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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 RICHARD LEE WILGUS, RPH

13 Respondent.

Case No. 2603

OAH No. L-2003110312

14 **STIPULATED SETTLEMENT AND**  
15 **DISCIPLINARY ORDER**

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

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

24 2. Respondent Richard Lee Wilgus (Respondent) is represented in this proceeding by  
25 Allan H. Stokke, Esq., whose address is Stokke & Riddet, 3 Imperial Promenade, Suite 750,  
26 Santa Ana, CA 92707-3918.

27 3. On or about August 15, 1984, the Board of Pharmacy issued RPH 38750 to  
28 Respondent. The license was in full force and effect at all times relevant to the charges brought

1 in Accusation No. 2603 and will expire on May 31, 2004, unless renewed.

2 JURISDICTION

3 4. Accusation No. 2603 was filed before the Board of Pharmacy (Board),  
4 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation  
5 and all other statutorily required documents were properly served on Respondent on October 30,  
6 2003. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of  
7 Accusation No. 2603 is attached as exhibit A and incorporated herein by reference.

8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read, fully discussed with counsel, and understands the  
10 charges and allegations in Accusation No. 2603. Respondent has also carefully read, fully  
11 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
12 Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to  
17 compel the attendance of witnesses and the production of documents; the right to reconsideration  
18 and court review of an adverse decision; and all other rights accorded by the California  
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each  
21 and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of only the following factual allegations in  
24 Accusation No. 2603: paragraph 11(A), (B), (D), and (E) and paragraph 18. Respondent neither  
25 admits nor denies the remaining factual allegations in paragraph 11.

26 9. Respondent agrees that his pharmacist license is subject to discipline under  
27 Business and Professions Code section 4301(f) and 4301(l) based on the above admissions, and  
28 he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary

1 Order below.

2 CONTINGENCY

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

13 11. The parties understand and agree that facsimile copies of this Stipulated  
14 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
15 force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties agree  
17 that the Board may, without further notice or formal proceeding, issue and enter the following  
18 Disciplinary Order:

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that Pharmacist License No. RPH 38750, issued to  
21 Respondent Richard Lee Wilgus is revoked. However, the revocation is stayed and Respondent  
22 is placed on probation for three (3) years on the following terms and conditions:

23 1. **Actual Suspension.** RPH 38750, issued to Respondent Richard Lee Wilgus is  
24 suspended for a period of sixty (60) consecutive days from the effective date of the decision in  
25 this case.

26 During suspension, Respondent shall not enter any pharmacy area or any portion of the  
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
28 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
3 consultation; nor shall Respondent manage, administer, **or** be a consultant to any licensee of the  
4 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
5 and devices or controlled substances.

6 Respondent shall not engage in any activity that requires the professional judgment of a  
7 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.

8 Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity  
9 licensed by the Board. Subject to the above restrictions, Respondent may continue to own or  
10 hold an interest in any pharmacy in which he holds an interest at the time this decision becomes  
11 effective unless otherwise specified in this order.

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

14 Respondent shall report any of the following occurrences to the Board, in writing, within  
15 72 hours of such occurrence:

- 16 • an arrest or issuance of a criminal complaint for violation of any provision of the  
17 Pharmacy Law, state and federal food and drug laws, or state and federal  
18 controlled substances laws
- 19 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to  
20 any criminal complaint, information or indictment
- 21 • a conviction of any crime
- 22 • discipline, citation, or other administrative action filed by any state and federal  
23 agency which involves Respondent's license or which is related to the practice  
24 of pharmacy or the manufacturing, obtaining, handling or distribution or billing  
25 or charging for any drug, device or controlled substance.

26 3. **Reporting to the Board.** Respondent shall report to the Board quarterly. The  
27 report shall be made either in person or in writing, as directed. Respondent shall state under  
28 penalty of perjury whether there has been compliance with all the terms and conditions of

1 probation. If the final probation report is **not** made as directed, probation shall be extended  
2 automatically until such time as the final report is made and accepted by the Board.

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

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

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

13 7. **Notice to Employers.** Respondent shall notify all present and prospective  
14 employers of the decision in case number and the terms, conditions and restrictions imposed  
15 on Respondent by the decision. Within 30 days of the effective date of this decision, and  
16 within 15 days of Respondent undertaking new employment, Respondent shall cause direct  
17 supervisor, pharmacist-in-charge and/or owner to report to the Board in writing  
18 acknowledging the employer has read the decision in case number 2603.

19 If Respondent works for or is employed by or through a pharmacy employment  
20 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at  
21 every pharmacy of the and terms conditions of the decision in case number 2603 in advance of  
22 the Respondent commencing work at each pharmacy.

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

26 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge**  
27 **(PIC), or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or  
28 perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of

1 any entity licensed by the Board unless otherwise specified in this order.

2       9.     **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs  
3 of investigation and prosecution in the amount of \$4,760.00. Respondent shall make said  
4 payments as follows: quarterly over the first two years of probation and submitted with his  
5 quarterly reports to the Board (see condition #3 above).

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

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

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

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

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

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

1 date the application for that license is submitted to the Board.

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

7       **14. Tolling of Probation.** Should Respondent, regardless of residency, for any  
8 reason cease practicing pharmacy in California, Respondent must notify the Board in writing  
9 within 10 days of cessation of the practice of pharmacy or the resumption of the practice of  
10 pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is  
11 a violation of probation for Respondent's probation to remain tolled pursuant to the provisions  
12 of this condition for a 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 the  
15 Business and Professions Code.

16       Respondent shall work at least 40 hours in each calendar month as a pharmacist and at  
17 least an average of 80 hours per month in any six consecutive months. Failure to do so will be  
18 a violation of probation. If Respondent has not complied with this condition during the  
19 probationary term, and Respondent has presented sufficient documentation of his good faith  
20 efforts to comply with this condition, and if no other conditions have been violated, the Board,  
21 in its discretion, may grant an extension of Respondent's probation period up to one year  
22 without further hearing in order to comply with this condition.

23       **15. Violation of Probation.** If Respondent violates probation in any respect, the  
24 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation  
25 and carry out the disciplinary order which was stayed. If a petition to revoke probation or an  
26 accusation is filed against Respondent during probation, the Board shall have continuing  
27 jurisdiction and the period of probation shall be extended, until the petition to revoke  
28 probation or accusation is heard and decided.

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

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

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

14 18. **Tolling of Suspension.** If Respondent leaves California to reside or practice  
 15 outside this state, or for any period exceeding 10 days (including vacation), Respondent must  
 16 notify the Board in writing of the dates of departure and return. Periods of residency or  
 17 practice outside the state or any absence exceeding a period of 10 days shall not apply to the  
 18 reduction of the suspension period.

19 ACCEPTANCE

20 I have carefully read the above Stipulated Settlement and Disciplinary Order  
 21 and have fully discussed it with my attorney, Allan H. Stokke, Esq.. I understand the  
 22 stipulation and the effect it will have on my pharmacist license. I enter into this Stipulated  
 23 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
 24 bound by the Decision and Order of the Board of Pharmacy.

25 DATED: July 2, 2004.

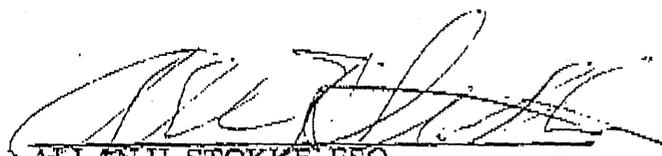
26   
 27 RICHARD LEE WILGUS  
 Respondent

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

DATED: July 2, 2004.



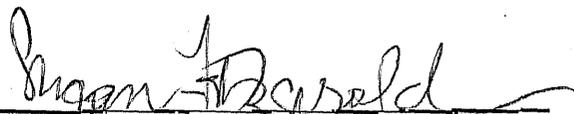
ALLAN H. STOKKE, ESQ.  
Attorney for Respondent

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: July 2, 2004.

BILL LOCKYER, Attorney General  
of the State of California



SUSAN FITZGERALD  
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:

RICHARD LEE WILGUS, RPH

Respondent.

Case No. 2603

OAH No. L-2003110312

**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 September 24, 2004.

It is so ORDERED August 25, 2004.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG  
Board President

**Exhibit A**

**Accusation No. 2603**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101

5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2066  
Facsimile: (619) 645-2061

7 Attorneys for Complainant  
8

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

12 In the Matter of the Accusation Against:

Case No. 2603

13 RICHARD LEE WILGUS, RPH  
17835 El Mineral Rd.  
14 Perris, CA 92570

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

15 Original Pharmacist License No. RPH 38750

16 Respondent.

17  
18 Complainant alleges:

19 PARTIES

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

23 2. On or about August 15, 1984, the Board of Pharmacy issued Original  
24 Pharmacist License Number RPH 38750 to Richard Lee Wilgus, RPH (Respondent). The  
25 Original Pharmacist License was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on May 31, 2004, unless renewed.

27 ///

28 ///

JURISDICTION

1  
2           3.     This Accusation is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5           4.     Section 4301 of the Code states:

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

10           "...

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

14           "...

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

17           "...

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

20           "(o) Violating or attempting to violate, directly or indirectly, ...any provision or  
21 term of this chapter or o the applicable federal and state laws and regulations governing  
22 pharmacy..."

23           "..."

24           5.     Section 4059 of the Code states, in pertinent part, that a person may not  
25 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,  
26 optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the  
27 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

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6. Section 4324 of the Code states in pertinent part:

"(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery...

"..."

7. This Accusation also refers to the following sections of the California Health and Safety Code (H&S Code):

A. H&S Code section 11158(a) provides that no controlled substances may be dispensed without a prescription.

B. H&S Code section 11171 states that "no person shall prescribe, dispense, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division."

C. H&S Code section 11173 states in pertinent part that

"(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.

"..."

"(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a . . .physician..."

DRUGS

8. Phentermine is a Schedule IV controlled substance, per H&S Code section 11057;

9. Alprazolam, is a Schedule IV controlled substance, per H&S Code section 11057;

10. "Zyrtec" is a brand name for ceterizine hydrochloride, a dangerous drug within the meaning of Code section 4022.

///



1 G. On or about December 18, 2001, respondent stole two checks from his  
2 employer.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Violation of Laws Governing Controlled Substances)**

5 12. Respondent is subject to disciplinary action under section 4301(j) in  
6 conjunction with H&S Code section 11158(a) in that he dispensed phentermine, alprazolam, and  
7 Zyrtec without a valid prescription, as more particularly alleged in paragraph 11 and its subparts  
8 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct: Violation of Laws Governing Controlled Substances)**

11 13. Respondent is subject to disciplinary action under section 4301(j) in  
12 conjunction with H&S Code section 11171 in that he prescribed, administered, or furnished  
13 controlled substances without a valid prescription, as more particularly alleged in paragraph 11  
14 and its subparts above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct: Violation of Laws Governing Controlled Substances)**

17 14. Respondent is subject to disciplinary action under section 4301(j) in  
18 conjunction with H&S Code section 11173(a) in that respondent obtained or attempted to obtain  
19 or procured or attempted to procure prescriptions for phentermine and alprazolam by fraud,  
20 deceit, misrepresentation or subterfuge, as more particularly alleged in paragraph 11 and its  
21 subparts above.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct: Violation of Laws Governing Controlled Substances)**

24 15. Respondent is subject to disciplinary action under section 4301(j) in  
25 conjunction with H&S Code section 11173(c) in that respondent falsely represented himself to be  
26 a physician with respect to the prescriptions nos. 549813 for phentermine and 603822 for  
27 alprazolam for Jo M.

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

DATED: 10/22/03

*P. J. Harris*  
\_\_\_\_\_  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant