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of the State of California
FRED A. SLIMP II, State Bar No. 118693
Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 2478

WALGREENS NO. 2939
333 El Camino Real
San Bruno, CA 94066

OAH No. N2002050495

**STIPULATED SETTLEMENT
AND ORDER**

Pharmacy License No. PHY 39380,

(Walgreens No. 2939 and Lo, only)

CATHERINE LAI-HUNG LO
333 El Camino Real
San Bruno, CA 94066

Pharmacist License No. RPH 50192,

and

PAULA RABB
1651 Claremont Drive
San Bruno, CA 94066

Pharmacy Technician License No. TCH 29621

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between Patricia F.

Harris, complainant, Walgreens No. 2939, respondent, and Catherine Lai-Hung Lo, respondent,
parties to the above-entitled proceedings, that the following matters are true:

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1 PARTIES

2 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
3 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
4 by Bill Lockyer, Attorney General of the State of California, by Fred A. Slimp II, Deputy
5 Attorney General.

6 2. Respondents Walgreens No. 2939 and Catherine Lai-Hung Lo are
7 represented by Gregory P. Matzen, Esq., and Lewis, Brisbois, Bisgaard & Smith, LLP, whose
8 address is 2500 Venture Oaks Way, Suite 200, Sacramento, CA 95833.

9 3. On or about August 2, 1993, the Board of Pharmacy issued Pharmacy
10 License Number PHY 39380 to Walgreens No. 2939 (Respondent Walgreens). The Pharmacy
11 License was in full force and effect at all times relevant to the charges brought herein and will
12 expire on May 1, 2002, unless renewed.

13 4. On or about August 18, 1998, the Board of Pharmacy issued Pharmacist
14 License Number RPH 50192 to Catherine Lai-Hung Lo (Respondent Lo). The Pharmacist
15 License was in full force and effect at all times relevant to the charges brought herein and will
16 expire on September 30, 2002, unless renewed. Respondent Lo has been Pharmacist-in-Charge
17 at respondent pharmacy since November 19, 1999.

18 JURISDICTION

19 5. Accusation No. 2478 was filed before the Board of Pharmacy (Board),
20 Department of Consumer Affairs, and is currently pending against Respondents. The Accusation
21 and all other statutorily required documents were properly served on Respondents on March 13,
22 2002. Respondents timely filed Notices of Defense contesting the Accusation. A copy of
23 Accusation No. 2478 is attached as Exhibit A and incorporated herein by reference.

24 ADVISEMENT AND WAIVERS

25 6. Respondents, and each of them, have carefully read, fully discussed
26 with counsel, and understand the charges and allegations in Accusation No. 2478. Respondents,
27 and each of them, have also carefully read, fully discussed with counsel, and understand
28 the effects of this Stipulated Settlement and Order.

7. Respondents, and each of them, are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondents, and each of them, voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents, and each of them, admit the truth of the allegations set forth in paragraphs 41-43 and 45-46 of Accusation No. 2478 in that they unknowingly allowed respondent Rabb's conduct to occur.

10. Respondents, and each of them, agree to be bound by the Board's imposition of sanctions as set forth in the Order below.

RESERVATION

11. The admissions made by respondents herein as set forth in paragraph 9, above, are only for the purposes of this proceeding, or any other proceedings in which the California Board of Pharmacy is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents, and each of them, understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents, and each of them, understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts

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

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

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

11 **ORDER**

12 IT IS HEREBY ORDERED that:

13 1. Registered Pharmacist Catherine Lai-Hung Lo is hereby cited for
14 the violations set forth in Accusation number 2478 pursuant to Business and Professions Code
15 section 125.9

16 2. Licensed Pharmacy Walgreens No. 2939 is hereby cited for the violations
17 set forth in Accusation number 2478 pursuant to Business and Professions Code section 125.9
18 and, pursuant to the same statutory authority, is fined two thousand dollars (\$2,000). Said fine
19 shall be paid within thirty (30) days from the effective date of this decision.

20 3. As to respondent Catherine Lai-Hung Lo, Accusation number 2478
21 is withdrawn effective immediately upon the effective date of this decision.

22 4. As to respondent Walgreens No. 2939, Accusation number 2478 shall be
23 withdrawn effective immediately upon payment of the fine imposed pursuant to paragraph 2,
24 above. Should respondent Walgreens No. 2939 fail to pay the fine as required in paragraph 2,
25 above, this stipulated settlement shall be null and void and of no effect whatsoever as to
26 respondent Walgreens No. 2939, and complainant may institute, reinstitute, or recommence
27 such disciplinary proceedings against respondent Walgreens No. 2939 as shall then be by law
28 available to complainant.

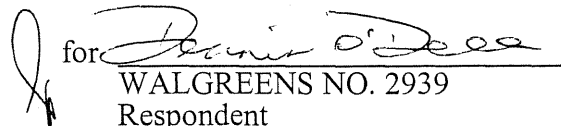
1 ACCEPTANCE

2 We, and each of us, have carefully read the above Stipulated Settlement and Order
3 and have fully discussed it with our attorney, Gregory P. Matzen, Esq., and Lewis, Brisbois,
4 Bisgaard & Smith, LLP. We, and each of us, understand the stipulation and the effect it will
5 have on our registered pharmacist license and pharmacy license, respectively. We, and each
6 of us, enter into this Stipulated Settlement and Order voluntarily, knowingly, and intelligently,
7 and agree to be bound by the Decision and Order of the Board of Pharmacy.

8
9 DATED: 9/25/2002

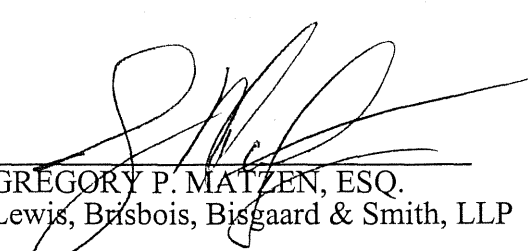
10 
11 CATHERINE LAI-HUNG LO, R.Ph.
12 Respondent

13 DATED: 10.7.02

14
15  for Walgreens No. 2939
16 Respondent

17 I have read and fully discussed with Respondents Catherine Lai-Hung Lo
18 and Walgreens No. 2939, and each of them, the terms and conditions and other matters contained
19 in the above Stipulated Settlement and Order. I approve its form and content.

20
21 DATED: 9/26/02

22 
23 GREGORY P. MATZEN, ESQ.
24 Lewis, Brisbois, Bisgaard & Smith, LLP
25 Attorneys for Respondents

26 ///

27 ///

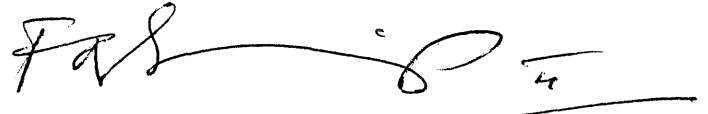
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ENDORSEMENT

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

DATED: 10-31-02

BILL LOCKYER, Attorney General
of the State of California

A handwritten signature in dark ink, appearing to read 'FAS', followed by a horizontal line and a small mark resembling a checkmark or the number '4'.

FRED A. SLIMP II
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against:

WALGREENS NO. 2939
333 El Camino Real
San Bruno, CA 94066

Pharmacy License No. PHY 39380,

CATHERINE LAI-HUNG LO
333 El Camino Real
San Bruno, CA 94066

Pharmacist License No. RPH 50192,

and

PAULA RABB
1651 Claremont Drive
San Bruno, CA 94066

Pharmacy Technician License No. TCH 29621

Respondents.

Case No. 2478

OAH No. N2002050495

(Walgreens No. 2939 and Lo, only)

DECISION AND ORDER

The attached Stipulated Settlement and 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 December 11, 2002.

It is so ORDERED December 11, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: _____

JOHN D. JONES
Board President

BILL LOCKYER, Attorney General
of the State of California
FRED A. SLIMP II, State Bar No. 118693
Deputy Attorney General
California Department of Justice
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Case No. 2478

WALGREENS NO. 2939
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ACCUSATION

Pharmacy License No. PHY 39380,

CATHERINE LAI-HUNG LO
333 El Camino Real
San Bruno, CA 94066

Pharmacist License No. RPH 50192,

and

PAULA RABB
1651 Claremont Drive
San Bruno, CA 94066

Pharmacy Technician License No. TCH 29621

Respondents.

Complainant alleges:

PARTIES

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

2. On or about August 2, 1993, the Board of Pharmacy issued Pharmacy License Number PHY 39380 to Walgreens No. 2939 (Respondent Walgreens). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2002, unless renewed.

3. On or about August 18, 1998, the Board of Pharmacy issued Pharmacist License Number RPH 50192 to Catherine Lai-Hung Lo (Respondent Lo). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2002, unless renewed. Respondent Lo has been Pharmacist-in-Charge at respondent pharmacy since November 19, 1999.

4. On or about June 11, 1999, the Board of Pharmacy issued Pharmacy Technician License Number TCH 29621 to Paula Rabb (Respondent Rabb). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2002, unless renewed.

JURISDICTION

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).

6. Section 4300 of the Code provides in pertinent part that every license issued may be suspended or revoked.

7. Section 4301(f) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which shall include, but is not limited to, the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

8. Section 4301(g) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which shall include, but is not limited to, knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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1 9. Section 4301(h) of the Code provides in pertinent part that the Board shall
2 take action against any holder of a license who is guilty of unprofessional conduct, which shall
3 include, but is not limited to, the administering to oneself, of any controlled substance, or the use
4 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
5 or injurious to oneself, to a person holding a license under this chapter, or to any other person or
6 to the public.

7 10. Section 4301(j) of the Code provides in pertinent part that the Board shall
8 take action against any holder of a license who is guilty of unprofessional conduct, which shall
9 include, but is not limited to, the violation of any of the statutes of this state or of the United
10 States regulating controlled substances and dangerous drugs.

11 11. Section 4301(o) of the Code provides in pertinent part that the Board shall
12 take action against any holder of a license who is guilty of unprofessional conduct, which shall
13 include, but is not limited to, violating or attempting to violate, directly or indirectly, or assisting
14 in or abetting the violation of or conspiring to violate any provision or term of Chapter 9
15 (commencing with Section 4000) of the Business and Professions Code or of the applicable
16 federal and state laws and regulations governing pharmacy, including regulations established by
17 the board.

18 12. Section 4022 of the Code in pertinent part defines a dangerous drug as any
19 drug unsafe for self-medication or that can lawfully be dispensed only by prescription.

20 13. Section 4059 of the Code provides in pertinent part that no person shall
21 furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist,
22 optometrist, or veterinarian.

23 14. Section 4060 of the Code provides in pertinent part that no person shall
24 possess any controlled substance, except that furnished to a person upon the prescription of a
25 physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a
26 physician assistant pursuant to Section 3502.1 or a nurse practitioner pursuant to Section 2836.1.

27 15. Section 4063 of the Code provides in pertinent part that no prescription for
28 any dangerous drug may be refilled except upon authorization of the prescriber.

1 16. Section 4081 of the Code provides in pertinent part that all records of sale,
2 acquisition or disposition of dangerous drugs shall be at all times, during business hours, open to
3 inspection by authorized officers of the law, and shall be preserved for at least three years from
4 the date of making. A current inventory shall be kept by every pharmacy. The owner, officer and
5 partner of any pharmacy shall be jointly responsible, with the pharmacist-in-charge, for
6 maintaining the records and inventory described in this section.

7 17. Section 4113 of the Code provides in pertinent part that every pharmacy
8 shall designate a pharmacist-in-charge who shall be responsible for the pharmacy's compliance
9 with all state and federal laws and regulations pertaining to the practice of pharmacy.

10 18. Section 4324 of the Code provides in pertinent part that every person who
11 signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters,
12 publishes, passes, or attempts to pass, as genuine, any prescription for any drug is guilty of
13 forgery and upon conviction shall be punished by imprisonment in the state prison, or by
14 imprisonment in the county jail for not more than one year.

15 19. Health and Safety Code (H&S Code) section 11150 provides that no
16 person other than a physician, dentist, podiatrist, veterinarian, pharmacist, registered nurse, nurse
17 practitioner, physician assistant, or an optometrist shall write or issue a prescription.

18 20. H&S Code section 11170 provides that no person shall prescribe,
19 administer or furnish a controlled substance for himself or herself.

20 21. H&S Code section 11173(a) provides that no person shall obtain or
21 attempt to obtain controlled substances, or procure or attempt to procure the administration of or
22 prescription of controlled substances, by fraud, deceit, misrepresentation or subterfuge or by the
23 concealment of a material fact.

24 22. Section 125.3 of the Code provides in pertinent part that the Board may
25 request the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

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1 23. Title 16, California Code of Regulations, section 1718 provides in
2 pertinent part that "current inventory" as used in Code section 4081, above, shall be considered
3 to include complete accountability for all dangerous drugs handled by every licensee enumerated
4 in section 4081.

5 24. Title 21, Code of Federal Regulations, section 1301.71 provides in
6 pertinent part that all registrants shall provide effective controls and procedures to guard against
7 theft and diversion of controlled substances, including adequately supervising employees having
8 access to narcotics storage areas.

DRUGS

25. Ativan, a trade name for the benzodiazepine compound lorazepam, is a Schedule IV controlled substance as defined by H&S Code section 11057(d) and a dangerous drug within the meaning of Code section 4022.

13 26. Cipro (ciprofloxacin) is a dangerous drug within the meaning of Code
14 section 4022.

15 27. Flexeril (cyclobenzaprine) is a dangerous drug within the meaning of Code
16 section 4022.

28. Valium, a trade name for the benzodiazepine compound diazepam, is a Schedule IV controlled substance as defined by H&S Code section 11057(d)(8) and a dangerous drug within the meaning of Code section 4022.

20 29. Vicodin and Vicodin Extra Strength ("Vicodin ES"), a trade name for a
21 chemical compound of hydrocodone and acetaminophen, is a Schedule III controlled substance
22 as defined by H&S Code section 11056(e)(4) and a dangerous drug within the meaning of Code
23 section 4022.

24 30. Vicoprofen, a trade name for a chemical compound of hydrocodone and
25 ibuprofen, is a Schedule III controlled substance as defined by H&S Code section 11056(e)(4)
26 and a dangerous drug within the meaning of Code section 4022.

31. Respondents are guilty of unprofessional conduct and subject to discipline
as set forth more particularly hereinafter.

1 *Pharmacy Technician Rabb*

2 FIRST CAUSE FOR DISCIPLINE

3 (Moral Turpitude, Fraud, Dishonesty, Corruption)

4 32. Commencing on or about March 28, 2000, and continuing thereafter until
5 on or about August 31, 2000, respondent Rabb, then functioning as a pharmacy technician at
6 respondent pharmacy, and while respondent pharmacist was pharmacist-in-charge, dishonestly,
7 fraudulently, deceitfully, and/or corruptly entered or altered twenty-two (22) prescriptions and/or
8 refills for controlled substances and/or dangerous drugs in respondent pharmacy's computer
9 system without proper authorization from a physician or other person authorized by law to
10 prescribe the said controlled substances and/or dangerous drugs and, by means of the
11 unauthorized prescriptions and/or refills, possessed, administered to herself, and/or distributed or
12 furnished the said controlled substances and/or dangerous drugs for her own use or the use of
13 others as follows:

- 14 (a) March 28, 2000 - Vicodin, 100 tablets, for the use of another
15 (b) April 11, 2000 - Vicoprofen, 30 tablets, for her own use
16 (c) April 11, 2000 - Flexeril, 30 tablets, for her own use
17 (d) April 12, 2000 - Vicodin, 100 tablets, for the use of another
18 (e) April 17, 2000 - Ativan, 90 tablets, for her own use
19 (f) May 8, 2000 - Vicoprofen, 30 tablets, for her own use
20 (g) May 22, 2000 - Vicoprofen, 60 tablets, for her own use
21 (h) May 31, 2000 - Cipro, 14 tablets, for her own use
22 (i) June 5, 2000 - Vicoprofen, 60 tablets, for her own use
23 (j) June 7, 2000 - Valium, 90 tablets, for the use of another
24 (k) June 12, 2000 - Ativan, 90 tablets, for her own use
25 (l) June 26, 2000 - Vicoprofen, 30 tablets, for her own use
26 (m) July 11, 2000 - Vicodin, 100 tablets, for the use of another
27 (n) July 11, 2000 - Vicodin ES, 100 tablets, for the use of another
28 (o) July 11, 2000 - Vicoprofen, 30 tablets, for her own use

- 1 (p) July 17, 2000 - Valium, 90 tablets, for the use of another
2 (q) August 2, 2000 - Vicoprofen, 30 tablets, for her own use
3 (r) August 3, 2000 - Vicodin ES, 100 tablets, for the use of another
4 (s) August 14, 2000 - Flexeril, 30 tablets, for her own use
5 (t) August 21, 2000 - Ativan, 90 tablets, for her own use
6 (u) August 23, 2000 - Valium, 90 tablets, for the use of another
7 (v) August 31, 2000 - Vicoprofen, 30 tablets, for her own use

8 33. Respondent Rabb's conduct as set forth in paragraph 32, above,
9 constitutes unprofessional conduct within the meaning of Code section 4301(f).

10 SECOND CAUSE FOR DISCIPLINE

11 (Making Document with False Representation)

12 34. Complainant realleges the allegations contained in paragraph 32, above,
13 and incorporates them herein by reference as if fully set forth at this point.

14 35. Respondent Rabb's conduct as set forth in paragraph 32, above,
15 constitutes unprofessional conduct within the meaning of Code section 4301(g).

16 THIRD CAUSE FOR DISCIPLINE

17 (Self-Administration of Controlled Substance)

18 36. Complainant realleges the allegations contained in paragraph 32, above,
19 and incorporates them herein by reference as if fully set forth at this point.

20 37. Respondent Rabb's conduct as set forth in paragraph 32, above, with
21 respect to paragraph 32 generally and to subparagraphs 32(b), 32(e), 32(f), 32(g), 32(i), 32(k),
22 32(l), 32(o), 32(q), 32(t), and 32(v) particularly, constitutes unprofessional conduct within the
23 meaning of Code section 4301(h).

24 FOURTH CAUSE FOR DISCIPLINE

25 (Violation of California and Federal Drug Statutes)

26 38. Complainant realleges the allegations contained in paragraph 32, above,
27 and incorporates them herein by reference as if fully set forth at this point.

28 ///

1 39. Respondent Rabb's conduct as set forth in paragraph 32, above,
2 constitutes violation of Code sections 4059, 4060, 4063, 4324 and violation of H&S Code
3 sections 11150, 11170 and 11173(a), and therefore constitutes unprofessional conduct within the
4 meaning of Code section 4301(j).

5 *Pharmacist Lo and Pharmacy Walgreens*

6 FIFTH CAUSE FOR DISCIPLINE

7 (Violation of Pharmacy Laws and Regulations)

8 40. Complainant realleges the allegations contained in paragraph 32, above,
9 and incorporates them herein by reference as if fully set forth at this point.

10 41. The twenty-two (22) unauthorized prescriptions and/or refills attributable
11 to the conduct of respondent Rabb as set forth in paragraph 32, above, resulted in respondent
12 Rabb's obtaining 1,340 doses of controlled substances and seventy-four (74) doses of dangerous
13 drugs during the period indicated, i.e., between March 28, 2000, and August 31, 2000.

14 42. During said period, respondent Lo and respondent Walgreens failed to
15 maintain records of disposition and a current inventory of dangerous drugs by virtue of allowing
16 an employee to process twenty-two (22) unauthorized prescriptions and/or refills and to
17 unlawfully obtain controlled substances and dangerous drugs, as alleged above.

18 43. The conduct of respondent Lo and respondent Walgreens as alleged above
19 constitutes violation of Code section 4081, as interpreted by Title 16, California Code of
20 Regulations, section 1718, and therefore constitutes unprofessional conduct within the meaning
21 of Code sections 4301(j) and/or 4301(o).

22 SIXTH CAUSE FOR DISCIPLINE

23 (Violation of Pharmacy Laws and Regulations)

24 44. Complainant realleges the allegations contained in paragraphs 32 and 41,
25 above, and incorporates said paragraphs herein by reference as if fully set forth at this point.

26 45. During the period between March 28, 2000, and August 31, 2000,
27 respondent Lo and respondent Walgreens failed to maintain adequate security of the prescription
28 department by failing to prevent the theft or diversion by respondent Rabb of 1,340 doses of

1 controlled substances and seventy-four (74) doses of dangerous drugs.

2 46. The conduct of respondent Lo and respondent Walgreens as alleged above
3 constitutes violation of Title 21, Code of Federal Regulations, section 1301.71, and therefore
4 constitutes unprofessional conduct within the meaning of Code section 4301(o).

5 PRAYER

6 WHEREFORE complainant requests that a hearing be held on the matters herein
7 alleged and that, following the hearing, the Board of Pharmacy issue a decision:

8 1. Revoking or suspending Pharmacy License Number PHY 39380, issued to
9 Walgreens No. 2939;

10 2. Revoking or suspending Pharmacist License Number RPH 50192, issued
11 to Catherine Lai-Hung Lo;

12 3. Revoking or suspending Pharmacy Technician License Number
13 TCH 29621, issued to Paula Rabb;

14 4. Ordering Walgreens No. 2939, Catherine Lai-Hung Lo, and Paula Rabb
15 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
16 case, pursuant to Business and Professions Code section 125.3; and

17 5. Taking such other and further action as may be deemed necessary or
18 proper.

19
20 DATED: 3/8/02

21
22 P. J. Harris

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

28 Complainant