimate
3 medical purpose, by failing to contact the prescribers for uncertain prescriptions (e.g. regarding
4 their quantities, directions, and purpose), and by dispensing prescriptions which contained errors
5 therein (e.g. prescription dispensed with too many refills, dispensed without prescribed refills,
6 and prescriber not listed on a secure prescription blank), as set forth in paragraphs 27 through 32,
7 and their subparagraphs, above.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Records – Respondent George)**

10 42. Respondent George is subject to disciplinary action for unprofessional conduct under
11 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
12 in-charge of Respondent Sutter, violated Code sections 4081, subdivisions (a) and (b), 4105, and
13 4113, by failing to maintain records of the acquisition and disposition of dangerous drugs, for at
14 least three years from the date of making, as set forth in paragraphs 27 through 32, and their
15 subparagraphs, above.

16 **NINTH CAUSE FOR DISCIPLINE**

17 **(Improperly Issuing Prescriptions – Respondent George)**

18 43. Respondent George is subject to disciplinary action for unprofessional conduct under
19 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
20 in-charge of Respondent Sutter, violated Code section 4113, and Title 24, Code of Federal
21 Regulations, section 1306.05 subdivision (a), by dispensing controlled substances to patients
22 when the patient's address was not known to Respondents, and when the security blank lacked an
23 address for the prescriber, as set forth in paragraphs 27 through 32, and their subparagraphs,
24 above.

25 **TENTH CAUSE FOR DISCIPLINE**

26 **(No Hard-Copy of Controlled Substance Prescriptions – Respondent George)**

27 44. Respondent George is subject to disciplinary action for unprofessional conduct under
28 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-

1 in-charge of Respondent Sutter, violated Code section 4113, and Health and Safety Code sections
2 11159.2 and 11164 by dispensing controlled substances using prescriptions that were initially
3 received by either fax transmission or verbally, which Respondents did not reduce to writing on a
4 form developed by the pharmacy, and which Respondents did not receive the prescribers' signed
5 orders or chart orders for prior to dispensing the prescriptions, as set forth in paragraphs 27
6 through 32, and their subparagraphs, above.

7 **ELEVENTH CAUSE FOR DISCIPLINE**

8 **(Dispensed Without Required Prescription Form – Respondent George)**

9 45. Respondent George is subject to disciplinary action for unprofessional conduct under
10 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
11 in-charge of Respondent Sutter, violated Code section 4113, and Health and Safety Code section
12 11162.1 subdivision (a)(9), by dispensing Schedule II controlled substance prescriptions pursuant
13 to a secure form which did not contain the address of the prescriber, as set forth in paragraphs 27
14 through 32, and their subparagraphs, above.

15 **TWELFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Patient Profile – Respondent George)**

17 46. Respondent George is subject to disciplinary action for unprofessional conduct under
18 Code section 4301 subdivisions (j) and (o), and section 4306, in that Respondent, as pharmacist-
19 in-charge of Respondent Sutter, violated Code section 4113, and Title 16 California Code of
20 Regulations, section 1707.1 subdivision (a) when the patient report that Respondents provided for
21 patient B.B. contained two dangerous drugs and no controlled substances while the CURES
22 report showed that Respondent Sutter had filled at least 70 controlled substances for B.B.
23 between February 12, 2014, and June 9, 2016, as set forth in paragraphs 27 through 32, and their
24 subparagraphs, above.

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1 PRAYER

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

4 1. Revoking or suspending Retail Pharmacy License Number PHY 47489, issued to
5 Sutter Pharmacy,

6 2. Revoking or suspending Registered Pharmacist License Number RPH 49255, issued
7 to Biju G. George;

8 3. Prohibiting Sutter Pharmacy from serving as a manager, administrator, owner,
9 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
10 Number PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated
11 if Pharmacy Permit Number 47489 issued to Sutter Pharmacy is revoked;

12 4. Prohibiting Biju G. George from serving as a manager, administrator, owner,
13 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
14 Number PHY 47489 is placed on probation or until Pharmacy Permit Number 47489 is reinstated
15 if Pharmacy Permit Number 47489 issued to Sutter Pharmacy is revoked;

16 5. Ordering Sutter Pharmacy and Biju G. George, to pay the Board of Pharmacy the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

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

20
21 DATED: 11/6/17

Virginia Herold

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

28 SA2017107638
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