

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  
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2557

12 MARC BARAJAS

OAH No. N2003010132

13 Pharmacist License No. RPH 40576

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

14 Respondent.

15  
16  
17 In the interest of a prompt and speedy settlement of this matter, consistent with the  
18 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer  
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order  
20 which will be submitted to the Board for approval and adoption as the final disposition of the  
21 Accusation.

22 PARTIES

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

27 ///

28 ///



1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in  
3 Accusation No. 2557, except for Paragraph 10(c). For Paragraph 10 (c), the parties stipulate that  
4 Respondent was adversely affected by prescription drugs on or about May 9, 2001. Respondent  
5 stipulates to a violation of Business & Professions Code sections 4301 (h), (j) and (l).

6 9. Respondent agrees that his Pharmacist License is subject to discipline and  
7 he agrees to be bound by the Board of Pharmacy (Board) 's imposition of discipline as set forth in  
8 the Disciplinary Order below.

9 RESERVATION

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

14 CONTINGENCY

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

25 12. The parties understand and agree that facsimile copies of this Stipulated  
26 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
27 force and effect as the originals.

28 ///



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

5                   4.       **Cooperation with Board Staff.** Respondent shall cooperate with the  
6 Board's inspectional program and in the Board's monitoring and investigation of Respondent's  
7 compliance with the terms and conditions of his probation. Failure to comply shall be  
8 considered a violation of probation.

9                   5.       **Continuing Education.** Respondent shall provide evidence of efforts  
10 to maintain skill and knowledge as a pharmacist as directed by the Board.

11                   6.       **Notice to Employers.** Respondent shall notify all present and  
12 prospective employers of the decision in case number 2557 and the terms, conditions and  
13 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of  
14 this decision, and within 15 days of Respondent undertaking new employment, Respondent  
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in  
16 writing acknowledging the employer has read the decision in case number 2557.

17                   If Respondent works for or is employed by or through a pharmacy employment  
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at  
19 every pharmacy of the and terms conditions of the decision in case number 2557 in advance of  
20 the Respondent commencing work at each pharmacy.

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

24                   7.       **No Preceptorships, Supervision of Interns, Being Pharmacist-in-  
25 Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern  
26 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the  
27 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this  
28 order.

1                   8.       **Reimbursement of Board Costs.** Respondent shall pay to the Board  
2 its costs of investigation and prosecution in the amount of \$1,000.00. Respondent shall make  
3 said payments as follows: Ten (10) equal installments over the first year of probation.

4                   The filing of bankruptcy by Respondent shall not relieve Respondent of his  
5 responsibility to reimburse the Board its costs of investigation and prosecution.

6                   9.       **Probation Monitoring Costs.** Respondent shall pay the costs  
7 associated with probation monitoring as determined by the Board each and every year of  
8 probation. Such costs shall be payable to the Board at the end of each year of probation.  
9 Failure to pay such costs shall be considered a violation of probation.

10                  10.       **Status of License.** Respondent shall, at all times while on probation,  
11 maintain an active current license with the Board, including any period during which  
12 suspension or probation is tolled.

13                  If Respondent's license expires or is canceled by operation of law or otherwise,  
14 upon renewal or re-application, Respondent's license shall be subject to all terms and  
15 conditions of this probation not previously satisfied.

16                  11.       **License Surrender while on Probation/Suspension.** Following the  
17 effective date of this decision, should Respondent cease practice due to retirement or health, or  
18 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender  
19 his license to the Board for surrender. The Board shall have the discretion whether to grant  
20 the request for surrender or take any other action it deems appropriate and reasonable. Upon  
21 formal acceptance of the surrender of the license, Respondent will no longer be subject to the  
22 terms and conditions of probation.

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

28       ///

1                   12.     **Notification of Employment/Mailing Address Change.** Respondent  
2 shall notify the Board in writing within 10 days of any change of employment. Said  
3 notification shall include the reasons for leaving and/or the address of the new employer,  
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in  
5 writing within 10 days of a change in name, mailing address or phone number.

6                   13.     **Tolling of Probation.** Should Respondent, regardless of residency, for  
7 any reason cease practicing pharmacy for a minimum of 20 hours per calendar month in  
8 California, Respondent must notify the Board in writing within 10 days of cessation of the  
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time  
10 shall not apply to the reduction of the probation period. It is a violation of probation for  
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a  
12 period exceeding three years.

13                   "Cessation of practice" means any period of time exceeding 30 days in which  
14 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of  
15 the Business and Professions Code.

16                   14.     **Violation of Probation.** If Respondent violates probation in any  
17 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke  
18 probation and carry out the disciplinary order which was stayed. If a petition to revoke  
19 probation or an accusation is filed against Respondent during probation, the Board shall have  
20 continuing jurisdiction and the period of probation shall be extended, until the petition to  
21 revoke probation or accusation is heard and decided.

22                   If Respondent has not complied with any term or condition of probation, the  
23 Board shall have continuing jurisdiction over Respondent, and probation shall automatically  
24 be extended until all terms and conditions have been satisfied or the Board has taken other  
25 action as deemed appropriate to treat the failure to comply as a violation of probation, to  
26 terminate probation, and to impose the penalty which was stayed.

27     ///

28     ///

1           15.     **Completion of Probation.** Upon successful completion of probation,  
2 Respondent's license will be fully restored.

3           16.     **Rehabilitation Program - Pharmacists Recovery Program (PRP).**  
4 Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists  
5 Recovery Program for evaluation and shall successfully participate in and complete the  
6 treatment contract and any subsequent addendums as recommended and provided by the PRP  
7 and as approved by the Board. The costs for PRP participation shall be borne by the  
8 Respondent.

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

18           The parties agree that after one year in the PRP, the Board will make an  
19 evaluation of Respondent to determine whether continued participation is necessary. If not,  
20 Respondent shall be relieved of this condition of probation and the probationary period shall  
21 be modified from five (5) years to three (3) years.

22           17.     **Random Drug Screening.** Respondent, at his own expense, shall  
23 participate in random testing, including but not limited to biological fluid testing (urine,  
24 blood), Breathalyzer, hair follicle testing, or a drug screening program approved by the Board.  
25 The length of time shall be for the entire probation period and the frequency of testing will be  
26 determined by the Board. At all times Respondent shall fully cooperate with the Board, and  
27 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,  
28 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as



1 Decision and Order of the Board of Pharmacy.

2 DATED: \_\_\_\_\_.

3

4

\_\_\_\_\_  
MARC BARAJAS  
Respondent

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

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

DATED: \_\_\_\_\_.

\_\_\_\_\_  
ROBERT F. HAHN  
Attorney for Respondent

ENDORSEMENT

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

DATED: \_\_\_\_\_.

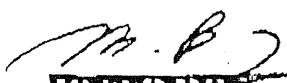
BILL LOCKYER, Attorney General  
of the State of California

\_\_\_\_\_  
MICHAEL B. FRANKLIN  
Deputy Attorney General

Attorneys for Complainant

1 Decision and Order of the Board of Pharmacy.

2 DATED: 5-3-03

3  
4   
5 **MARC BARAJAS**  
6 Respondent

7  
8 I have read and fully discussed with Respondent Marc Barajas the terms and  
9 conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
10 Order. I approve its form and content.

11 DATED: 5-5-03

12  
13   
14 **ROBERT F. HAHN**  
15 Attorney for Respondent

16 **ENDORSEMENT**

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

20 DATED: 5/5/03

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

23  
24   
25 **MICHAEL B. FRANKLIN**  
26 Deputy Attorney General  
27 Attorney for Complainant

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

In the Matter of the Accusation Against:

MARC BARAJAS

7600 Broadway St

8

Pharmacist License No. RPH 40576

Respondent.

Case No. 2557

OAH No. N2003010132

**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 9, 2003.

It is so ORDERED June 9, 2003.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



JOHN D. JONES  
Board President

**Exhibit A**  
**Accusation No. 2557**

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  
5 Facsimile: (415) 703-5480  
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 Against:

Case No. 2557

11 **MARC BARAJAS**  
12 7633 Buckeye Ct.  
13 3

**A C C U S A T I O N**

14 Pharmacist License No: RPH 40576

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 2. On or about September 17, 1986, the Board of Pharmacy issued  
23 Pharmacist License Number RPH 40576 to Marc Barajas (Respondent). The Pharmacist License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 March 31, 2004, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board of Pharmacy (Board),  
28 Department of Consumer Affairs under the authority of the below mentioned statutes and

1 regulations.<sup>1</sup>

2           4. Title 16, California Code of Regulations, section 1770, states that for the  
3 purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division  
4 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
5 considered substantially related to the qualifications, functions or duties of a licensee or  
6 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or  
7 registrant to perform the functions authorized by his license or registration in a manner consistent  
8 with the public health, safety, or welfare.

9           5. Section 4300 of the Code states that every license, permit, or certificate  
10 issued by the Board may be suspended or revoked.

11           6. Section 4301 of the Code states:

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

16           "...

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

20           "...

21           "(h) The administering to oneself, of any controlled substance, or the use of any  
22 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
23 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
24 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
25 the public the practice authorized by the license.

---

26  
27  
28           1. All statutory references are to the Business and Professions Code (Code) unless  
otherwise indicated.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

"...

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

"...

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. 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 this chapter. 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.

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

///  
///  
///

1 CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 10. Respondent is subject to disciplinary action under sections 4301(f), (h), (l)  
4 and/or (j) in that he has been convicted of a misdemeanor offense involving the use of drugs and  
5 which is substantially related to the qualifications, functions or duties of a pharmacist as follows:

6 a. On or about October 3, 2001, respondent was convicted of Vehicle  
7 Code section 23152 (a), (driving a vehicle under the influence of alcohol and/or drugs) a  
8 misdemeanor.

9 b. Pursuant to this conviction, respondent was sentenced to 36  
10 months probation and ordered to attend traffic school and pay restitution.

11 c. The underlying circumstances of this conviction are that on or  
12 about May 9, 2001, respondent drove a vehicle while under the influence of drugs.

13 PRAYER

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

16 A. Revoking or suspending Pharmacist License Number RPH 40576, issued  
17 to Marc Barajas;

18 B. Ordering Marc Barajas to pay the Board of Pharmacy the reasonable costs  
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
20 section 125.3;

21 C. Taking such other and further action as deemed necessary and proper.

22 DATED: 12/17/02

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