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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 ELIZABETH LOVE SMITH, RPH  
13 1103 Wilbur Avenue  
14 San Diego, CA 62109

15 Pharmacist License No. RPH 39152

16 Respondent.

Case No. 2436

OAH No. L-2002030204

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
23 by Bill Lockyer, Attorney General of the State of California, by James M. Ledakis, Deputy  
24 Attorney General.

25 2. Respondent ELIZABETH LOVE SMITH, RPh (Respondent) is  
26 represented in this proceeding by attorney Wendy A. McGhee, Esq., whose address is 410 South  
27 Melrose Drive, Suite 106, Vista, CA 92084, 7000 0520 0025 1945 1098.

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1           1.     **Actual Suspension - Pharmacist.** As part of probation, Respondent is  
2 suspended from the practice of pharmacy for 90 days, however, Respondent is given 90 days  
3 credit for the one year she remained unemployed as a pharmacist. Therefore, Respondent has  
4 completed her 90 day suspension.

5           2.     **Obey All Laws.** Respondent shall obey all federal and state laws and  
6 regulations substantially related or governing the practice of pharmacy.

7           3.     **Reporting to the Board.** Respondent shall report to the Board quarterly.  
8 The report shall be made either in person or in writing, as directed. Respondent shall state under  
9 penalty of perjury whether there has been compliance with all the terms and conditions of  
10 probation. If the final probation report is not made as directed, probation shall be extended  
11 automatically until such time as the final report is made.

12          4.     **Interview with the Board.** Upon receipt of reasonable notice, respondent  
13 shall appear in person for interviews with the board upon request at various intervals at a location  
14 to be determined by the board. Failure to appear for a scheduled interview without prior  
15 notification to board staff shall be considered a violation of probation.

16          5.     **Cooperation with Board Staff.** Respondent shall cooperate with the  
17 Board's inspection program and in the Board's monitoring and investigation of the Respondent's  
18 compliance with the terms and conditions of Female probation. Failure to cooperate shall be  
19 considered a violation of probation.

20          6.     **Continuing Education.** Respondent shall provide evidence of efforts to  
21 maintain skill and knowledge as a pharmacist as directed by the Board.

22          7.     **Notice to Employers.** Respondent shall notify all present and prospective  
23 employers of the decision in case No. 2436 and the terms, conditions and restrictions imposed on  
24 Respondent by the decision. Within thirty (30) days of the effective date of this decision, and  
25 within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause  
26 Female employer to report to the Board in writing acknowledging the employer has read the  
27 decision in case No. 2436.

28                If Respondent works for or is employed by or through a pharmacy employment

1 service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at  
2 which she is to employed or used of the fact and terms of the decision in case number 2436 in  
3 advance of the Respondent commencing work at the pharmacy.

4 "Employment" within the meaning of this provision shall include any full-time,  
5 part-time, temporary or relief service or pharmacy management service as a pharmacist, whether  
6 the Respondent is considered an employee or independent contractor.

7 **8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-**  
8 **Charge.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a  
9 preceptor, nor shall Respondent be the pharmacist-in-charge of any pharmacy licensed by the  
10 Board.

11 **9. Reimbursement of Board Costs.** Respondent shall pay to the Board its  
12 costs of investigation and prosecution in the amount of \$3,085.

13 The filing of bankruptcy by respondent shall not relieve the respondent of his or  
14 her responsibility to reimburse the board its costs of investigation and prosecution.

15 **10. Probation Monitoring Costs.** Respondent shall pay the costs associated  
16 with probation monitoring as determined by the Board each and every year of probation. Such  
17 costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs  
18 shall be considered a violation of probation.

19 **11. Status of License.** Respondent shall, at all times while on probation,  
20 maintain an active current license with the Board, including any period during which suspension  
21 or probation is tolled. If Respondent's license expires by operation of law or otherwise, upon  
22 renewal or re-application, Respondent's license shall be subject to all terms of this probation not  
23 previously satisfied.

24 Respondent shall, at all times while on probation, maintain a current license with  
25 the Board. If Respondent submits an application to the Board, and the application is approved,  
26 for a change of location, change or permit or change of ownership, the Board shall retain  
27 continuing jurisdiction over the license, and the Respondent shall remain on probation as  
28 determined by the Board or its designee.

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**12. License Surrender while on Probation/Suspension**

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his or her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

**13. Notification of Employment/Mailing Address Change.**

Respondent shall notify the board within ten (10) days of a change in employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

**14. Tolling of Probation.**

Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in California, Respondent must notify the board in writing within ten (10) days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy.

"Cessation of practice" means any period of time exceeding thirty (30) days in which Respondent is not engaged in the practice of pharmacy as defined in section 4052 of the Business and Professions Code.

Respondent shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will be a

1 violation of probation. If respondent has not complied with this condition during the  
2 probationary term, and respondent has presented sufficient documentation of his or her good  
3 faith efforts to comply with this condition, and if no other conditions have been violated, the  
4 board, in its discretion, may grant an extension of respondent's probation period up to one year  
5 without further hearing in order to comply with this condition.

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

16           16.    **Completion of Probation.** Upon successful completion of probation,  
17 Respondent's license will be fully restored.

18           17.    **Adoption of Stipulation.** It is understood that, in deciding whether to  
19 adopt this stipulation, the Board may receive oral and written presentation from, and make  
20 inquiries of, complainant, her attorneys, the Board's attorneys, consulting experts, and the  
21 Board's enforcement committee.

22           18.    **Rehabilitation Program.** Pharmacist Recovery Program (PRP)  
23 Within 30 days of the effective date of this decision, respondent shall contact the Pharmacists  
24 Recovery Program for evaluation and shall successfully participate in and complete the treatment  
25 contract and any subsequent addendums as recommended and provided by the PRP and as  
26 approved by the board. The costs for PRP participation shall be borne by the respondent.

27  
28 If respondent is currently enrolled in the PRP, said participation is now mandatory and is no

1 longer considered a self-referral under Business and Professions Code section 4363, as of the  
2 effective date of this decision. Respondent shall successfully participate in and complete his or  
3 her current contract and any subsequent addendums with the PRP. Probation shall be  
4 automatically extended until respondent successfully completes his or her treatment contract.  
5 Any person terminated from the program shall be automatically suspended upon notice by the  
6 board. Respondent may not resume the practice of pharmacy until notified by the board in  
7 writing. The board shall retain jurisdiction to institute action to terminate probation for any  
8 violation of this term.

9           19.       **Random Fluid Testing.** Within 30 days of the effective date of this  
10 decision, respondent shall contact the Pharmacists Recovery Program for evaluation and shall  
11 successfully participate in and complete the treatment contract and any subsequent addendums as  
12 recommended and provided by the PRP and as approved by the board. The costs for PRP  
13 participation shall be borne by the respondent.

14  
15           If respondent is currently enrolled in the PRP, said participation is now mandatory and is  
16 no longer considered a self-referral under Business and Professions Code section 4363, as of the  
17 effective date of this decision. Respondent shall successfully participate in and complete his or  
18 her current contract and any subsequent addendums with the PRP. Probation shall be  
19 automatically extended until respondent successfully completes his or her treatment contract.  
20 Any person terminated from the program shall be automatically suspended upon notice by the  
21 board. Respondent may not resume the practice of pharmacy until notified by the board in  
22 writing. The board shall retain jurisdiction to institute action to terminate probation for any  
23 violation of this term.

24           20.       **Supervised Practice.** Respondent shall practice only under the  
25 supervision of a pharmacist not on probation to the Board.

26           Respondent shall not practice until the supervisor is approved by the board or its  
27 designee. The supervision as required by the Board, may be:

28           Continuous - 75% to 100% of a work week

1                   Substantial - At least 50% of a work week

2                   Partial - At least 25% of a work week

3                   Daily Review - Supervisor's review of probationer's daily activities within 24  
4                   days.

5                   Within thirty (30) days of the effective date of this decision, Respondent shall  
6                   have his/her supervisor submit a report to the Board in writing stating the supervisor has read the  
7                   decision in case number 2436. If Respondent changes employment, Respondent shall have her  
8                   new supervisor, within fifteen (15) days after employment commences, submit a report to the  
9                   Board in writing stating the supervisor has read the decision in case number 2436. Within ten  
10                  (10), days of leaving employment, Respondent shall so notify the Board in writing.

11                  21.     **No Ownership of Premises.** Respondent shall not own, have any legal  
12                  or beneficial interest in, or serve as a manager, administrator, member, officer, director,  
13                  associate, or partner of any business, firm, partnership, or corporation currently or hereinafter  
14                  licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any  
15                  entity licensed by the Board within 90 days following the effective date of this decision and shall  
16                  immediately thereafter provide written proof thereof to the Board.

17                  22.     **Random Drug Screening** (If PRP provision is required, this term is also  
18                  to be included to allow for continued fluid monitoring by the Board in cases where a respondent  
19                  successfully complete the PRP before completion of the probation period; terms also appropriate  
20                  for those cases where the evidence demonstrates that the respondent may have a problem with  
21                  chemical dependency (drugs, alcohol) but where the PRP is not required.)

22  
23                  Within 30 days of the effective date of this decision, respondent shall contact the Pharmacists  
24                  Recovery Program for evaluation and shall successfully participate in and complete the treatment  
25                  contract and any subsequent addendums as recommended and provided by the PRP and as  
26                  approved by the board. The costs for PRP participation shall be borne by the respondent.

27                  If respondent is currently enrolled in the PRP, said participation is now mandatory and is no  
28                  longer considered a self-referral under Business and Professions Code section 4363, as of the



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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: April 24, 2002.

BILL LOCKYER, Attorney General  
of the State of California

  
\_\_\_\_\_  
JAMES M. LEDAKIS  
Deputy Attorney General  
Attorneys for Complainant

DOJ Docket Number: 03583110-SD2001AD0643

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

In the Matter of the Accusation Against:

ELIZABETH LOVE SMITH, RPH  
1103 Wilbur Avenue  
San Diego, CA 62109

Pharmacist License No. RPH 39152

Respondent.

Case No. 2436

OAH No. L-2002030204

**DECISION AND ORDER**

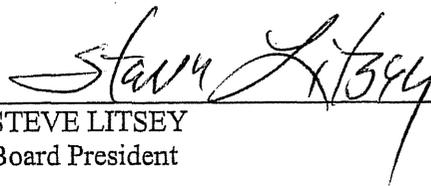
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 4, 2002.

It is so ORDERED June 4, 2002.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By:

  
STEVE LITSEY  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JAMES M. LEDAKIS, State Bar No. 132645  
Deputy Attorney General  
3 California Department of Justice  
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San Diego, CA 92186-5266  
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7 Facsimile: (619) 645-2061  
8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

14 ELIZABETH LOVE SMITH, RPH  
1103 Wilbur Avenue  
15 San Diego, CA 92109  
16 Pharmacist License No. RPH 39152

17 Respondent.

Case No. 2436

**ACCUSATION**

18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her  
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
23 Affairs.  
24 2. On or about March 13, 1985, the Board of Pharmacy issued License No.  
25 RPH 39152 to ELIZABETH LOVE SMITH, RPH ("Respondent"). It will expire on February  
26 28, 2003.  
27  
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1 JURISDICTION

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

4 4. Section 4022 of the Code states:

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
6 self-use, except veterinary drugs that are labeled as such, and includes the following:

7 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
8 without prescription," 'Rx only,' or words of similar import...,

9 " . . .

10 "(c) Any other drug or device that by federal or state law can be lawfully  
11 dispensed only on prescription or furnished pursuant to Section 4006."

12 5. Section 4301 of the Code states in pertinent part:

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

17 " . . .

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

21 "(g) Knowingly making or signing any certificate or other document that falsely  
22 represents the existence or nonexistence of a state of facts.

23 "(h) The administering to oneself, of any controlled substance, or the use of any  
24 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous  
25 or injurious to oneself, to a person holding a license under Chapter 9 (commencing with  
26 Section 4000) of the Business and Professions Code, or to any other person or to the  
27 public, or to the extent that the use impairs the ability of the person to conduct with safety  
28 to the public the practice authorized by the license. . .

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"...

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

"...

6. Section 4059 of the Code states in pertinent part:

"(a) That no person shall furnish any dangerous drug or dangerous device except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. . . .

7. Section 4060 of the Code states in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or

1 furnished pursuant to a drug order issued by a physician assistant pursuant to Section  
2 3502.1 or a nurse practitioner pursuant to Section 2836.1 . . ."

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

7 9. This Accusation refers to the following sections of the Health & Safety  
8 Code:

9 10. H & S Code section 11173 (a) states in pertinent part:

10 "No person shall obtain or attempt to obtain controlled substances, or procure or  
11 attempt to procure the administration of or prescription for controlled substances, (1) by  
12 fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material  
13 fact."

14 11. Health & Safety Code (H&S Code) section 11170 states in pertinent part:  
15 "No person shall prescribe, administer, or furnish a controlled substance for himself."

16 12. California Code of Regulations Section 1770 states in pertinent part:  
17 "For purposes of denial, suspension, or revocation of a personal or facility license  
18 pursuant to Division 1.5 (commencing with Section 475) of the Business & Professions  
19 Code, a crime or act shall be considered substantially related to the qualifications,  
20 functions, or duties of a licensee or registrant if to a substantial degree it evidences  
21 present or potential unfitness of a licensee or registrant to perform the functions  
22 authorized by his license or registration in a manner consistent with the public health,  
23 safety, or welfare."

24 **DRUGS**

25 13. The following drugs are dangerous drugs under Business & Professions  
26 Code section 4022 in that they can only be lawfully dispensed by prescription of an authorized  
27 prescriber: Ambien, Bactrim DS, Entex LA, Relafen, and Vicodin.

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(a) Ambien is classified as a Schedule IV controlled substance under H&S Code section 11057 (d).

(b) Vicodin is classified as a Schedule III controlled Substance under H&S Code section 11056 (e).

(c) Bactrim DS, Entex LA and Relafen are all classified as dangerous drugs according to Business and Professions Code section 4022

**CHARGES AND ALLEGATIONS**

**FIRST CAUSE FOR DISCIPLINE**

(Unprofessional Conduct for Fraud and Deceit)

14. Respondent is subject to disciplinary action under section 4301 (f) for the commission of an act involving moral turpitude, dishonesty, fraud, deceit or corruption in that from June 25, 1999 through June 17, 2000, Respondent, admitted that she forged seven prescriptions for Ambien, Bactrim DS, Entex LA, Relafen and Vicodin for her own use while she worked as a pharmacist at Scripps Memorial Hospital Pharmacy.

**SECOND CAUSE FOR DISCIPLINE**

(Unprofessional Conduct for Knowingly Making a False Representation of Fact)

15. Respondent is subject to disciplinary action under section 4301 (g) for knowingly making and signing forged prescriptions in order to obtain controlled substances, as more particularly set forth in paragraphs 13 and 14 and incorporated by reference.

**THIRD CAUSE FOR DISCIPLINE**

(Unprofessional Conduct for Violation of State Law Regulating Dangerous Drugs)

16. Respondent is subject to disciplinary action under section 4301 (j) in conjunction with H & S Code sections 11173(a) and 11170 as set forth in paragraphs 13 and 14 above and incorporated herein.

/

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct for Conviction of a Crime Substantially  
3 Related to a Licensee's Qualifications, Functions and Duties)

4 17. Respondent is subject to disciplinary action under section 4301(l) in that she  
5 admitted to a violation of H & S Code section 11368 by pleading guilty in the Superior Court of  
6 California, County of San Diego, in Criminal Case No. 814879 to Count Five of said Complaint,  
7 wherein Respondent did obtain a narcotic drug by a forged or altered prescription as set forth in  
8 paragraphs 13 and 14 above which are incorporated by reference.

9 **PRAYER**

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

- 12 1. Revoking or suspending License Number RPH 39152, issued to  
13 ELIZABETH LOVE SMITH, RPH;
- 14 2. Ordering ELIZABETH LOVE SMITH, RPH to pay the Board of  
15 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
16 Business and Professions Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 1/28/02

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21 PATRICIA F. HARRIS  
22 Executive Officer  
23 Board of Pharmacy  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

24 jml.11-7-01