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6 Attorneys for Complainant

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

10 In the Matter of the Accusation and Petition to
Revoke Probation Against:

11 GERALD ALLEN KATAOKA

12 Respondent.

Case No. 2408

OAH No. N2002120098

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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16 In the interest of a prompt and speedy settlement of this matter, consistent with the
17 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer
18 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
19 which will be submitted to the Board for approval and adoption as the final disposition of the
20 Accusation and Petition to Revoke Probation solely with respect to GERALD ALLEN
21 KATAOKA. It does not apply to BAY CITIES PHARMACEUTICAL SERVICES and VIVIEN
22 W. M. TSENG.

23 PARTIES

24 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
25 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
26 by Bill Lockyer, Attorney General of the State of California, by Michael B. Franklin, Deputy
27 Attorney General.

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I have read and fully discussed with Respondent GERALD ALLEN KATAOKA the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____.

DON BROWN
Attorney for Respondent

ENDORSEMENT

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

DATED: _____.

BILL LOCKYER, Attorney General
of the State of California

MICHAEL B. FRANKLIN
Deputy Attorney General

Attorneys for Complainant

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I have read and fully discussed with Respondent GERALD ALLEN KATAOKA the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: FEB 21 2003



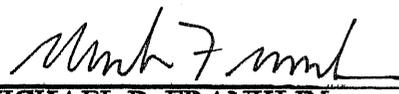
DON BROWN
Attorney for Respondent

ENDORSEMENT

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

DATED: 3/4/03

BILL LOCKYER, Attorney General
of the State of California



MICHAEL B. FRANKLIN
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Accusation and Petition to
Revoke Probation Against:

GERALD ALLEN KATAOKA

Respondent.

Case No. 2408

OAH No. N2002120098

DECISION AND ORDER

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

This Decision shall become effective on May 2, 2003.

It is so ORDERED April 3, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

Exhibit A

Accusation and Petition to Revoke Probation No. 2408

1 BILL LOCKYER, Attorney General
of the State of California
2 W. LLOYD PARIS, State Bar No. 124755
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5553
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to
11 Revoke Probation Against:

Case No. 2408

12 BAY CITIES PHARMACEUTICAL
SERVICES

13 Anthony A. Froyd, owner
431 N Buchanan Cr 10 Suite 1
14 Pacheco, CA 94553

15 Pharmacy Permit No. PHY 40016,

16 GERALD ALLEN KATAOKA
135 Glenbridge Court
17 Pleasant Hill, CA 94523

18 Pharmacist License No. RPH 26581,

19 and

20 VIVIEN W. M. TSENG
44 Deerhaven Place
21 Pleasant Hill, CA 94523

22 Pharmacist License No. RPH 32741

23 Respondents.

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

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26 Complainant alleges:

27 PARTIES

28 1. Patricia F. Harris (Complainant) brings this Accusation solely in her

1 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
2 following:

3 " . . .

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

7 . . .

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

10 . . .

11 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
12 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
13 applicable federal and state laws and regulations governing pharmacy, including regulations
14 established by the board."

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

19 9. Section 118(b) of the Code states:

20 "(b) The suspension, expiration, or forfeiture by operation of law of a license
21 issued by a board in the department, or its suspension, forfeiture, or cancellation by order
22 of the board or by order of a court of law, or its surrender without the written consent of
23 the board, shall not, during any period in which it may be renewed, restored, reissued, or
24 reinstated, deprive the board of its authority to institute or continue a disciplinary
25 proceeding against the licensee upon any ground provided by law or to enter an order
26 suspending or revoking the license or otherwise taking disciplinary action against the
27 licensee on any such ground.

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1 **THIRD CAUSE FOR DISCIPLINARY ACTION**

2 (Dispensing Medications from a Pharmacy on Suspension)

3 16. In Board Case Number 2011, In the Matter of the Accusation Against: Bay
4 Cities Pharmaceutical Services, et al. respondent Bay Cities' pharmacy permit was revoked, but
5 the revocation was stayed and the pharmacy permit was placed on three years probation. One of
6 the probationary terms included an actual suspension of the pharmacy for fifteen days from the
7 effective date of the decision March 28, 2000.

8 17. Respondent Bay Cities is subject to disciplinary action pursuant to section
9 4300(d) for violating its probation in Board Case Number 2011 by dispensing the following
10 prescriptions during the period in which it was on suspension:

11 (i.) RX Number 300252 for Gamimune 5 gram was dispensed on April 1, 2000.

12 (ii.) RX Number 300256 for Gamimune N10% was dispensed on April 1, 2000.

13 (iii.) RX Number 300221 for Sandoglobulin was dispensed on April 7, 2000.

14 18. Respondents Kataoka and Tseng are subject to disciplinary action under
15 section 4301(o) for having violated the Board's disciplinary order in Case Number 2001 as set
16 forth in paragraph 17 above.

17 19. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
18 action under section 4301(f) for having committed acts involving moral turpitude, dishonesty,
19 fraud, deceit or corruption in that they violated the Board's disciplinary order in Case Number
20 2001 as set forth in paragraph 17 above.

21 **FOURTH CAUSE FOR DISCIPLINARY ACTION**

22 (Failure to Maintain All Records of Acquisition)

23 20. Section 4081 of the Code states:

24 "(a) All records of manufacture and of sale, acquisition, or disposition of
25 dangerous drugs or dangerous devices shall be at all times during business hours open to
26 inspection by authorized officers of the law, and shall be preserved for at least three years from
27 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
28 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,

1 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
2 certificate, license, permit, registration, or exemption under Division 2 (commencing with
3 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)
4 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
5 dangerous devices.

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

9 21. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
10 action under sections 4301(j) and/or 4301(o) for having violated sections 4105 and/or 4801(a) in
11 that records of acquisition of dangerous drugs for the following expired dangerous drugs were
12 not maintained by respondents or available for inspection during the May 4, 2000 search of
13 Respondent Bay Cities.

14 (i.) Benadryl 50mg per ml NDC 0071-4259-40
15 Expired 6/96 Parke Davis

16 (ii.) Diazepam 10mg/2ml 10ml Multiple Dose vial NDC 0677-1088-21
17 Expired 8/89 Elkins-Sinn

18 (iii.) Diazepam Injection 5mg/ml 10ml Multiple Dose vial NDC 0677-1088-21
19 Expired 1/00 United Research Laboratories

20 (iv.) EpiPen 0.3mg NDC 49502-500-01
21 Expired 1/00 Dey Pharma

22 **FIFTH CAUSE FOR DISCIPLINARY ACTION**

23 (Failure to Maintain Dangerous Drugs, Dangerous Devices & Pharmacy Records In the
24 Pharmacy Area)

25 22. Code section 4116 (a) provides, in pertinent part, that no person other than
26 a pharmacist shall be permitted in that area described in the license issued by the board wherein
27 controlled substances and dangerous drugs are stored.

28 23. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary

1 suspended from the operation of a pharmacy for 15 days beginning the effective date of the
2 decision. Condition 6 of the probation order required that respondent Bay Cities obey all laws
3 and regulations substantially related to the practice of pharmacy. Condition 10 of the probation
4 order required that respondent Bay Cities pay the Board its costs of investigation and prosecution
5 in the amount of \$8,000.00; an initial payment of \$4,000.00 was to be made within 30 days of
6 the effective date of the decision, and a final payment of \$4,000.00 was to be made one year
7 thereafter.

8 29. Grounds exist to revoke respondent Bay Cities' probation and reimpose
9 the order of revocation for failing to comply with the terms and conditions of the probation as set
10 forth below:

11 (A.) Respondent Bay Cities dispensed medications during the period of its suspension
12 as set forth in paragraph 17 above in violation of probationary condition number one.

13 (B.) Respondent Bay Cities failed to obey all laws and regulations substantially related
14 to the practice of pharmacy in violation of probationary condition number six. Complaint
15 incorporates all individual causes for disciplinary action in paragraphs 11 through 26
16 above which are incorporated by reference as if fully set forth. Each cause for
17 disciplinary action set forth in paragraphs 11 through 26 is a separate and individual
18 violation of probationary condition number six.

19 (C.) Respondent Bay Cities failed to make all payments to the Board as required under
20 probationary condition number ten. Respondent Bay Cities made the initial \$4,000.00
21 payment to the Board, but it has failed to make the final \$4,000.00 payment.

22 **PETITION TO REVOKE PROBATION AGAINST RESPONDENT KATAOKA**

23 30. On February 29, 2000 in Board Case No. 2011, the Board order
24 respondent Kataoka's pharmacist license revoked, then stayed the revocation and placed
25 respondent Kataoka on three years probation with terms and conditions. The Board's decision
26 was effective March 28, 2000.

27 31. Paragraph 16 (first probationary condition) of the stipulated settlement
28 agreement and probationary order required that respondent Kataoka obey all laws and regulations

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7. Taking such other and further action as deemed necessary and proper.

DATED: 7/29/02.

P. F. Harris
PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant