

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHAEL B. FRANKLIN, State Bar No. 136524
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5622
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6 Attorneys for Complainant

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

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

12 BAY CITIES PHARMACEUTICAL SERVICES
ANTHONY A. FROYD, Owner
13 431 N Buchanan Cr 10 Suite 1
Pacheco, CA 94553

14 Pharmacy Permit No. PHY 40016

15 Respondent.

Case No. 2408
OAH No. N2002120098
DEFAULT DECISION
AND ORDER
[Gov. Code, §11520]

16
17 FINDINGS OF FACT

18 1. On or about August 1, 2002, Complainant Patricia F. Harris, in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
20 filed Accusation and Petition to Revoke Probation No. 2408 against BAY CITIES
21 PHARMACEUTICAL SERVICES, Anthony A. Froyd, Owner (Respondent) before the Board of
22 Pharmacy.

23 2. On or about February 21, 1995, the Board of Pharmacy (Board) issued
24 Pharmacy Permit No. PHY 40016 to Respondent. The Pharmacy Permit expired on February 1,
25 2001, and has not been renewed.

26 3. On or about August 1, 2002, Fe Domingo, an employee of the Department
27 of Justice, served by Certified and First Class Mail a copy of the Accusation and Petition to
28 Revoke Probation No. 2408, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's
2 address of record with the Board, which was and is 431 N Buchanan Cr 10 Suite 1, Pacheco, CA
3 94553. A copy of the Accusation and Petition to Revoke Probation, the related documents, and
4 Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

5 4. Service of the Accusation and Petition to Revoke Probation was effective
6 as a matter of law under the provisions of Government Code section 11505, subdivision (c).

7 5. On or about August 9, 2002, the aforementioned documents were returned
8 by the U.S. Postal Service marked "No Forwarding Address." A copy of the postal returned
9 documents are attached hereto as exhibit B, and are incorporated herein by reference.

10 6. Business and Professions Code section 118 states, in pertinent part:

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

18 7. Government Code section 11506 states, in pertinent part:

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

23 8. Respondent failed to file a Notice of Defense within 15 days after service
24 upon it of the Accusation and Petition to Revoke Probation, and therefore waived its right to a
25 hearing on the merits of Accusation and Petition to Revoke Probation No. 2408.

26 9. California Government Code section 11520 states, in pertinent part:

27 "(a) If the respondent either fails to file a notice of defense or to appear at the
28 hearing, the agency may take action based upon the respondent's express admissions or

1 upon other evidence and affidavits may be used as evidence without any notice to
2 respondent."

3 10. Pursuant to its authority under Government Code section 11520, the Board
4 finds Respondent is in default. The Board will take action without further hearing and, based on
5 Respondent's express admissions by way of default and the evidence before it, contained in
6 exhibits A and B finds that the allegations in Accusation and Petition to Revoke Probation No.
7 2408 are true.

8 11. The total costs for investigation and enforcement are \$3,493.75 as of
9 February 6, 2003.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent BAY CITIES
12 PHARMACEUTICAL SERVICES has subjected its Pharmacy Permit No. PHY 40016 to
13 discipline.

14 2. A copy of the Accusation and Petition to Revoke Probation and the related
15 documents and Declaration of Service are attached.

16 3. The agency has jurisdiction to adjudicate this case by default.

17 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy
18 Permit based upon the following violations alleged in the Accusation and Petition to Revoke
19 Probation:

20 a. Business and Professions Code section 4105 (Failure to Maintain
21 Records on Pharmacy Premises).

22 b. Title 16, California Code of Regulations, section 1717.4
23 (Accepting Prescriptions from Patients by FAX)

24 c. Business and Professions Code section 4300 for violating its
25 probation in Board Case Number 2011 (Dispensing Medications from a Pharmacy on
26 Suspension).

27 d. Business and Professions Code section 4081 (Failure to Maintain
28 All Records of Acquisition).

1 e. Business and Professions Code section 4116 (Failure to Maintain
2 Dangerous Drugs, Dangerous Devices and Pharmacy Records in the Pharmacy Area).

3 f. Title 16, California Code of Regulations, section 1751 (Failure to
4 Properly Maintain Area for Preparation of Parenteral Solutions).

5 g. Business and Professions Code section 4300 for violating its
6 probation in Board Case Number 2011 (Failure to Pay Board its Costs of Investigation
7 and Prosecution).

8
9 ORDER

10 IT IS SO ORDERED that Pharmacy Permit No. PHY 40016, heretofore issued to
11 Respondent BAY CITIES PHARMACEUTICAL SERVICES, is revoked.

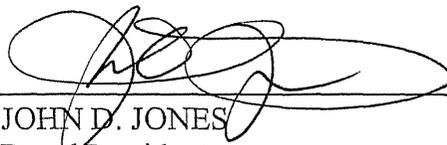
12 Pursuant to Government Code section 11520, subdivision (c), Respondent may
13 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
14 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
15 may vacate the Decision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

17 This Decision shall become effective on July 17, 2003.

18 It is so ORDERED June 17, 2003

19
20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 By


24 JOHN D. JONES
25 Board President

26 Attachments:

- 27 Exhibit A: Accusation and Petition to Revoke Probation No. 2408, Related Documents, and
28 Declaration of Service
29 Exhibit B: Postal Return Documents

DOJ docket number:03583110-SF2001AD0185

Exhibit A

Accusation and Petition to Revoke Probation No. 2408,
Related Documents and Declaration of Service

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
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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**

24
25
26 Complainant alleges:

27 PARTIES

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

1 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
2 Affairs.

3 2. On or about February 21, 1995, the Board of Pharmacy issued Pharmacy
4 Permit No. PHY 40016 to BAY CITIES PHARMACEUTICAL SERVICES, Anthony A. Froyd,
5 owner (Respondent Bay Cities). Respondent Vivien M. Tseng was designated as the
6 pharmacist-in-charge of Respondent Bay Cities on November 1, 1999. The pharmacy Permit
7 expired under probation on February 1, 2001, and has not been renewed.

8 3. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist
9 License No. RPH 26581 to GERALD ALLEN KATAOKA (Respondent Kataoka). The
10 Pharmacist License is currently on probation and will expire on May 31, 2002, unless renewed.

11 4. On or about January 22, 1979, the Board of Pharmacy issued Pharmacist
12 License No. RPH 32741 to VIVIEN W. M. TSENG (Respondent). The Pharmacist License was
13 in full force and effect at all times relevant to the charges brought herein and will expire on
14 November 30, 2002, unless renewed.

15

16

JURISDICTION

17

18

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

19

6. Section 4300 of the Code states:

20

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

21

...

22

23

"(d) The board may initiate disciplinary proceedings to revoke or suspend any
probationary certificate of licensure for any violation of the terms and conditions of probation.

24

25

Upon satisfactory completion of probation, the board shall convert the probationary certificate to
a regular certificate, free of conditions."

26

7. Section 4301 of the Code states:

27

28

"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

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.

28 //

1 ACCUSATION

2 **FIRST CAUSE FOR DISCIPLINARY ACTION**

3 (Failure to Maintain Records on Pharmacy Premises)

4 10. Section 4105 of the Code states:

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

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

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

13 11. Title 16, California Code of Regulations, section 1764 provides, in
14 pertinent part, that no pharmacist shall exhibit or discuss or reveal the contents of any patient or
15 any medical information furnished by the prescriber with any person other than the patient or his
16 or her authorized representative.

17 12. Respondents Bay Cities, Kataoka and Tseng are subject to disciplinary
18 action under sections 4301(j) and/or 4301(o) for having violated section 4105 in that records of
19 acquisition and disposition of dangerous drugs and devices (or a duplicate copy) were not
20 maintained at respondent Bay Cities. The circumstances are as follows:

- 21 (A.) On May 4, 2000 the Federal Food and Drug Administration executed a search
22 warrant on the home of Anthony A. Froyd, the non-pharmacist owner of
23 respondent Bay Cities, with the assistance of other law enforcement personnel
24 including an inspector from the Board.
- 25 (B.) Records of acquisition of dangerous drugs, prescriptions and prescription records
26 and payment or reimbursement records pertaining to respondent Bay Cities were
27 found at Mr. Froyd's home. Duplicate records were not maintained at respondent
28 Bay Cities.

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

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

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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
4 455 Golden Gate Avenue, Suite 11000
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10 **STATE OF CALIFORNIA**

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

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SERVICES

14 ANTHONY A. FROYD, Owner
431 N. Buchanan Cr 10 Suite 1
15 Pacheco, CA 94553

16 Pharmacy Permit No. PHY 40016

17 GERALD ALLEN KATAOKA,
18 135 Glenbridge Court
Pleasant Hill, CA 94523

19 Pharmacist License No. RPH 26581,

20
21 and

22 VIVIEN W.M. TSENG
44 Deerhaven Place
23 Pleasant Hill, CA 94523

24 Pharmacist License No. RPH 32741

25 Respondents.
26
27
28

Case No. 2408

STATEMENT TO RESPONDENT

[Gov. Code §§ 11503, 11505, subd. (b)]

1 TO RESPONDENT:

2 Enclosed is a copy of the Accusation and Petition to Revoke Probation that has
3 been filed with the Board of Pharmacy, Board (Board), and which is hereby served on you.

4 Unless a written request for a hearing signed by you or on your behalf is delivered
5 or mailed to the Board, represented by Deputy Attorney General W. Lloyd Paris, within fifteen
6 (15) days after a copy of the Accusation and Petition to Revoke Probation was personally served
7 on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter
8 and the Board may proceed upon the Accusation and Petition to Revoke Probation without a
9 hearing and may take action thereon as provided by law.

10 The request for hearing may be made by delivering or mailing one of the enclosed
11 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
12 in section 11506 of the Government Code, to:

13
14 **W. Lloyd Paris**
15 **Deputy Attorney General**
16 **455 Golden Gate Avenue, Suite 11000**
17 **San Francisco, California 94102**

18 You may, but need not, be represented by counsel at any or all stages of these
19 proceedings.

20 The enclosed Notice of Defense, if signed and filed with the Board, shall be
21 deemed a specific denial of all parts of the Accusation and Petition to Revoke Probation, but you
22 will not be permitted to raise any objection to the form of the Accusation and Petition to Revoke
23 Probation unless you file a further Notice of Defense as provided in section 11506 of the
24 Government Code within fifteen (15) days after service of the Accusation and Petition to Revoke
25 Probation on you.

26 If you file any Notice of Defense within the time permitted, a hearing will be held
27 on the charges made in the Accusation and Petition to Revoke Probation.

28 The hearing may be postponed for good cause. If you have good cause, you are

1 obliged to notify the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland,
2 California 94612, within ten (10) working days after you discover the good cause. Failure to
3 notify the Office of Administrative Hearings within ten (10) days will deprive you of a
4 postponement.

5 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
6 enclosed.

7 If you desire the names and addresses of witnesses or an opportunity to inspect
8 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
9 custody or control of the Board you may send a Request for Discovery to the above designated
10 Deputy Attorney General.

11 **NOTICE REGARDING STIPULATED SETTLEMENTS**

12 It may be possible to avoid the time, expense and uncertainties involved in an
13 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
14 settlement is a binding written agreement between you and the government regarding the matters
15 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
16 Board of Pharmacy, Board but, once approved, it would be incorporated into a final order.

17 Any stipulation must be consistent with the Board's established disciplinary
18 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
19 Board's Disciplinary Guidelines will be provided to you on your written request to the state
20 agency bringing this action.

21 If you are interested in pursuing this alternative to a formal administrative
22 hearing, or if you have any questions, you or your attorney should contact Deputy Attorney
23 General W. Lloyd Paris at the earliest opportunity.
24

25 *****

26 fmd-8/1/02
27 statement to respondent.wpt

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

In the Matter of the Accusation and Petition to
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BAY CITIES PHARMACEUTICAL SERVICES
ANTHONY A. FROYD, Owner
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Pleasant Hill, CA 94523

Pharmacist License No. RPH 26581,

and

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

Pharmacist License No. RPH 32741

Respondents.

Case No. 2408

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation and Petition to Revoke Probation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation and Petition to Revoke Probation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation and Petition to Revoke Probation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation and Petition to Revoke Probation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation and Petition to Revoke Probation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code _____

Respondent's Telephone Number _____

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation and Petition to Revoke Probation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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of the State of California
2 W. LLOYD PARIS, State Bar No. 124755
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

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STATE OF CALIFORNIA

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

Case No. 2408

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

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,
17 135 Glenbridge Court
Pleasant Hill, CA 94523

18 Pharmacist License No. RPH 26581,

19 and

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

22 Pharmacist License No. RPH 32741

23 Respondents.
24

25 TO RESPONDENT:

26 Under section 11507.6 of the Government Code of the State of California, parties
27 to an administrative hearing, including the Complainant, are entitled to certain information
28

1 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
2 Government Code concerning such rights is included among the papers served.

3
4 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE HEREBY
5 REQUESTED TO:

6 1. Provide the names and addresses of witnesses to the extent known to the
7 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

8 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
9 the following in the possession or custody or under control of the Respondent:

10 a. A statement of a person, other than the Respondent, named in the initial
11 administrative pleading, or in any additional pleading, when it is claimed that the act or
12 omission of the Respondent as to this person is the basis for the administrative
13 proceeding;

14 b. A statement pertaining to the subject matter of the proceeding made by
15 any party to another party or persons;

16 c. Statements of witnesses then proposed to be called by the Respondent and
17 of other persons having personal knowledge of the acts, omissions or events which are
18 the basis for the proceeding, not included in (a) or (b) above;

19 d. All writings, including but not limited to reports of mental, physical and
20 blood examinations and things which the Respondent now proposes to offer in evidence;

21 e. Any other writing or thing which is relevant and which would be
22 admissible in evidence, including but not limited to, any patient or hospital records
23 pertaining to the persons named in the pleading;

24 f. Investigative reports made by or on behalf of the Respondent pertaining to
25 the subject matter of the proceeding, to the extent that these reports (1) contain the names
26 and addresses of witnesses or of persons having personal knowledge of the acts,
27
28

1 omissions or events which are the basis for the proceeding, or (2) reflect matters
2 perceived by the investigator in the course of his or her investigation, or (3) contain or
3 include by attachment any statement or writing described in (a) to (e), inclusive, or
4 summary thereof.

5 For the purpose of this Request for Discovery, "statements" include written
6 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
7 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
8 and written reports or summaries of these oral statements.

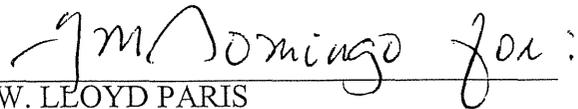
9
10 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
11 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
12 is privileged from disclosure by law or otherwise made confidential or protected as attorney's
13 work product.

14 Your response to this Request for Discovery should be directed to the undersigned
15 attorney for the Complainant at the address on the first page of this Request for Discovery **within**
16 **30 days after service** of the Accusation and Petition to Revoke Probation.

17 Failure without substantial justification to comply with this Request for Discovery
18 may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30
19 of the Government Code.

20 DATED: August 1, 2002

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

23 
24 W. LELOYD PARIS
25 Deputy Attorney General

26 Attorneys for Complainant

27 fmd#8/1/02
28 Req for discover.wpt

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE
(US Mail and Certified)

In the Matter of the Accusation and Petition to Revoke Probation Against:
**BAY CITIES PHARMACEUTICAL SERVICES, GERALD ALLEN KATAOKA and
VIVIEN W.M. TSENG**

Agency Case No. 2408

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 1, 2002, I served the attached **Accusation and Petition to Revoke Probation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation and Petition to Revoke Probation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

Bay Cities Pharmaceutical Services
Anthony A. Froyd, Owner
431 N. Buchanan Cr 10 Suite 1
Pacheco, CA 94553
Certified No. 7099 3220 0001 4652 9898

Gerald Allen Kataoka
135 Glenbridge Court
Pleasant Hill, CA 94523
Certified No. 7099 3220 0001 4652 9904

Vivien W.M. Tseng
44 Deerhaven Place
Pleasant Hill, CA 94523
Certified No. 7099 3220 0001 4652 9911

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed at San Francisco, California.

FE M. DOMINGO

Typed Name



Signature

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL



7099 3220 0001 4652 9911
7099 3220 0001 4652 9911

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Postage \$
Certified Fee \$
Return Receipt Fee (Endorsement Required) \$
Restricted Delivery Fee (Endorsement Required) \$
Total Postage & Fees \$

Postmark Here

Name (Please Print Clearly) (To be completed by mailer)
VIVIAN W.M. TSENG
Street, Apt. No., or PO Box No.
44 Deerhaven Place
City, State, ZIP+4
Pleasant Hill, CA 94523

PS Form 3811, December 1994 See Reverse for Instructions

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

Complete items 1 and/or 2 for additional services.
 Complete items 3, 4a, and 4b.
 Print your name and address on the reverse of this form so that we can return this card to you.
 Attach this form to the front of the mailpiece, or on the back if space does not permit.
 Write "Return Receipt Requested" on the mailpiece below the article number.
 The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
VIVIAN W.M. TSENG
44 Deerhaven Place
Pleasant Hill, CA 94523

4a. Article Number: 7099 3220 0001 4652 9911

4b. Service Type:
 Registered
 Express Mail
 Return Receipt for Merchandise
 COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)

6. Signature (Addressee or Agent)

1. Addressee's Address
2. Restricted Delivery

PS Form 3811, December 1994 102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

Complete items 1 and/or 2 for additional services.
 Complete items 3, 4a, and 4b.
 Print your name and address on the reverse of this form so that we can return this card to you.
 Attach this form to the front of the mailpiece, or on the back if space does not permit.
 Write "Return Receipt Requested" on the mailpiece below the article number.
 The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
BAY CITIES PHARMACEUTICAL SVCS
ANTHONY A. FROYD, OWNER
431 N. Buchanan Cr 10 Suite 1
Pacheco, CA 94553

4a. Article Number: 7099 3220 0001 4652 9898

4b. Service Type:
 Registered
 Express Mail
 Return Receipt for Merchandise
 Certified
 Insured
 COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)

6. Signature (Addressee or Agent)

PS Form 3811, December 1994 102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Postage \$
Certified Fee \$
Return Receipt Fee (Endorsement Required) \$
Restricted Delivery Fee (Endorsement Required) \$
Total Postage & Fees \$

Postmark Here

Name (Please Print Clearly) (To be completed by mailer)
Bay Cities Pharm. Svcs/A. Froyd, Owner
Street, Apt. No., or PO Box No.
431 N. Buchanan Cr 10 Suite 1
City, State, ZIP+4
Pacheco, CA 94553

PS Form 3800, July 1989 See Reverse for Instructions

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

Complete items 1 and/or 2 for additional services.
 Complete items 3, 4a, and 4b.
 Print your name and address on the reverse of this form so that we can return this card to you.
 Attach this form to the front of the mailpiece, or on the back if space does not permit.
 Write "Return Receipt Requested" on the mailpiece below the article number.
 The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:
GERALD ALLEN KATAOKA
135 Glenbridge Court
Pleasant Hill, CA 94523

4a. Article Number: 7099 3220 0001 4652 9904

4b. Service Type:
 Registered
 Express Mail
 Return Receipt for Merchandise
 Certified
 Insured
 COD

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)

6. Signature (Addressee or Agent)

1. Addressee's Address
2. Restricted Delivery

PS Form 3811, December 1994 102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Postage \$
Certified Fee \$
Return Receipt Fee (Endorsement Required) \$
Restricted Delivery Fee (Endorsement Required) \$
Total Postage & Fees \$

Postmark Here

Name (Please Print Clearly) (To be completed by mailer)
Gerald Allen Kataoka
Street, Apt. No., or PO Box No.
135 Glenbridge Court
City, State, ZIP+4
Pleasant Hill, CA 94523

Exhibit B
Postal Return Documents

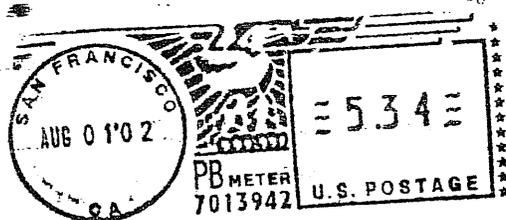
STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

L. Paris

CERTIFIED MAIL



7099 3220 0001 4652 9898



Bay Cities Pharmaceutical Services
Anthony A. Froyd, Owner
431 N. Buchanan St. 10 Suite 1
Pacheco, CA 94555

NO SUCH STREET NUMBER
 MOVED, LEFT NO ADDRESS
 MOVED, NOT FORWARDABLE

RECEIVED
ATTORNEY GENERAL
2002 AUG -9
CA. DEPT. OF JUSTICE
SAN FRANCISCO
MAIL ROOM
TO OFFICE

PLACE STICKER AT TOP OF ENVELOPE
FOLD AT DOTTED LINE
TO THE RIGHT OF RETURN ADDRESS

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

3. Article Addressed to:
BAY CITIES PHARMACEUTICAL SVCS
ANTHONY A. FROYD, OWNER
431 N. Buchanan Cr 10 Suite 1
Pacheco, CA 94553

4a. Article Number
7099 3220 0001 4652 9898

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

Thank you for using Return Receipt Service.