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

In the Matter of the Accusation Against:

PRESTON DEAN FORAYTER,
a.k.a. PRESTON DEAN FORAYTER
d.b.a. SAFETY DRUG CO.
401 Center St.
Taft, CA 93268

Original Pharmacy Permit No. PHY 41103

and

PRESTON DEAN FORAYTER,
a.k.a PRESTON DEAN FORAYTER,
401 Center St.
Taft, CA 93268

and

514 Fifth Street
Taft, CA 93268

Original Pharmacist License No. RPH 35363

Respondents.

Case No. 2361

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

On or about September 29, 2003, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 2361 against Preston Dean Forayter, a.k.a. Preston Dean Forayter d.b.a. Safety Drug Co. (Respondent Safety Drug), and Preston Dean Forayter, a.k.a Preston Dean Forayter before the Board (Respondent Forayter).

//

1 1. On or about July 7, 1980, the Board issued Original Pharmacist License
2 No. RPH 35363 to Respondent Forayter. Said license expired on June 30, 2002.

3 2. On or about September 17, 1995, the Board issued Original Pharmacy
4 Permit No. PHY 41103 to Respondent Safety Drug. The Pharmacist-in-Charge has been
5 Respondent Forayter, since on or about September 19, 1995. Said license expired on
6 September 1, 2001.

7 3. On or about October 16, 2003, Eumelia Y. Guzman, an employee of the
8 Office of the Attorney General, served by Certified and First Class Mail a copy of the Accusation
9 No. 2361, to Respondents' address of record with the Board, which was and is 401 Center St.,
10 Taft, CA 93268 and 514 Fifth St., Taft, CA 83268.

11 4. Service of the Accusation was effective as a matter of law under the
12 provisions of Government Code section 11505, subdivision (c).

13 5. On or about October 24, 2003, the aforementioned documents were
14 returned by the U.S. Postal Service marked "Not Deliverable as Addressed -- Unable to
15 Forward".

16 6. Government Code section 11506 states, in pertinent part:

17 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
19 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
20 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

21 7. Respondents failed to file a Notice of Defense within 15 days after service
22 upon him of the Accusation, and therefore waived their right to a hearing on the merits of
23 Accusation No. 2361.

24 8. California Government Code section 11520 states, in pertinent part:

25 "(a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions or
27 upon other evidence and affidavits may be used as evidence without any notice to
28 respondent."

1 California Code of Regulations, title 16, section 1770 - unprofessional conduct.

2 4. The Board of Pharmacy is authorized to revoke Respondent Safety Drug's
3 Pharmacy License based upon the following violations alleged in the Accusation:

4 a. Business and Professions Code sections 4059, subdivision (a), and
5 section 4077, subdivision (a) - furnishing dangerous drugs with out a prescription.

6 b. Business and Professions Code sections 4060, 4077, subdivision
7 (a), and Health & Safety Code sections 11158, subdivision (a), 11171, and 11173, subdivision
8 (d) - furnishing controlled substances without a prescription.

9 c. California Code and Regulations, title 16, section 1714,
10 subdivisions (b) and (c) - failure to properly maintain premises.

11 ORDER

12 IT IS ORDERED that the Original Pharmacist License No. RPH 35363,
13 heretofore issued to Respondent Preston Dean Forayter, a.k.a. Preston Dean Forayter, is revoked.

14 IT IS FURTHER ORDERED that the Original Pharmacy Permit No. PHY 41103,
15 heretofore issued to Respondent Preston Dean Forayter, a.k.a. Preston Dean Forayter d.b.a.
16 Safety Drug Company, is revoked.

17 Pursuant to Government Code section 11520, subdivision (c), Respondents may
18 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
19 within seven (7) days after service of the Decision on Respondents. The agency in its discretion
20 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
21 statute.

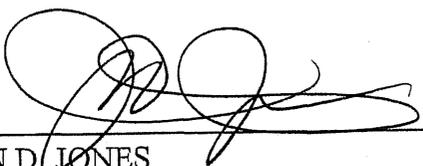
22 This Decision shall become effective on June 10, 2004.

23 It is so ORDERED May 11, 2004

24 BOARD OF PHARMACY
25 DEPARTMENT OF CONSUMER AFFAIRS
26 STATE OF CALIFORNIA

27 DOJ docket number:03583110-LA2002AD0459
28 ELS: 01/30/04

By


JOHN D. JONES
Board President

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

11

In the Matter of the Accusation Against:

Case No. 2361

12

PRESTON DEAN FORAYTER,
a.k.a. PRESTON DEAN FORTAYER
13 d.b.a. SAFETY DRUG CO.

A C C U S A T I O N

14

401 Center Street
14 Taft, CA 93268
PRESTON DEAN FORAYTER,
15 Pharmacist-in-Charge

16

Original Pharmacy Permit No. PHY 41103

17

and

18

PRESTON DEAN FORAYTER,
a.k.a. PRESTON DEAN FORTAYER
19 401 Center Street
Taft, CA 93268

20

and

21

514 Fifth Street
22 Taft, CA 93268

23

Original Pharmacist License No. RPH 35363

24

Respondent.

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Complainant alleges:

PARTIES

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

2. On or about July 7, 1980, the Board issued Original Pharmacist License No. RPH 35363 to Preston Dean Forayter, also known as Preston Dean Fortayer ("Respondent Forayter"). Said license expired on June 30, 2002 and is currently suspended.

3. On or about September 17, 1995, the Board issued Original Pharmacy Permit No. PHY 41103 to Preston Dean Forayter, to do business as Safety Drug Co. ("Respondent Safety Drug Co."). The Pharmacist- in-Charge has been Preston D. Forayter, also known as Preston Dean Fortayer since September 19, 1995. Said license expired on September 1, 2001.

JURISDICTION

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

5. Section 118, subdivision (b), provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 states:

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

1 following:

2

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

6

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

9

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

28

1 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of Chapter 9 (commencing
3 with Section 4000) of the Business and Professions Code or of the applicable federal and state
4 laws and regulations governing pharmacy, including regulations established by the board.

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

6 8. Section 4116, subdivision (a), states:

7 “No person other than a pharmacist, an intern pharmacist, an authorized officer of
8 the law, or a person authorized to prescribe shall be permitted in that area, place, or premises
9 described in the license issued by the board wherein controlled substances or dangerous drugs or
10 dangerous devices are stored, possessed, prepared, manufactured, derived, compounded,
11 dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who
12 enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing
13 clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to
14 the pharmacy if the pharmacist remains present in the pharmacy during all times as the
15 authorized individual is present.”

16 9. Section 4059, subdivision (a), states, in pertinent part,

17 “A person may not furnish any dangerous drug, except upon the prescription of a
18 physician, dentist, podiatrist, optometrist, or veterinarian.”

19 10. Section 4060 states, in pertinent part, that:

20 “No person shall possess any controlled substance, except that furnished to a
21 person upon the prescription of a physician, dentist, podiatrist, or veterinarian.”

22 11. Section 4077, subdivision (a), states:

23 “Except as provided in subdivisions (b) and (c) [of this section], no person shall
24 dispense any dangerous drug upon prescription except in a container correctly labeled with the
25 information required by Section 4076.”

26 12. Section 4306.5 states:

27 “Unprofessional conduct for a pharmacist may include acts or omissions that
28 involve, in whole or in part, the exercise of his or her education, training, or experience as a

1 pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or
2 the ownership, management, administration, or operation of a pharmacy or other entity licensed
3 by the board.”

4 13. Section 490 provides, in pertinent part, that the Board may suspend or
5 revoke a license when it finds that the licensee has been convicted of a crime, if the crime is
6 substantially related to the qualifications, functions, or duties of that license.

7 14. Health and Safety Code Section 11158, subdivision (a), states in relevant
8 part that:

9 “. . . no controlled substance classified in Schedule II shall be dispensed without a
10 prescription meeting the requirements of this chapter. Except as provided in Section 11159 or
11 when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or
12 pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without
13 a prescription meeting the requirements of this chapter.”

14 15. Health and Safety Code Section 11171, states:

15 “No person shall prescribe, administer, or furnish a controlled substance except
16 under the conditions and in the manner provided by this division.”

17 16. Health and Safety Code Section 11173, subdivision (d), states:

18 “No person shall affix any false or forged label to a package or receptacle
19 containing controlled substances.”

20 17. Health and Safety Code Section 11352, subdivision (a), provides that
21 every person who transports, imports into this state, sells, furnishes, administers, or gives away,
22 or attempts to import into this state or transport any controlled substance including those
23 classified as Schedule III, IV, or V, which is a narcotic drug, unless upon the written prescription
24 of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be
25 punished by imprisonment in the state prison.

26 18. Health and Safety Code Section 11379, subdivision (a), states, in
27 pertinent part:

28 //

1 “Except as otherwise provided in subdivision (b) and in Article 7 (commencing
2 with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every
3 person who transports, imports into this state, sells, furnishes, administers, or gives away, or
4 offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to
5 import into this state or transport any controlled substance which is (1) classified in Schedule III,
6 IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified
7 in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23)
8 of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4)
9 specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in
10 subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A)
11 of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician,
12 dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by
13 imprisonment in the state prison for a period of two, three, or four years.”

14 19. California Code of Regulations, title 16, section 1714, subdivision (b),
15 states:

16 “Each pharmacy licensed by the board shall maintain its facilities, space, fixtures,
17 and equipment so that drugs are safely and properly prepared, maintained, secured and
18 distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the
19 safe practice of pharmacy.”

20 20. California Code of Regulations, title 16, section 1714, subdivision (c)
21 states:

22 “The pharmacy and fixtures and equipment shall be maintained in a clean and
23 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and
24 properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water
25 for pharmaceutical purposes.”

26 21. California Code of Regulations, title 16, section 1717, subdivision (c),
27 states:

28 //

1 “Promptly upon receipt of an orally transmitted prescription, the pharmacist shall
2 reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the
3 prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial
4 the prescription to identify him or herself.

5 “All orally transmitted prescriptions shall be received and transcribed by a
6 pharmacist prior to compounding, filling, dispensing, or furnishing.”

7 22. California Code of Regulations, title 16, section 1770, states:

8 “For the purpose of denial, suspension, or revocation of a personal or facility
9 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
10 Code, a crime or act shall be considered substantially related to the qualifications, functions or
11 duties of a licensee or registrant if to a substantial degree it evidences present or potential
12 unfitness of a licensee or registrant to perform the functions authorized by his license or
13 registration in a manner consistent with the public health, safety, or welfare.”

14 23. California Code of Regulations, title 16, section 1793.1, states, in
15 pertinent part:

16 “Only a registered pharmacist, or an intern pharmacist acting under the
17 supervision of a registered pharmacist, may:

18 “(a) Receive a new prescription order orally from a prescriber or other person
19 authorized by law.

20

21 “(c) Identify, evaluate and interpret a prescription.

22

23 “(i) Perform all functions which require professional judgment.”

24 24. Section 125.3, subdivision (a), states, in pertinent part:

25 "Except as otherwise provided by law, in any order issued in resolution of a
26 disciplinary proceeding before any board within the department . . . the board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations
28 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case.”

2 CONTROLLED SUBSTANCES

3 25. “Diazepam” is the generic name for Valium. It is a Schedule IV narcotic
4 controlled substance, as defined by Health and Safety Code section 11057(d)(8) and is
5 categorized as a “dangerous drug” pursuant to Business and Professions Code section 4022.

6 26. “Hydrocodone with Acetaminophen” is the generic name for Vicodin. It
7 is Schedule III narcotic controlled substance, as defined by Health and Safety Code section
8 11056(e)(4) and is categorized as a “dangerous drug” pursuant to Business and Professions Code
9 section 4022.

10 DANGEROUS DRUGS

11 27. “Carisoprodol” is the generic name for Soma and is a “dangerous drug”
12 pursuant to section 4022.

13 FIRST CAUSE FOR DISCIPLINE

14 (Conviction of a Crime)

15 28. Respondent Forayter is subject to disciplinary action under Business and
16 Professions Code section 4300, section 4301, subdivisions (f), (j), (l), (o), and (p), and section
17 490, in conjunction with California Code of Regulations section 1770, of Title 16, on the
18 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
19 related to the qualifications, functions, or duties of a pharmacist, by reasons of the following:

20 a. On or about April 13, 2001, Respondent was convicted on a plea of nolo
21 contendere of one count of violating Health and Safety Code section 11352 (transportation, sale,
22 or furnishing of a controlled substance), a felony and one count of violating Health and Safety
23 Code section 11379(a) (transportation, sale, or furnishing of a controlled substance), a felony, in
24 the Superior Court, Metropolitan Division, of the State of California, County of Kern, under Case
25 No. SC082091A, entitled *People v. Preston Dean Forayter, aka Preston Dean Fortayer*.
26 Respondent was concurrently placed on probation for 5 years with terms and conditions, and
27 ordered to serve 1 year in the custody of Kern County Sheriff, for violating Health and Safety
28 Code section 11352. In addition, Respondent concurrently was placed on probation for 5 years

1 with terms and conditions, and ordered to serve 1 year in the custody of Kern County Sheriff, for
2 violating Health and Safety Code section 11379(a).

3 b. The circumstances surrounding the conviction are that on or about October
4 3, 2000, Respondent wilfully and unlawfully transported, imported into the State of California,
5 sold, furnished, administered, or gave away, controlled substances, to wit: Vicodin and Valium.

6 c. On or about August 27, 1999, Respondent was convicted on a plea of nolo
7 contendere of one count of violating Penal Code section 415(3) (offensive words in public place),
8 a misdemeanor, in the Municipal Court of California, County of Kern, Maricopa-Taft Judicial
9 District, under Case No. TP99-23203, entitled *People v. Preston Dean Forayter, aka Preston*
10 *Dean Fortayer*. Respondent was placed on probation for 3 years with terms and conditions. On
11 February 15, 2001, Respondent's probation was revoked, due to probation violation: new filing
12 of Case No. TF003733A (SC082091A) and was ordered to serve 90 days in custody.

13 d. The circumstances surrounding the conviction are that on or about August
14 20, 1999, Respondent wilfully and unlawfully used offensive words in a public place which were
15 inherently likely to produce an immediate violent reaction.

16 SECOND CAUSE FOR DISCIPLINE

17 (Furnishing Dangerous Drugs without a Prescription)

18 29. Respondents Safety Drug Co. and Forayter are subject to disciplinary
19 action under section 4059, subdivision (a), and section 4077, subdivision (a), in that on or about
20 September 28, 2000, Respondents furnished carisoprodol, a dangerous drug, without a
21 prescription or authorization, in a container incorrectly labeled as "Mapap" to an undercover
22 informant. In addition, by his own admissions, Respondent Forayter furnished dangerous drugs
23 many times to other individuals in exchange for sexual favors (approximately six times per
24 month).

25 THIRD CAUSE FOR DISCIPLINE

26 (Furnishing Controlled Substances without a Prescription)

27 30. Respondents Safety Drug Co. and Forayter are subject to disciplinary
28 action under Business and Profession Code section 4060, and section 4077, subdivision (a), and

1 Health and Safety Code section 11158, subdivision (a), section 11171, and section 11173,
2 subdivision (d), in that on or about October 3, 2000, Respondents furnished hydrocodone 7.5mg
3 with acetaminophen and diazepam, controlled substances, without a prescription or
4 authorization, in a container labeled as "Benztropine 1mg." In addition, by his own admissions,
5 Respondent Forayter furnished controlled substances many times to other individuals, in
6 exchange for sexual favors (approximately six times per month).

7 FOURTH CAUSE FOR DISCIPLINE

8 (Possession of Controlled Substances for Sale)

9 31. Respondent Forayter is subject to disciplinary action under Health and
10 Safety Code section 11379, subdivision (a), and section 11352, subdivision (a), in that on or
11 about October 3, 2000, Respondent furnished diazepam, a Schedule IV controlled substance and
12 hydrocodone with acetaminophen, a Schedule III controlled substance.

13 FIFTH CAUSE FOR DISCIPLINE

14 (Allowed an Unlicensed Person to Act as a Pharmacist)

15 32. Respondent Forayter is subject to disciplinary action under Business and
16 Professions Code section 4116, subdivision (a), and California Code of Regulations, title 16,
17 section 1717, subdivision (c), section 1793.1, subdivisions (a), (c), and (i), in that in
18 approximately September 2000, Respondent allowed Jill Davis, an unlicensed person, to receive
19 and transcribe orally transmitted prescriptions, to check his work for errors in the manner of a
20 pharmacist checking a technician's work, and to act as a pharmacy technician without
21 registration with the Board.

22 SIXTH CAUSE FOR DISCIPLINE

23 (Failure to Properly Maintain Premises)

24 33. Respondent Safety Drug Co. is subject to disciplinary action under
25 California Code of Regulations, title 16, section 1714, subdivision (b), and section 1714,
26 subdivision (c), in that on or about October 3, 2000, Respondent lived in the pharmacy, in a side
27 room area and maintained the premises in a cluttered, obstructed, and unsanitary condition.

28 //

