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of the State of California
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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:

Case No. 2518

12 POMERADO PHARMACY, INC.
13 ELLA FAYE KISH, President

OAH No. L-2002060401

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Respondent.
15

16 In the interest of a prompt and speedy resolution of this matter, consistent with the
17 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer
18 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order
19 which will be submitted to the Board for approval and adoption as the final disposition of the
20 Accusation solely with respect to POMERADO PHARMACY, INC. and its officers,
21 ELLA FAYE KISH, PRESIDENT and Pharmacy Technician & ROBERT KISH, treasurer. It
22 does not apply to MELVIN MONES.

23 PARTIES

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

28 2. OFFICERS OF POMERADO, INC. (Respondent) is represented in this

1 CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation
3 No. 2518, if proven at a hearing, constitute cause for imposing discipline upon its PHY license
4 No. 34410.

5 9. For the purpose of resolving the Accusation without the expense and
6 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
7 establish a factual basis for the charges in the Accusation and that those charges constitute cause
8 for discipline. Respondent hereby gives up their right to contest that cause for discipline exists
9 based on those charges.

10 10. Respondent understands that by signing this stipulation Entity enables the
11 Board to issue its order accepting the surrender of their license without further process.

12 RESERVATION

13 11. The admissions made by Respondent herein are only for the purposes of
14 this proceeding, or any other proceedings in which the Board of Pharmacy or other professional
15 licensing agency is involved, and shall not be admissible in any other criminal or civil
16 proceeding.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board of Pharmacy.
19 Respondent understands and agrees that counsel for Complainant and staff of the Board of
20 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
21 without notice to or participation by Respondent or its counsel. By signing the stipulation,
22 Respondent understands and agrees that they may not withdraw its agreement or seek to rescind
23 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
24 this stipulation as its Decision and Order, the Stipulated Surrender of License and Order shall be
25 of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
26 between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

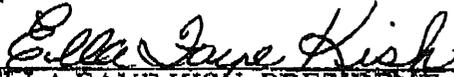
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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Hugh D. McLean, Esq.. I understand the stipulation and the effect it will have on Pharmacy license No. PHY 34410 . I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 9-13-02



ELLA FAYE KISH, PRESIDENT and authorized agent for
POMERADO, INC.
Respondent

I have read and fully discussed with Respondent and its officers the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 9/13/02



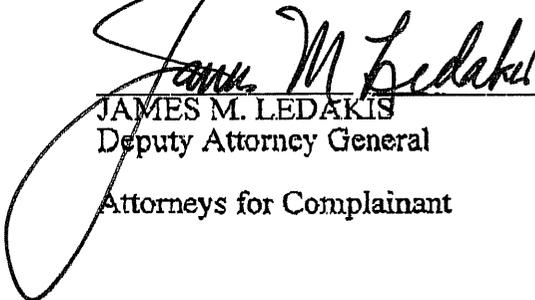
HUGH D. MCLEAN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: Sept 13, 2002

BILL LOCKYER, Attorney General
of the State of California



JAMES M. LEDAKIS
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:

POMERADO PHARMACY, INC.
ELLA FAYE KISH,

Pharmacy Permit No. PHY 34410

Respondent.

Case No. 2518

OAH No. L-2002060401

DECISION AND ORDER

The attached Stipulated Surrender of License 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 90 days after the effective date of the signed

Order on February 10, 2003.

It is so ORDERED November 12, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: _____

JOHN D. JONES
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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8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2518

13 POMERADO PHARMACY, INC.
1525 Pomerado Road
14 Poway, CA 92064
License No. PHY 34410

A C C U S A T I O N

15 and

16 ELLA FAYE KISH
10683 Mathieson Street
17 San Diego, CA 9219
Pharmacy Technician License No. TCH 3604

19 and

20 MELVIN MONES
15720 Caminito Atico
21 San Diego, CA 92128
RPH License No. 40412

22 Respondents.
23

24 Complainant alleges:

25 PARTIES

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

1 who maintains a stock of dangerous drugs or dangerous devices.

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

5 (c) The pharmacist-in-charge or exemptee shall not be criminally responsible for
6 acts of the owner, officer, partner, or employee that violate this section and of which the
7 pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not
8 knowingly participate.

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18 8. Section 4301 of the Code states:

19 "The board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been procured by fraud or misrepresentation
21 or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of
22 the following:

23 " . . .
24 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
25 deceit, or corruption, whether the act is committed in the course of relations as a licensee
26 or otherwise, and whether the act is a felony or misdemeanor or not.

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

29 " . . .
30 (j) The violation of any of the statutes of this state or of the United States
31 regulating controlled substances and dangerous drugs.

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

36 " . . .
37 (q) Engaging in any conduct that subverts or attempts to subvert an investigation
38 of the board.

39 9. Section 4330 of the Code states:

40 (a) Any person who has obtained a license to conduct a pharmacy, who fails to
41 place in charge of the pharmacy a pharmacist, or any person, who by himself or herself,
42 or by any other person, permits the compounding or dispensing of prescriptions, or the
43 furnishing of dangerous drugs, in his or her pharmacy, except by a pharmacist, or as
44 otherwise provided in this chapter, is guilty of a misdemeanor.

45 (b) Any non-pharmacist owner who commits any act that would subvert or tend to
46 subvert the efforts of the pharmacist-in-charge to comply with the laws governing the
47 operation of the pharmacy is guilty of a misdemeanor.

48 10. Section 4324 of the Code states:

49 (a) Every person who signs the name of another, or of a fictitious person, or
50 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any
51 prescription for any drugs is guilty of forgery and upon conviction thereof shall be
52 punished by imprisonment in the state prison, or by imprisonment in the county jail for
53 not more than one year.

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11. Section 4105 of the Code states:

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

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

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

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

12. California Code of Regulations, section 1718 provides:

Current Inventory as used in Section 4232 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section 4232. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

13. California Code of Regulations, section 1764 provides:

No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information.

14. California Code of Regulations, section 1714 provides:

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

(e) The pharmacy owner, the building owner or manager, or a family member of a pharmacist owner (but not more than one of the

1 aforementioned) may possess a key to the pharmacy that is maintained in a
2 tamper evident container for the purpose of 1) delivering the key to a
3 pharmacist or 2) providing access in case of emergency. An emergency
4 would include fire, flood or earthquake. The signature of the
5 pharmacist-in-charge shall be present in such a way that the pharmacist may
6 readily determine whether the key has been removed from the container.

7 (f) The board shall require an applicant for a licensed premise or for
8 renewal of that license to certify that it meets the requirements of this section
9 at the time of licensure or renewal.

10 (g) A pharmacy shall maintain a readily accessible restroom. The restroom
11 shall contain a toilet and washbasin supplied with running water.

12 ...

13 15. California Code of Regulations section 1717 provides:

14 (a) No medication shall be dispensed on prescription except in a new
15 container which conforms with standards established in the official
16 compendia.

17 Notwithstanding the above, a pharmacist may dispense and refill a
18 prescription for non-liquid oral products in a clean multiple-drug patient
19 medication package (patient med pak), provided:

- 20 (1) a patient med pak is reused only for the same patient;
21 (2) no more than a one-month supply is dispensed at one time; and
22 (3) each patient med pak bears an auxiliary label which reads, "store in a
23 cool, dry place."

24 (b) In addition to the requirements of Section 4036, Business and
25 Professions Code, the following information shall be maintained for each
26 prescription on file and shall be readily retrievable:

27 (1) The date dispensed, and the name or initials of the dispensing
28 pharmacist. All prescriptions filled or refilled by an intern pharmacist must
29 also be initialed by the preceptor before they are dispensed.

30 (2) The brand name of the drug or device; or if a generic drug or device is
31 dispensed, the distributor's name which appears on the commercial
32 package label; and

33 (3) If a prescription for a drug or device is refilled, a record of each refill,
34 quantity dispensed, if different, and the initials or name of the dispensing
35 pharmacist.

36 (4) A new prescription must be created if there is a change in the drug,
37 strength, prescriber or directions for use, unless a complete record of all
38 such changes is otherwise maintained.

39 (c) Promptly upon receipt of an orally transmitted prescription, the
40 pharmacist shall reduce it to writing, and initial it, and identify it as an orally
41 transmitted prescription. If the prescription is then dispensed by another
42 pharmacist, the dispensing pharmacist shall also initial the prescription to
43 identify him or herself.

44 All orally transmitted prescriptions shall be received and transcribed by a
45 pharmacist prior to compounding, filling, dispensing, or furnishing.

46 16. California Code of Regulations, section 1716.2 provides:

47 (a) For the purpose of compounding in quantities larger than required for
48 immediate dispensing by a prescriber or for future dispensing upon prescription, a
49 pharmacy shall maintain records that include, but are not limited to

- 50 (1) The date of preparation.

1 (2) The lot numbers. These may be the manufacturer's lot numbers or new
2 numbers assigned by the pharmacy. If the lot number is assigned by the
3 pharmacy, the pharmacy must also record the original manufacturer's lot numbers
4 and expiration dates, if known. If the original manufacturer's lot numbers and
5 expiration dates are not known, the pharmacy shall record the source and
6 acquisition date of the components.

7 (3) The expiration date of the finished product. This date must not exceed 180
8 days or the shortest expiration date of any component in the finished product
9 unless a longer date is supported by stability studies in the same type of packaging
10 as furnished to the prescriber. Shorter dating than set forth in this subsection may
11 be used if it is deemed appropriate in the professional judgment of the responsible
12 pharmacist.

13 (4) The signature or initials of the pharmacist performing the compounding.

14 (5) A formula for the compounded product. The formula must be maintained in a
15 readily retrievable form.

16 (6) The name(s) of the manufacturer(s) of the raw materials.

17 (7) The quantity in units of finished products or grams of raw materials.

18 (8) The package size and the number of units prepared.

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17. Health and Safety Code § 11157, entitled, False or fictitious prescription
states in part:

No person shall issue a prescription that is false or fictitious in any respect.

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

(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.

18. Business and Professions Code § 4332, entitled, Dangerous drugs or
devices; records; failure to maintain; failure to produce; falsification states in part:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

19. Business & Professions Code section 4105, entitled, Records of
acquisition and disposition of dangerous drugs and devices; location; availability; waivers states
in part:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be

1 retained on the licensed premises in a readily retrievable form.

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

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

8 (d) Any records that are maintained electronically shall be maintained so that the
9 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty,
10 or, in the case of a veterinary food-animal drug retailer, medical device retailer, or
11 wholesaler, the exemptee, shall, at all times during which the licensed premises are open
12 for business, be able to produce a hard copy and electronic copy of all records of
13 acquisition or disposition or other drug or dispensing-related records maintained
14 electronically.

15 (e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written
16 request, grant to a licensee a waiver of the requirements that the records described in
17 subdivisions (a), (b), and (c) be kept on the licensed premises.

18 (2) A waiver granted pursuant to this subdivision shall not affect the board's
19 authority under this section or any other provision of this chapter.

20 20. Business & Professions Code section 4115, entitled, Pharmacy

21 technicians; nondiscretionary tasks; direct supervision of pharmacists; registration; ratios, states
22 in part:

23 (a) Notwithstanding any other provision of law, a pharmacy technician may
24 perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while
25 assisting, and while under the direct supervision and control of, a pharmacist.

26 (b) This section does not authorize the performance of any tasks specified in
27 subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this
28 section authorize the use of a pharmacy technician to perform tasks specified in
subdivision (a) except under the direct supervision and control of a pharmacist.

(f) The performance of duties by a pharmacy technician shall be under the direct
supervision and control of a pharmacist. The pharmacist on duty shall be directly
responsible for the conduct of a pharmacy technician. A pharmacy technician may
perform the duties, as specified in subdivision (a), only under the immediate, personal
supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy
technician shall be on the premises at all times, and the pharmacy technician shall be
within the pharmacist's view. A pharmacist shall indicate verification of the prescription
by initialing the prescription label before the medication is provided to the patient.
This subdivision shall not apply to a person employed or utilized as a pharmacy
technician to assist in the filling of prescriptions for an inpatient of a hospital or for an
inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the
requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as a
pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital
or for an inmate of a correctional facility.

1 21. Business & Professions Code section 4116, entitled, Controlled substances
2 and dangerous drugs or devices; access; area, place or premises; security measures states in part:

3 (a) No person other than a pharmacist, an intern pharmacist, an authorized officer
4 of the law, or a person authorized to prescribe shall be permitted in that area, place, or
5 premises described in the license issued by the board wherein controlled substances or
6 dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured,
7 derived, compounded, dispensed, or repackaged. However, a pharmacist shall be
8 responsible for any individual who enters the pharmacy for the purposes of receiving
9 consultation from the pharmacist or performing clerical, inventory control, housekeeping,
10 delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist
11 remains present in the pharmacy during all times as the authorized individual is present.

12 22. Business & Professions Code section 4333 entitled, Prescriptions and
13 other records; maintenance; willful violations; punishment; waivers states in part:

14 (a) All prescriptions filled by a pharmacy and all other
15 records required by Section 4081 shall be maintained on the premises
16 and available for inspection by authorized officers of the law for a
17 period of at least three years. In cases where the pharmacy
18 discontinues business, these records shall be maintained in a
19 board-licensed facility for at least three years.

20 (b) Any person who willfully fails to comply with subdivision (a)
21 is guilty of a misdemeanor, and upon conviction thereof, shall be
22 punished by a fine not exceeding two hundred dollars (\$200). Any
23 person convicted of a second or subsequent offense shall be punished
24 by a fine of not less than two hundred dollars (\$200) and not more
25 than four hundred dollars (\$400).

26 (c) (1) Notwithstanding subdivisions (a) and (b), the board may,
27 upon written request, grant a waiver of the requirement that the
28 records described in subdivisions (a) and (b) be maintained on the
licensed premises or, in the event the pharmacy discontinues
business, that the records be maintained in a board licensed
facility. A person who maintains records in compliance with that
waiver is not subject to the penalties set forth in subdivision (b).

(2) A waiver granted pursuant to this subdivision shall not affect
the board's authority under this section or any other provision of
this chapter.

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

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1 FIRST CAUSE OF ACTION

2 RESPONDENT, POMERADO PHARMACY, ELLA FAYE KISH

3 Section 4301(j) - Violation of any Statute of the State or
4 of the United States Regulating Controlled
5 Substances or Dangerous Drugs

6 24. Pomerado Pharmacy Inc., and its Technician/President, Ella Faye Kish,
7 violated Business & Professions Code section 4081 because they failed to maintain accurate
8 dispensing records of dangerous drugs on the premises. The patient profiles for Ella Faye Kish,
9 Robert Kish, Jason Kish, Donna Kish, and Thomas Kish contained prescriptions that had not
10 been authorized by any prescriber.

11 SECOND CAUSE OF ACTION

12 Section 4301(j) - Violation of any Statute of the State or
13 of the United States Regulating Controlled
14 Substances or Dangerous Drugs

15 25. Pomerado Pharmacy Inc., and its Technician/President, Ella Faye Kish,
16 violated Business & Professions Code section 4332 because they failed to produce prescription
17 records when requested by Inspector Knight.

18 THIRD CAUSE OF ACTION

19 Section 4301(j) - Violation of any Statute of the State or
20 of the United States Regulating Controlled
21 Substances or Dangerous Drugs

22 26. Pomerado Pharmacy Inc., by and through its Technician/President, Ella
23 Faye Kish, violated Business & Professions Code section 4324 (a) because Ella Faye Kish
24 falsely made and forged prescriptions for the Kish family and placing them in the files of
25 Pomerado Pharmacy.

26 FOURTH CAUSE OF ACTION

27 Section 4301(f) - Commission of an Act Involving Moral Turpitude,
28 Dishonesty, Fraud, Deceit or Corruption

29 27. Pomerado Pharmacy Inc., by and through its Technician/President, Ella
30 Faye Kish, violated Business & Professions Code section 4115 (a), 4116 (a), and 4117. when
31 Ella Faye Kish entered into the Pomerado Pharmacy and billed Eckerd Health Services for false

1 prescriptions without pharmacist supervision or authorization. Some of the false prescriptions
2 were for controlled substances.

3 FIFTH CAUSE OF ACTION

4 Section 4301(o) - Violating or Attempting to Violate any Provision of this
5 Chapter, Including Pharmacy Regulations

6 28. Pomerado Pharmacy Inc., by and through its Technician/President, Ella
7 Faye Kish, violated Business & Professions Code section 4330 (b), when Ella Faye Kish, a non-
8 pharmacist and owner acted in ways that would subvert a pharmacist in charge in complying
9 with the laws governing pharmacies.

10 SIXTH CAUSE OF ACTION

11 Section 4301(g) - Knowingly Making or Signing Documents that are False

12 29. Pomerado Pharmacy Inc., by and through its Technician/President, Ella
13 Faye Kish, violated Health & Safety Code section 11157 and 11173 (b) when Ella Faye Kish
14 made false records indicating the dispensing of controlled substances.

15 SEVENTH CAUSE OF ACTION

16 Section 4301(g) - Knowingly Making or Signing Documents that are False

17 30. Pomerado Pharmacy Inc., by and through its Technician/President, Ella
18 Faye Kish, knowingly made prescription claim forms to Eckerd Health Services for false
19 prescriptions not authorized by any prescriber.

20 EIGHTH CAUSE OF ACTION

21 Section 4301(q), - Subverting an Investigation of the Board

22 31. Pomerado Pharmacy Inc., by and through its Technician/President, Ella
23 Faye Kish, made false statements to a Board Inspector when asked which insurance company the
24 fraudulent prescriptions had been billed to for Ella Faye Kish and Robert Kish.

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NINTH CAUSE OF ACTION

Section 4301(g) - Knowingly Making or Signing Documents that are False

32. Pomerado Pharmacy Inc., by and through its Technician/President, Ella Faye Kish, knowingly signed the Eckerd Health Systems Claim Forms as Pharmacist Kenneth Kandel in order to receive payment for false prescriptions for Ella Faye and Robert Kish.

AS TO RESPONDENTS, POMERADO PHARMACY, ELLA FAYE KISH AND MELVIN MONES

TENTH CAUSE OF ACTION

Section 4301(j) - Violation of any Statute of the State or of the United States Regulating Controlled Substances or Dangerous Drugs

33. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1764, when they failed to maintain patient confidentiality when they disposed of patient information in public trash receptacles.

ELEVENTH CAUSE OF ACTION

Section 4301(j) - Violation of any Statute of the State or of the United States Regulating Controlled Substances or Dangerous Drugs

34. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1714 (d), and 1718 when they failed to maintain accurate record keeping by using an inaccurate perpetual inventory for controlled substances.

TWELFTH CAUSE OF ACTION

Section 4301(j) - Violation of any Statute of the State or of the United States Regulating Controlled Substances or Dangerous Drugs

35. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1717 (c), when they failed to record the name of the pharmacist receiving orally transmitted prescriptions.

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THIRTEENTH CAUSE OF ACTION

Section 4301(j) - Violation of any Statute of the State or
of the United States Regulating Controlled
Substances or Dangerous Drugs

36. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye
Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1717
(a), when they maintained at least 22 used prescription containers in their prescription vial stock,
held in place to be used.

FOURTEENTH CAUSE OF ACTION

Section 4301(j) - Violation of any Statute of the State or
of the United States Regulating Controlled
Substances or Dangerous Drugs

37. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye
Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1716.2
when they failed to meet the requirements of records for future furnishing of compounded drugs
by not indicating the name of the manufacturer used in compounding.

FIFTEENTH CAUSE OF ACTION

Section 4301(j) - Violation of any Statute of the State or
of the United States Regulating Controlled
Substances or Dangerous Drugs

38. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye
Kish, and Pharmacist in Charge, Melvin Mones, violated Business & Professions code section
4076 (a) (1) when they failed to clearly indicate names of principal active drug ingredients on
prescription containers for "XYZ" cream.

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1 SIXTEENTH CAUSE OF ACTION

2 Section 4301(j) - Violation of any Statute of the State or
3 of the United States Regulating Controlled
4 Substances or Dangerous Drugs

5 39. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye
6 Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1714
7 (d) (e), and Business & Professions code section 4116 (a) and 4117 when they allowed a non-
8 pharmacist, Technician Ella Faye Kish, to possess a key to the pharmacy that was on her
9 personal key chain, and not in a tamper-proof container.

10 SEVENTEENTH CAUSE OF ACTION

11 Section 4301(j) - Violation of any Statute of the State or
12 of the United States Regulating Controlled
13 Substances or Dangerous Drugs

14 40. Pomerado Pharmacy Inc., its Pharmacy Technician/President, Ella Faye
15 Kish, and Pharmacist in Charge, Melvin Mones, violated California Code of Regulations 1707,
16 and Business & Professions code section 4105 and 4333 when they allowed pharmacy
17 prescription records to be stored off the premises of the pharmacy, without Board authorization
18 or waiver.

19 PRAYER

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

22 A. Revoking or suspending Pharmacy License No. PHY 34410, issued to
23 POMERADO PHARMACY INC.;

24 B. Revoking or suspending Pharmacist Technician No. TCH 3604, issued to
25 Ella Faye Kish, owner and president of Pomerado Pharmacy, Inc..

26 C. Revoking or suspending license number RPH 40412, issued to MELVIN
27 MONES;

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D. Ordering POMERADO PHARMACY INC., Ella Faye Kish, owner, president/pharmacy technician of Pomerado Pharmacy Inc. to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/14/02



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