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BOARD OF PHARMACY

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

12 In the Matter of the Accusation Against:

Case No. 2407

13 CHILDREN'S HOSPITAL AND HEALTH  
CENTER PHARMACY  
14 3020 Children's Way  
San Diego, CA 92123

OAH No. L-2001120485

15 Original Permit Number HSP 37948

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR  
CHILDREN'S HOSPITAL**

16 and

17 VICTORIA SERRANO MURPHY  
18 PHARMACIST-IN-CHARGE  
11458 Tree Hollow Lane  
19 San Diego, CA 92128

20 Original Pharmacist License Number No. RPH  
32467

21 Respondent.  
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23 IT IS HEREBY STIPULATED AND AGREED by and between the California  
24 Board of Pharmacy and Respondent Children's Hospital and Health Center Pharmacy to the  
25 above-entitled proceedings that the following matters are true:

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1 seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board  
2 fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and  
3 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be  
4 inadmissible in any legal action between the parties, and the Board shall not be disqualified from  
5 further action by having considered this matter.

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

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

12 **DISCIPLINARY ORDER**

13 IT IS HEREBY ORDERED that Original Permit Number HSP 37948 issued to  
14 Respondent Children's Pharmacy is suspended for ninety (90) days. However, the suspension is  
15 stayed and respondent is placed on probation for one (1) year on the following terms and  
16 conditions.

17 1. **Obey All Laws.** Respondent Children's Pharmacy shall obey all federal and  
18 state laws and regulations substantially related or governing the practice of pharmacy.

19 2. **Reporting to the Board.** Respondent Children's Pharmacy shall report to the  
20 Board or its designee quarterly. The report shall be made either in person or in writing, as  
21 directed. If the final probation report is not made as directed, probation shall be extended  
22 automatically until such time as the final report is completed.

23 3. **Interview with the Board.** Upon receipt of reasonable notice, Respondent  
24 Children's Pharmacy, or its Pharmacist-In-Charge shall appear in person for interviews with the  
25 Board or its designee upon request at various intervals at a location to be determined by the  
26 Board or its designee. Failure to appear for a scheduled interview without prior notification to  
27 Board staff shall be considered a violation of probation.

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1           4. **Cooperation with Board Staff.** Respondent Children's Pharmacy shall  
2 cooperate with the Board's inspectional program and in the Board's monitoring and investigation  
3 of its compliance with the terms and conditions of its probation. Failure to cooperate shall be  
4 considered a violation of probation.

5           5. **Reimbursement of Board Costs.** Respondent Children's Pharmacy shall pay  
6 to the Board its costs of investigation and prosecution in the amount of \$ 3,000.00. If  
7 Respondent Children's Pharmacy fails to pay the costs as specified by the Board and on or before  
8 the date(s) determined by the Board, the Board shall, without affording the Respondent  
9 Children's Pharmacy notice and the opportunity to be heard, revoke probation and carry out the  
10 disciplinary order that was stayed.

11           6. **Probation Monitoring Costs.** Respondent Children's Pharmacy shall pay the  
12 costs associated with probation monitoring as determined by the Board. Such costs shall be  
13 payable to the Board at the end of each year of probation. Failure to pay such costs shall be  
14 considered a violation of probation.

15           7. **Status of License.** Respondent Children's Pharmacy shall, at all times while  
16 on probation, maintain a current license with the board. If respondent submits an application to  
17 the Board, and the application is approved, for a change of location, change of permit or change  
18 of ownership, the board shall retain continuing jurisdiction over the license, and the respondent  
19 shall remain on probation as determined by the board.

20           8. **Notice to Employees.** Respondent Children's Pharmacy shall, upon or before  
21 the effective date of this decision, ensure that all employees involved in permit operations are  
22 made aware of all the terms and conditions of probation, either by posting a notice of the terms  
23 and conditions, circulating such notice, or both. If the notice required by this provision is posted,  
24 it shall be posted in a prominent place and shall remain posted throughout the probation period.  
25 Respondent Children's Pharmacy shall ensure that any employees hired or used after the  
26 effective date of this decision are made aware of the terms and conditions by posting a notice,  
27 circulating a notice, or both.

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1 "Employees" as used in this provision includes all full-time, part-time, temporary  
2 and relief employees and independent contractors employed or hired at any time during  
3 probation.

4 **9. Owners and Officers: Knowledge of the Law**

5 Respondent Children's Pharmacy shall provide, within 30 days after the effective  
6 date of this decision, signed and dated statements from its owners, including any owner or holder  
7 of 10% or more of the interest in respondent or respondent's stock, and any officer, stating said  
8 individuals have read and are familiar with state and federal laws and regulations governing the  
9 practice of pharmacy.

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

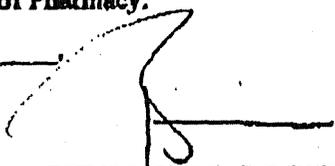
21 **11. Completion of Probation.** Upon successful completion of probation,  
22 Respondent Children's Pharmacy's license will be fully restored.

23 ACCEPTANCE

24 As the Executive Vice-President and Chief Operating Officer for Children's  
25 Hospital and Health Center Pharmacy, I have carefully read the above Stipulated Settlement and  
26 Disciplinary Order and have fully discussed it with the attorney representing Children's Hospital  
27 and Health Center Pharmacy, Marilyn R. Moriarty. I understand the stipulation and the effect it  
28 will have on the Children's Hospital and Health Center Pharmacy's Original Permit License

1 Number HSP 37948. As the Executive Vice-President and Chief Operating Officer for  
2 Children's Hospital and Health Center Pharmacy, I enter into this Stipulated Settlement and  
3 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
4 Decision and Order of the Board of Pharmacy.

5 DATED: 3/25/02



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7  
8 Paul Van Dolah, Executive Vice-President/  
9 Chief Operating Officer, for  
10 Respondent Children's Hospital and  
11 Health Center Pharmacy

12 I concur in this Stipulated Settlement and Disciplinary Order.

13 DATED: 3/26/02

14   
15 MARILYN R. MORIARTY  
16 Attorney for Respondent Children's Pharmacy

17 ENDORSEMENT

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

20  
21 DATED: 3/29/02

22 BILL LOCKYER, Attorney General  
23 of the State of California

24   
25 SHERRY LEDAKIS  
26 Deputy Attorney General  
27 Attorneys for Complainant

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

In the Matter of the Accusation Against:

CHILDREN'S HOSPITAL AND HEALTH  
CENTER PHARMACY  
3020 Children's Way  
San Diego, CA 92123

Original Permit Number HSP 37948

and

VICTORIA SERRANO MURPHY  
PHARMACIST-IN-CHARGE  
11458 Tree Hollow Lane  
San Diego, CA 92128

Original Pharmacist License Number RPH  
32467

Respondent.

Case No. 2407

OAH No. L-2001120485

**DECISION AND ORDER**

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

This Decision shall become effective on July 19, 2002.

It is so ORDERED June 19, 2002.

DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



JOHN D. JONES  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHERRY LEDAKIS; State Bar No. 131767  
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7 Attorneys for Complainant  
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9  
10 **BEFORE THE**  
**BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 99-19258

13 CHILDREN'S HOSPITAL AND HEALTH  
14 CENTER PHARMACY  
3020 Children's Way  
15 San Diego, CA 92123

**A C C U S A T I O N**

16 Original Permit Number No. HSP 37948

17 and

18 VICTORIA SERRANO MURPHY,  
Pharmacist-In-Charge  
19 11458 Tree Hollow Lane  
San Diego, CA 92128

20 Original Pharmacist License Number No. RPH  
21 32467

22 Respondents.

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24 Complainant alleges:

25 PARTIES

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

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2. Section 4081 of the Code provides:

"(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, medical device retailer, 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, veterinary food-animal drug retailer, or medical device retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section.

" . . . . "

3. Section 4115(f) of the Code provides:

" . . . "

"(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

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4. Section 4301 of the Code provides:

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:

" . . .

(j) The violation of any of the statutes of this 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 Chapter 9 (commencing with Section 4000) of the Business and Professions Code or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

" . . ."

C. This Accusation is also brought before the Board under the authority of the following sections of the California Code of Regulations ("Regulation").

1. Regulation 1714(d) provides:

"Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for the effective control against theft or diversion of dangerous drugs or devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist."

2. Regulation 1718 states:

"Current Inventory" as used in Section 4232 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section 4232.

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1 "The controlled substances inventories required by Title 21, CFR, Section 1304  
2 shall be available for inspection upon request for at least 3 years after the date of the  
3 inventory."

4 3. Regulation 1793.7(c) provides:

5 "Pharmacy technicians must work under the direct supervision of a registered  
6 pharmacist and in such a relationship that the supervising pharmacist is on the premises at  
7 all times and is fully aware of all activities involved in the preparation and dispensing of  
8 medications, including the maintenance of appropriate records.

9 " . . . "

10 5. Section 125.3 of the Code provides, in pertinent part, that the Board may  
11 request the administrative law judge to direct a licentiate found to have committed a violation or  
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
13 and enforcement of the case.

14 FIRST CAUSE FOR DISCIPLINE

15 (Failure to Maintain Effective Controls Against Theft and Diversion)

16 6. Respondents Children's Hospital and Health Center Pharmacy and Victoria  
17 Serrano Murphy are subject to disciplinary action under Title 21 of the Code of Federal  
18 Regulations Section 1301.71, in that they failed to maintain effective controls against the theft or  
19 diversion of controlled substances, as more particularly alleged below:

20 A. On or about August 4, 1999, Supervising Inspector, Judith Nurse,  
21 received information from John Partridge of the Drug Enforcement Administration, that a  
22 pharmacy technician, Dennis Shackelton was diverting large quantities of controlled  
23 substances from Children's Pharmacy and selling the drugs to undercover operators at a  
24 tanning salon. On August 10, 1999, Shackelton was arrested.

25 B. On August 11, 1999, Supervising Inspector Nurse and Inspector  
26 Venegas conducted an inspection of Children's Pharmacy. During this inspection, the  
27 locker belonging to Shackelton was searched and dangerous drugs and controlled

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1 substances were found inside of his locker. The Inspectors met with the Pharmacist-In-  
2 Charge, respondent Murphy.

3 C. Respondent Murphy informed the Inspectors that Shackelton was the  
4 pharmacy technician responsible for ordering drugs for the in-patient pharmacy. He also  
5 ordered drugs for the out-patient pharmacy and when they arrived he volunteered to  
6 deliver the drugs to the out-patient pharmacy.

7 D. On September 14, 1999, Children's Pharmacy submitted a DEA Loss  
8 Report to the Board of Pharmacy. This report set forth the following unaccounted for  
9 losses:

10	Ketamine 100ml/5ml	562
	Meperedine 50mg/ml	44
11	Morphine 2mg/ml	77
	Percocet tablets	10
12	Anadrol 50 mg	880
	Acetaminophen & Codeine	1126
13	Halotestin 10mg	200
	Deca Durabolin 200mg/ml	12
14	Android 10	1210
	Xanax 2mg	5100
15	Klonopin 2mg	3502
	Diazepam 10mg	8933
16	Hydrocodone/APAP 10mg/650mg	1592
	Hydrocodone/APAP 10mg/500mg	1213
17	Hydrocodone/APAP 7.5/500	524
	Hydrocodone/APAP 7.5 mg/650mg	164
18	Hydrocodone/APAP 7.5 mg/750mg	7197
	Vicodin (generic)	41,993
19	Vicoprofen	174

20 E. The above listed drugs were missing from the Children's Pharmacy without  
21 respondent Murphy's knowledge.

## 22 SECOND CAUSE FOR DISCIPLINE

23 (Failed to Maintain a Current Inventory of Dangerous Drugs)

24 7. Respondents Children's Hospital and Health Center and Victoria Serrano  
25 Murphy are subject to disciplinary action under Business and Professions Code section 4081(a),  
26 in that they failed to maintain records of the disposition of dangerous drugs or dangerous devices  
27 at all times during business hours open to inspection by authorized officers of the law, as more  
28 particularly alleged hereinafter.

1 Paragraphs 6A through and including paragraph 6E, above, are hereby  
2 incorporated by reference and realleged as if fully set forth herein.

3 THIRD CAUSE FOR DISCIPLINE

4 (Respondents are Jointly Responsible for Failure to Maintain Pharmacy Security)

5 8. Respondents Children's Hospital and Health Center Pharmacy and respondent  
6 Victoria Serrano Murphy are subject to disciplinary action under Business and Professions Code  
7 section 4081(b), in that the owner, officer, and partner of any pharmacy, . . . shall be jointly  
8 responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and  
9 inventory described in this section, as more particularly alleged hereinafter:

10 Paragraphs 6A through and including paragraph 6E, above, are hereby  
11 incorporated by reference and realleged as if fully set forth herein.

12 FOURTH CAUSE FOR DISCIPLINE

13 (Failed to Maintain Direct Supervision of a Pharmacy Technician)

14 9. Respondents Children's Hospital and Health Center and Victoria Serrano  
15 Murphy are subject to disciplinary action under Business and Professions Code section 4115(f),  
16 in that they failed to maintain direct supervision of a pharmacy technician, as more particularly  
17 alleged hereinafter.

18 Paragraphs 6A through and including paragraph 6E, above, are hereby  
19 incorporated by reference and realleged as if fully set forth herein.

20 FIFTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct for Violation of Laws Regulating Dangerous Drugs)

22 10. Respondents Children's Hospital and Health Center and Victoria Serrano  
23 Murphy are subject to disciplinary action under Business and Professions Code section 4301(j),  
24 in that they committed unprofessional conduct by violating the statutes of this state or of the  
25 United States regulating controlled substances and dangerous drugs, as more particularly alleged  
26 hereinafter.

27 Paragraphs 6A through and including paragraph 6E, above, are hereby  
28 incorporated by reference and realleged as if fully set forth herein.



1 NINTH CAUSE FOR DISCIPLINE

2 (Failed to Be Aware of Activities of Pharmacy Technician)

3 14. Respondents Children's Hospital and Health Center and Victoria Serrano  
4 Murphy are subject to disciplinary action under Title 16 of the California Code of Regulations,  
5 Regulation 1793.7, in that they failed to maintain direct supervision of a pharmacy technician in  
6 that they were not fully aware of all his activities in the dispensing of medications, including the  
7 maintenance of appropriate records, as more particularly alleged hereinafter:

8 Paragraphs 6A through and including paragraph 6E, above, are hereby  
9 incorporated by reference and realleged as if fully set forth herein.

10 PRAYER

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

- 13 1. Revoking or suspending Original Permit Number HSP 37948, issued to  
14 Children's Hospital and Health Center Pharmacy;
- 15 2. Revoking or suspending Original Pharmacist License Number RPH  
16 32467, issued to Victoria Serrano Murphy, Pharmacist-in-Charge;
- 17 3. Ordering Children's Hospital and Health Center Pharmacy and Victoria  
18 Serrano Murphy to pay the Board of Pharmacy the reasonable costs of the investigation and  
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 4. Taking such other and further action as deemed necessary and proper.

21 DATED: 11/26/01

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23  
24 P. F. Harris  
25 PATRICIA F. HARRIS  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant