

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

In the Matter of the Accusation Against:

GERALD JERRY TANAKA  
19271 Pebble Beach  
Northridge, California 91326

Pharmacy License No. RPH 28954

Case Nos. 2622

OAH Nos. L2003060448

**PROPOSED DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on September 27, 2004, in Los Angeles, California.

Deputy Attorney General Susan Melton Wilson represented complainant.

Nelson Atkins, from the Law Office of Atkins & Evans, represented Gerald Jerry Tanaka, respondent.

Oral and documentary evidence was received and the matter was submitted. The Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Patricia F. Harris made and filed the Accusation and Petition to Revoke Probation in her official capacity as Executive Director of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On July 17, 1974, the Board of Pharmacy issued Pharmacist's Number RPH 28954 Gerald Jerry Tanaka (respondent). The pharmacist's license held by respondent is currently under temporary suspension pursuant to an Interim Suspension Order imposed on July 11, 2003. Respondent agreed that the Interim Suspension Order would remain in effect for 30 days after submission of the case for decision on the Accusation and Petition to Revoke Probation. Respondent's pharmacist's license has an expiration date of April 30, 2005.

3. Effective June 1, 2000, pursuant to a Stipulation and Order in Case Number 1897, the Board revoked respondent's license. However, the revocation was stayed and respondent's license was placed on probation for a period of three years on certain terms and conditions. The facts and circumstances underlying the imposition of discipline were that between March 1994 and March 1995, respondent stole approximately 23 4-ounce containers of Promethazine with Codeine syrup and 50 pint bottles of Hycodan syrup from his employer for his personal use. Promethazine with Codeine, a generic name for Phenergan with Codeine, is a schedule V controlled substance as designated by Health and Safety Code section 11058, subdivision (c) (1), and is categorized as a dangerous drug pursuant to section 4022. Hycodan is a schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (b) (1), and is categorized as a dangerous drug pursuant to section 4022.

4. On February 3, 2003, in the Municipal Court of Los Angeles, Van Nuys Judicial District (Case No. 2PN06038), respondent was convicted on his plea of guilty to one count charging a violation of Penal Code section 487, subdivision (a), grand theft. This is a crime of moral turpitude and substantially related to the duties, functions and qualifications of a pharmacist.

5. Imposition of sentence was suspended and respondent was placed on probation for a period of 36 months on certain terms and conditions including conditions ordering respondent to perform 350 hours of community service and pay restitution to the victim.

6. The facts and circumstances of the offense were that respondent, while employed as a manager of Kaiser Permanente Panorama City Medical Center, diverted 116 pints of Hydrocodone with Homatropine Syrup and 237 Promethazine with Codeine cough syrup from the pharmacy drug stock. Respondent stole these drugs for his personal use and self administered these drugs during an 18 month period in from early 2001 and continuing through late 2002. Hydrocodone/Homatropine, a generic name for Hycodan, is a schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (b)(1), and is categorized as a dangerous drug pursuant to section 4022.

7. At the time that respondent was stealing and self administering the above referenced drugs, he was on probation to the Pharmacy Board for the discipline imposed under the Stipulation and Order set forth in finding 3. Respondent violated condition 3 of his probation, which expressly required that respondent abstain from personal use and/or possession of controlled substances and dangerous drugs. Respondent also violated condition number 13 of his probation, in that he failed to obey all federal and state laws and regulations substantially related to or governing the practice of pharmacy.

8. Respondent had been an excellent pharmacist prior to 1994. This is evidenced by the various commendations and performance evaluations he received from Kaiser Permanente.

9. In the early 1990s, respondent's employer had become concerned with reducing costs and becoming more efficient. As a result, respondent was forced to lay-off four pharmacists and six technicians. Throughout this time respondent had been under great pressure. In 1994, respondent began losing sleep. He sought medical help and was given a prescription of Zoloft. The Zoloft did not alleviate his insomnia. In fact, respondent's insomnia became worse. Although it had not been diagnosed at the time, respondent was suffering from depression.

10. In March 1994, respondent started taking and self administering drugs as set forth in finding 3. He eventually was caught and agreed to complete a drug rehabilitation program offered by Kaiser Permanente.

11. On June 30 1997, the Board made the Accusation against respondent which resulted in the Stipulation and Order set forth in finding 3. When respondent received notice of the disciplinary action initiated by the Board, he became more depressed and his insomnia became worse. Respondent then went into a major crisis. During a two week period in 1998, respondent lost so much sleep that he began hallucinating and was hospitalized at the Woodland Hills Psychiatric Unit. He thereafter was transferred to a medical facility because he developed renal failure. After respondent was released from the hospital, he saw a physician at Kaiser who prescribed a drug that was not appropriate for the treatment of depression. As a result respondent's depression remained untreated and his insomnia continued.

12. In 2001, respondent again began taking and self administering drugs while at work. Respondent self administered these drugs because he believed the drugs were effective in helping him sleep. In October 2002, respondent was again caught and fired from his position at Kaiser.

13. In December 2002, respondent sought medical attention from Sherwin J. Levin, M.D., a psychiatrist who has substantial experience in treating patients who abuse drugs. He diagnosed respondent as suffering from depression and opiate dependence. Dr. Levin prescribed Prozac which was an effective treatment for respondent's depression. This was the first time that respondent had been properly diagnosed and treated for his depression. Respondent is now able to sleep regularly and not longer feels exhausted during the day. Respondent's family has seen the difference in respondent's demeanor at home. For example, he is now quite involved in his children's activities.

14. Respondent was evaluated by Samuel I Miles, M.D., Ph.D. Dr. Miles diagnosed respondent with "Dysthymia; Major Depression, Recurrent, In Remission; Opiate Dependence in Remission; and Possible Alcohol Abuse." The alcohol abuse diagnosis was based on respondent's statement to Dr. Miles that he, respondent, started to drink one or two times a week (as much as a half pint of vodka at a time) because he has nothing else to do.

15. Beginning May 7, 2004, respondent sought treatment from Douglas Sears, M.D. In the mental status examination of his report, Dr. Sears stated that respondent's "mood is somewhat melancholic. His affect is sad at times and appropriate to mood." Dr. Sears diagnosed respondent with "Major Depressive Disorder, Recurrent, in Partial Remission; Opiate Dependence in full remission."

16. Complainant submitted certification of costs of investigation totaling \$16,183.75. These costs are deemed reasonable under Business and Professions Code section 125.3.

### **LEGAL CONCLUSIONS**

1. Grounds exist to suspend or revoke respondent's pharmacist's license under Business and Professions Code section 4301, subdivision (l), for unprofessional conduct based on the conviction as set forth in findings 4.

2. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct under Business and Professions Code sections 4301, subdivision (j), and 4060, for unlawfully possessing controlled substances, as set forth in findings 3 through 6.

3. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct under Business and Professions Code section 4301, subdivision (j), and Health and Safety Code section 11170, for unlawfully dispensing controlled substances (to himself), as set forth in findings 3 through 6.

4. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct under Business and Professions Code section 4301, subdivision (f), for committing acts of dishonesty (theft of controlled substances), as set forth in findings 3 through 6.

5. Grounds exist to suspend or revoke respondent's probation and re-impose the Board's June 1, 2000 Order of Revocation under Business and Professions Code section 4301, for violating Condition 3 and Condition 14 of respondent's probation imposed in Case No. 1897.

6. Grounds exist to order respondent to pay \$16,183.75, under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on finding 16.

### DISCUSSION

Respondent presented mitigation in that he suffered from depression for years without being diagnosed. Perhaps if respondent had been properly diagnosed in 1994, he might have avoided the professional and personal problems that beset him. Such a conclusion, however, would be speculative.

Respondent's effort to address his depression is an important step in rehabilitation. Both Drs. Levin and Spears opined that respondent could safely practice pharmacy with proper monitoring and drug testing. Their opinions have been seriously considered since both eloquently stated their opinions during their testimony. However, the undersigned and the Board have the responsibility to protect the public. In discharging this responsibility, consideration is also given to the recent date of respondent's conviction and his conduct of stealing controlled substances from his employer and self administering these drugs. Respondent engaged in this conduct for two separate extended time periods. Further, respondent was on probation to the Board during the 18 month period that he stole and ingested drugs in 2001 and 2002. The level of discipline should be commensurate with the proved misconduct. In this case, revocation is the appropriate discipline. However, respondent is encouraged to seek reinstatement when the law allows.

### ORDER

1. Pharmacist's License No RPH 28954, issued to respondent Gerald Jerry Tanaka, is revoked pursuant to Legal Conclusions 1 through 5.
2. Respondent is hereby ordered to pay \$16,183.75 to the Board of Pharmacy for costs of enforcement and prosecution of this matter under Business and Professions Code section 125.3.

DATED: October 21, 2004



HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

GERALD JERRY TANAKA  
19271 Pebble Beach  
Northridge, California 91326

Pharmacy License No. RPH 28954

Case Nos. 2622

OAH Nos. L2003060448

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on December 23, 2004.

IT IS SO ORDERED this 23rd day of November, 2004.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
STANLEY W. GOLDENBERG  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SUSAN MELTON WILSON, State Bar No. 106092  
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. 2622

11 GERALD JERRY TANAKA  
12 19271 Pebble Beach  
Northridge, California 91326  
13 Pharmacist License No. RPH 28954,  
14 Respondent.  
15

**ACCUSATION AND PETITION  
TO REVOKE PROBATION**

16  
17 PATRICIA F. HARRIS (Complainant) alleges:

18 PARTIES

19 1. Complainant brings this Accusation and Petition to Revoke Probation  
20 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of  
21 Consumer Affairs (hereinafter "Board").

22 PHARMACIST LICENSE

23 2. On or about July 17, 1974, the Board of Pharmacy issues Original  
24 Pharmacist License Number RPH 28954 to Gerald Jerry Tanaka (hereinafter "Respondent").  
25 Effective June 1, 2000, pursuant to a Stipulation and Order in case number 1897, In the Matter of  
26 the Accusation Against Kaiser Foundation Hospital, Pharmacy No. 251, et al., the Board revoked  
27 Respondent Tanaka's license number RPH 28953. However, the revocation was stayed, and  
28

1 Respondent's license was placed on probation and subject to enumerated terms and conditions,  
2 for a period of three (3) years. A copy of the Stipulation and Order in case number 1897 is  
3 attached hereto as **Exhibit A** and incorporated herein by this reference. Said probationary license  
4 was in effect at all times relevant to the charges brought herein, and will expire on April 30,  
5 2005, unless renewed.

6 STATUTORY PROVISIONS

7 3. Section 4300 of the Code permits the Board to take disciplinary action to  
8 suspend or revoke a license issued by the Board.

9 4. Section 4301 of the Code states, in pertinent part, that:

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

14 "(a) Gross immorality.

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

18 . . . .

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

21 . . . .

22 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
23 abetting the violation of or conspiring to violate any provision or term of Chapter 9 (commencing  
24 with Section 4000) of the Business and Professions Code or of the applicable federal and state  
25 laws and regulations governing pharmacy, including regulations established by the board."

26 5. Section 4060 of the Code states:

27 "No person shall possess any controlled substance, except that furnished to a  
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1 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished  
2 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse  
3 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This  
4 section shall not apply to the possession of any controlled substance by a manufacturer,  
5 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse  
6 practitioner, or physician assistant, when in stock in containers correctly labeled with the name  
7 and address of the supplier or producer.

8 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,  
9 or a physician assistant to order his or her own stock of dangerous drugs and devices."

10 6. Section 11170 of the Health and Safety Code provides that no person shall  
11 prescribe, minister, or furnish a controlled substance for himself.

12 7. California Penal Code 487, states:

13 "Grand theft is theft committed in any of the following cases:

14 "(a) When the money, labor, or real or personal property taken is of a value  
15 exceeding four hundred dollars (\$400), except as provided in subdivision (b)."

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

#### 20 DRUG CLASSIFICATIONS

21 9. "Hydrocodone-Homatropine", a generic name for Hycodan, is a Schedule  
22 III controlled substances as designated by Health and Safety Code section 11056, subdivision  
23 (e)(4) and is categorized as a dangerous drugs pursuant to section 4022 of the Code.

24 10. "Promethazine with Codeine", a generic name for Phenergan with  
25 Codeine, is a Schedule V controlled substance as designated by Health and Safety Code section  
26 11058(c)(1) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

27 ///

28



1 with Homatropine syrup and Promethazine with Codeine cough syrup, as described in paragraph  
2 11 above, as well as all acts of Respondent to conceal both the theft and his self-administration of  
3 drugs in the workplace.

4 THIRD CAUSE FOR DISCIPLINE

5 **(Unlawful Possession of Controlled Substance(s))**

6 13. Respondent has subjected his license to discipline for unprofessional  
7 conduct under sections 4301(j) and 4060 of the Code, since, by his own admission, between  
8 approximately April 2001 and October 2002, he obtained possession of at least 116 pints of  
9 Hydrocodone and 237 pints of Promethazine with Codeine, both controlled substances, without a  
10 valid prescription, as described in paragraph 11 above.

11 FOURTH CAUSE FOR DISCIPLINE

12 **(Unlawfully Dispensed Controlled Substances)**

13 14. Respondent has subjected his license to discipline for unprofessional  
14 conduct under sections 4301(j) and Health and Safety Code section 11170 since, by his own  
15 admission, he furnished controlled substances to himself without a valid prescription, as  
16 described in paragraph 11, above.

17  
18 PETITION TO REVOKE PROBATION

19  
20 15. The allegations of paragraphs 11 through 14 of the Accusation above are  
21 realleged and incorporated herein by reference as though fully set forth herein.

22 RESPONDENT HAS FAILED TO COMPLY  
23 WITH CONDITION 3 OF PROBATION

24 16. Grounds exist to revoke Respondent Tanaka's probation and reimpose the  
25 Board's June 1, 2000 Order of Revocation due to Respondent's failure to comply with Condition  
26 3 of the probation order, which expressly required that Respondent abstain completely from the  
27 personal use or possession of controlled substances and dangerous drugs, as set forth in  
28 paragraphs 11 through 14, above.

RESPONDENT HAS FAILED TO COMPLY  
WITH CONDITION 13 OF PROBATION

17. Separate, severable grounds exist to revoke Respondent's probation and reimpose the Board's June 1, 2000 Order of Revocation due to Respondent's failure to comply with Condition 13 of probation, in that Respondent failed to obey all federal and state laws and regulations substantially related to or governing the practice of pharmacy, as set forth in paragraphs 11 through 14 above.

PRAYER

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

1. Granting the Petition to Revoke Probation;
2. Revoking probation and reimposing the order or revocation of Pharmacist License Number RPH 28954 issued to Gerald Jerry Tanaka;
3. Finding that allegations of the Accusation are true and constitute grounds for revocation of Pharmacist License Number RPH 28954;
4. Ordering Respondent to pay the Pharmacy Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
5. Taking such other and further action as deemed necessary and proper.

DATED: 5-21-03



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

Complainant

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SUSAN MELTON WILSON, State Bar # 106092  
Deputy Attorney General  
3 300 South Spring Street, 10 North  
Los Angeles, California 90013  
4 Telephone: (213) 897-4942  
5 Attorneys for Complainant

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

10 In the Matter of the Accusation ) NO. 1897  
11 Against: ) OAH NO. L-1999020311  
) )  
12 KAISER FOUNDATION HOSPITAL ) STIPULATION AND  
PHARMACY NO. 251 ) ORDER  
13 13652 Cantara Street, Room I )  
Panorama City, CA 91402 )  
14 Permit No. HSP 39643, )  
) )  
15 HOWARD K. KRAMER )  
22922 Paul Revere Drive )  
16 Calabasas, CA 91302 )  
License No. RPH 21663 )  
17 ) )  
GERALD JERRY TANAKA )  
18 19271 Pebble Beach )  
Northridge, CA 91326 )  
19 License No. RPH 28954 )  
) )  
20 Respondents. )  
) )  
21

22  
23 In the interest of a prompt and speedy settlement of  
24 this matter, consistent with the public interest and the  
25 responsibility of the Board of Pharmacy (hereinafter "Board") the  
26 parties submit this Stipulation and Decision to the Board for its  
27 approval and adoption as the final disposition of the Accusation.

1           IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES TO  
2 THE ABOVE-ENTITLED CASE that the following matters are true:

3  
4           1.     Accusation No. 1897 is currently pending against  
5 GERALD J. TANAKA as an individual licensee, HOWARD K. KRAMER as  
6 an individual licensee and pharmacist-in-charge of KAISER  
7 FOUNDATION HOSPITAL PHARMACY #251, and KAISER FOUNDATION HOSPITAL  
8 PHARMACY #251, the inpatient pharmacy at the KAISER PERMANENTE  
9 hospital in Panorama City, owned and operated by KAISER  
10 FOUNDATION HOSPITALS.

11           2.     Said Accusation was filed by complainant PATRICIA  
12 F. HARRIS in her official capacity as Executive Officer, Board  
13 of Pharmacy, Department of Consumer Affairs, State of California  
14 (hereinafter referred to as "Board"). The Accusation, together  
15 with all other statutorily required documents, was duly served on  
16 the respondents on or about August 1, 1997, and Respondents filed  
17 their timely Notice of Defense, contesting the Accusation. A  
18 copy of Accusation No. 1897 is attached hereto as Exhibit "A" and  
19 incorporated by reference as if fully set forth.

20           3.     At all times relevant herein, Respondent Kaiser  
21 has been licensed by the Board of Pharmacy under pharmacy permit  
22 no. HSP 39643 issued to KAISER FOUNDATION HOSPITALS doing  
23 business as KAISER FOUNDATION HOSPITAL PHARMACY NO. 251  
24 ("Respondent KAISER").

25           At all times relevant herein, Respondent KRAMER has  
26 been licensed by the Board, under pharmacist license no.

27 \\\

1 RPH21663; and had been pharmacist-in-charge of Respondent Kaiser  
2 since June 16, 1994 and all times pertinent herein.

3 At all times relevant herein, Respondent TANAKA has  
4 been licensed by the Board, under pharmacist license no.  
5 RPH28954.

6 4. Each Respondent is advised and represented by  
7 attorney Anthony A. Barrueta in this matter. Respondents have  
8 fully and completely discussed with counsel the effects of this  
9 stipulation.

10 5. Respondents understand the nature of the charges  
11 stated in the Accusation and that the charges and allegations  
12 constitute cause for imposing discipline upon their licenses to  
13 practice pharmacy. Respondents are fully aware of their right to  
14 a hearing on the charges and allegations contained in said  
15 Accusation, their rights to reconsideration, appeal and all other  
16 rights accorded pursuant to the California Business and  
17 Professions Code and freely and voluntarily waive such rights.

18 6. Respondents understand that no hearing will be  
19 held and no witnesses will be called and examined before the  
20 Board, no evidence or documents will be introduced, and that the  
21 Board in making its decision or order on the accusation will only  
22 have before it the accusation and this stipulation. Respondents  
23 understand that by entering into this stipulation they give up  
24 their right to confront and cross-examine any and all witnesses  
25 against them.

26 7. Respondents understand that by entering into this  
27 stipulation they give up their right to seek reconsideration or

1 to appeal to the courts of the State of California any decision  
2 or order of the Board on the Accusation, and that by entering  
3 into this Stipulation the Board may enter a final non-reviewable  
4 decision or order on the Accusation.

5           8. Only Respondents Kaiser and Tanaka are parties to  
6 this settlement agreement, and only Respondents Kaiser and Tanaka  
7 are to be disciplined pursuant to the Board's order herein.

8           As part of this agreement, Complainant has dismissed  
9 and withdrawn the charges in Accusation no. 1897 against  
10 Respondents Kramer and Kaiser alleging that respondents failed to  
11 comply with notice requirements of 16 California Code of  
12 Regulations § 1715.6, and 21 Code of Federal Regulations §  
13 1301.76(b), and were therefore subject to discipline under the  
14 Business and Professions Code. Remaining charges against  
15 Respondent Kaiser are to be resolved in accord with the terms of  
16 this stipulation.

17           9. The following admissions are for purposes of this  
18 stipulation only, and are made with the express understanding  
19 that any admissions made here are not to be used or admissible in  
20 any collateral proceeding between any Respondent and any party or  
21 parties other than the Board of Pharmacy.

22           Respondents Kaiser and Tanaka admit that - between  
23 approximately March 1994 and March 1995 - Respondent Tanaka,  
24 while employed by Respondent Kaiser, stole for his personal use  
25 approximately 23 4-ounce containers of Promethazine with Codeine  
26 syrup and 50 4-ounce bottles of Hycodan syrup from Respondent  
27 Kaiser and several other Kaiser Foundation Hospital pharmacy

1 facilities. Respondents Kaiser and Tanaka admit that this conduct  
2 constitutes cause for discipline under Business and Professions  
3 Code Section 4350.5(c).

4 Respondents Kaiser and Tanaka admit that - between  
5 approximately March 1994 and March 1995 - Respondent Tanaka,  
6 while employed by Respondent Kaiser, administered to himself  
7 Promethazine with Codeine and Hycodan syrup in a manner dangerous  
8 to himself and to the public, and to such an extent that it  
9 impaired his ability to practice pharmacy. Respondents Kaiser  
10 and Tanaka admit that this conduct constitutes cause for  
11 discipline under Business and Professions Code Section 4350.5 and  
12 Section 4353.

13 Respondent Tanaka admits that - between approximately  
14 March 1994 and March 1995 - while employed by Respondent Kaiser,  
15 he unlawfully possessed Promethazine with Codeine and Hycodan  
16 syrup, controlled substances, and that these acts constitute  
17 cause for discipline under Business and Professions Code Section  
18 4350.5 and Section 4230.

19 Respondents admit that the Board has jurisdiction to  
20 bring and adjudicate all charges stated in the Accusation herein,  
21 and to impose disciplinary penalties in this matter.

22 Based on all of the foregoing admissions, Respondents,  
23 and each of them agree to resolve charges and allegations made in  
24 the Accusation herein by the Board's imposition of penalty as set  
25 out in the Order below.

26 10. It is stipulated and agreed that the Board has  
27 incurred costs within the meaning of Business and Professions

1 Code § 125.3 in the amount of Nine Thousand, Seven Hundred  
2 Dollars (\$9,700.00).

3 11. This stipulation is solely for purposes of this  
4 proceeding, for any other disciplinary proceedings by the Board,  
5 and for any petition for reinstatement, reduction of penalty, or  
6 application for re-licensure, and shall have no force or effect  
7 in any other case or proceeding. In any future proceedings  
8 before the Board, or in which the Board of Pharmacy and  
9 respondents are parties, Respondents may not deny the allegations  
10 admitted in paragraph 9, above, and said allegations shall be  
11 deemed true without requiring the Board to present any further  
12 evidence. In the event this settlement is not adopted by the  
13 Board, the stipulation will not become effective and may not be  
14 used for any purpose.

15 12. Respondents understand that, in deciding whether  
16 to adopt this stipulation, the Board may receive oral and written  
17 presentations from, and make inquiries of the complainant, her  
18 attorneys, the Board's attorneys, consulting experts and the  
19 Board's enforcement committee.

20 WHEREFORE IT IS FURTHER STIPULATED AND AGREED by and  
21 between the parties that the Board may issue the following  
22 disciplinary decision or order as its decision and order in the  
23 matter of Accusation Number 1897:

24 IT IS HEREBY ORDERED AS FOLLOWS:

25 KAISER FOUNDATION HOSPITAL PHARMACY NO. 251

26 That the hospital pharmacy permit of respondent KAISER  
27 FOUNDATION HOSPITAL PHARMACY NO. 251, permit no. HSP 39643 is

1 revoked. However, the revocation is stayed and Respondent is  
2 placed on probation for a period of one (1) year upon the terms  
3 and conditions listed below .

4 GERALD JERRY TANAKA:

5 That the pharmacist license of GERALD JERRY TANAKA,  
6 license no. RPH-28954 is revoked. However, the revocation is  
7 stayed and Respondent is placed on probation for a period of  
8 three(3) years upon the terms and conditions listed below.

9 TERMS AND CONDITIONS OF PROBATION

10 1. Rehabilitation Program - Pharmacist Recovery  
11 Program (PRP).

12 Within thirty (30) days of the effective date of this  
13 decision, Respondent Tanaka shall contact the Pharmacist Recovery  
14 Program for evaluation and shall successfully participate in and  
15 complete the treatment contract and any subsequent addendums as  
16 recommended and provided by the PRP and as approved by the Board.  
17 The costs for PRP participation shall be borne by the respondent.  
18 Probation shall be extended automatically until respondent  
19 successfully completes his or her treatment contract.

20 2. Random Fluid Testing

21 Respondent Tanaka shall immediately submit, with or  
22 without prior notice, to biological fluid testing, at respondent  
23 Tanaka's expense, upon the request of the Board or its designee.  
24 The length and frequency of this testing requirement will be  
25 determined by the Board.

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1                   3.     Abstain From Drug Use

2                   Respondent Tanaka shall abstain completely from the  
3 personal use or possession of controlled substances and dangerous  
4 drugs. This order does not apply in instances where medications  
5 are lawfully prescribed to the respondent for a legitimate  
6 illness or condition by a physician, dentist or podiatrist and  
7 where respondent, upon request of the Board or its designee,  
8 provides documentation from the treating physician, dentist or  
9 podiatrist that the prescription was legitimately issued and is a  
10 necessary part of the treatment of the respondent.

11                   4.     Restrictions on Supervision of Others

12                   Respondent Tanaka shall not supervise any intern  
13 pharmacist or perform the duties of a preceptor. In the event  
14 that the respondent is currently the pharmacist-in-charge of a  
15 pharmacy, the pharmacy shall retain an independent consultant at  
16 its expense who shall be responsible for reviewing pharmacy  
17 operations on a quarterly basis for compliance by respondent with  
18 state and federal laws and regulations governing pharmacy and for  
19 compliance by respondent by respondent with the obligations of a  
20 pharmacist in charge. The consultant shall be a pharmacist  
21 licensed by and not on probation to the Board and whose name  
22 shall be submitted to the Board for its approval within thirty  
23 (30) days of the effective date of this decision. Respondent  
24 shall not be a pharmacist-in-charge at more than one pharmacy or  
25 at any pharmacy of which he is not placed as the pharmacist-in-  
26 charge on the date of this agreement, without prior notification  
27 and consent of the Board. The Board may, in case of an employment

1 change by respondent or for other reasons as deemed appropriate  
2 by the Board, bar the respondent from acting as a pharmacist-in-  
3 charge.

4           5.    No Ownership of Premises

5           Respondent Tanaka shall not own, have any legal or  
6 beneficial interest in, or serve as a manager, administrator,  
7 member, officer, director, associate, or partner of any business,  
8 firm, partnership, or corporation currently or hereinafter  
9 licensed by the Board, except as expressly permitted in paragraph  
10 4, above. Respondent shall sell or transfer any legal or  
11 beneficial interest in any entity licensed by the Board within 90  
12 days following the effective date of this decision and shall  
13 immediately thereafter provide written proof thereof to the  
14 Board.

15           6.    Reporting to the Board

16           Respondent Tanaka shall report to the Board or its  
17 designee quarterly. The report shall be made either in person or  
18 in writing, as directed. If the final probation report is not  
19 made as directed, probation shall be extended until such time as  
20 the final report is made.

21           7.    Interview with the Board

22           Upon receipt of reasonable notice, Respondent Tanaka  
23 shall appear in person for interviews with the Board or its  
24 designee upon request at various intervals at a location to be  
25 determined by the Board or its designee. Failure to appear for a  
26 scheduled interview without prior notification to Board staff  
27 shall be considered a violation of probation.

1           8.    Peer Review

2           Respondent Tanaka shall submit to peer review as deemed  
3 necessary by the Board.

4           9.    Continuing Education

5           Respondent Tanaka shall provide evidence of efforts to  
6 maintain skill and knowledge as a pharmacist as directed by the  
7 Board.

8           10.   Notice to Employers

9           Respondent Tanaka shall notify all present and  
10 prospective employers of the Decision in case number 1897 and the  
11 terms, conditions and restrictions imposed on Respondent by said  
12 decision.

13           Within 30 days of the effective date of this Decision,  
14 and within 15 days of Respondent undertaking new employment, if  
15 any, Respondent shall cause his employer to report to the Board  
16 in writing, acknowledging the employer has read the Accusation  
17 and Decision in case number 1897.

18           If Respondent works for or is employed by or through a  
19 pharmacy employment service, Respondent must notify the  
20 pharmacist-in-charge and/or owner at every pharmacy at which he  
21 is to employed or used of the fact and terms of the decision in  
22 case number 1897 in advance of the respondent commencing work at  
23 the pharmacy.

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

## 1           11.    Notification of Employment/ Mailing Address Change

2            Within ten (10) days of a change in employment --  
3 either leaving or commencing employment -- Respondent Tanaka  
4 shall so notify the Board in writing, including the address of  
5 the new employer; within ten (10) days of a change of mailing  
6 address, respondent shall notify the board in writing.  If  
7 respondent works for or is employed through a pharmacy employment  
8 service, respondent shall, as requested, provide to the Board or  
9 its designee with a work schedule indicating dates and location  
10 of employment.

## 11           12.    Tolling of Probation

12           Should Respondent Tanaka leave California to reside or  
13 practice outside this State, Respondent must notify the Board in  
14 writing of the dates of departure and return.  Periods of  
15 residency or practice outside the State shall not apply to  
16 reduction of the probationary terms.

## 17           13.    Obey All Laws

18           Respondents shall obey all federal and state laws and  
19 regulations substantially related to or governing the practice of  
20 pharmacy.

## 21           14.    Cooperation with Board Staff

22           Respondents shall cooperate with the Board's inspection  
23 program and in the Board's monitoring and investigation of the  
24 respondent's compliance with the terms and conditions of his  
25 probation.  Failure to cooperate shall be considered a violation  
26 of probation.

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1           15.    Probation Monitoring Costs

2            Respondents shall pay the costs associated with  
3 probation monitoring as determined by the Board each and every  
4 year of probation.  Such costs shall be payable to the Board at  
5 the end of each year of probation.  Failure to pay such costs  
6 shall be considered a violation of probation.

7           16.    Costs

8            Respondents Tanaka and Kaiser shall repay to the Board  
9 its costs pursuant to Business and Professions Code § 125.3, in  
10 the amount of Nine Thousand, Seven Hundred Dollars (\$9,700.00),  
11 in full, within sixty (60) days of the effective date of this  
12 order.

13           If either Respondent fails to pay these costs on or  
14 before the dates(s) determined by the Board, the Board shall,  
15 without affording the Respondent notice and the opportunity to be  
16 heard, revoke probation and carry out the disciplinary order that  
17 was stayed.

18           17.    Status of License

19            Respondent Tanaka shall, at all times while on  
20 probation, maintain an active current license with the Board,  
21 including any period during which suspension or probation is  
22 tolled.

23           If Respondent's license expires by operation of law or  
24 otherwise, upon renewal or reinstatement Respondent's license  
25 shall be subject to any and all terms of this probation not  
26 previously satisfied.

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1            Respondent Kaiser shall, at all times while on  
2 probation, maintain a current license with the Board. If  
3 Respondent submits an application to the Board, and the  
4 application is approved, for a change of location, change of  
5 permit or change of ownership, the Board shall retain continuing  
6 jurisdiction over the license, and the Respondent shall remain on  
7 probation as determined by the Board or its designee.

8            18. Owners and Officers: Knowledge of the Law

9            Respondent Kaiser shall provide, within 30 days after  
10 the effective date of this decision, signed and dated statements  
11 from the owners, officers, or any owner or holder of 10% or more  
12 of the interest in Respondent or Respondent's stock and any  
13 officer, stating said individuals have read and are familiar with  
14 federal and state laws and regulations governing the practice of  
15 pharmacy.

16            19. Notice to Employees

17            Respondent Kaiser shall, upon or before the effective  
18 date of this decision, ensure that all employees involved in  
19 permit operations are made aware of all the terms and conditions  
20 of probation, either by posting a notice of the conditions of the  
21 terms and conditions, circulating such notice, or both. If the  
22 notice required by this provision is posted, it shall be posted  
23 in a prominent place and shall remain posted throughout  
24 probation. Respondent shall ensure that any employees hired or  
25 used after the effective date of this decision are made aware of  
26 all the terms and conditions by posting a notice, circulating a  
27 notice, or both.

1 "Employees" as used in this provision includes all  
2 full-time, part-time, temporary and relief employees and  
3 independent contractors employed or hired at any time during  
4 probation.

5 20. Violation of Probation

6 If Respondents violate probation in any respect, the  
7 Board, after giving said Respondent notice and an opportunity to  
8 be heard, may revoke probation and carry out the disciplinary  
9 order which was stayed. If a petition to revoke probation is  
10 filed against any Respondent during probation, the Board shall  
11 have continuing jurisdiction and the period of probation shall be  
12 extended until the petition to revoke probation is heard and  
13 decided.

14 If Respondent has not complied with any term or  
15 condition of probation, the Board shall have continuing  
16 jurisdiction over Respondent, and probation shall automatically  
17 be extended until all terms and conditions have been met or the  
18 Board has taken other action as deemed appropriate to treat the  
19 failure to comply as a violation of probation, to terminate  
20 probation, and to impose the penalty which was stayed.

21 21. Completion of Probation

22 Upon successful completion of probation, Respondents'  
23 certificates will be fully restored.

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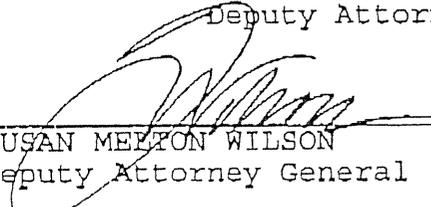
CONTINGENCY

The within stipulation shall be subject to the approval of the Board of Pharmacy. If the Board of Pharmacy fails to adopt this stipulation as its Order, the stipulation shall be of no force or effect for either party.

I concur in the stipulation and order.

DATED: 9-10-99

BILL LOCKYER, Attorney General  
of the State of California  
SUSAN MELTON WILSON  
Deputy Attorney General

  
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SUSAN MELTON WILSON  
Deputy Attorney General  
Attorneys for Complainant

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AGREEMENT BY RESPONDENTS

RESPONDENT KAISER HOSPITAL PHARMACIES

I, Al L. Carver, am the Vice President, Pharmacy Strategy and Operations of KAISER FOUNDATION HOSPITALS, dba KAISER FOUNDATION HOSPITAL PHARMACY NO. 251.

I have carefully read and fully understand the stipulation and order set forth above. I have discussed the terms and conditions set forth in the stipulation and order with my attorney, Anthony A. Barrueta. I understand that in signing this stipulation I am, as the responsible managing officer of respondent pharmacy, waiving all rights to a hearing on the charges set forth in the Accusation on file in this matter. I further understand in signing this stipulation, that the Board shall enter the foregoing order placing certain requirements, restrictions and limitations on the license of Respondent pharmacy in the State of California.

DATED: June 18, 1999 Al L. Carver  
AL L. CARVER, Vice President,  
Pharmacy Strategy and Operations  
Kaiser Foundation Hospital  
dba Respondent Pharmacy

I concur in the stipulation and order.

DATED: \_\_\_\_\_  
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ANTHONY A. BARRUETA  
Attorney for Respondent Kaiser  
Foundation Hospital

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AGREEMENT BY RESPONDENTS

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DATED: June 18, 1999 Al L. Carver  
AL L. CARVER, Vice President,  
Pharmacy Strategy and Operations  
Kaiser Foundation Hospital  
dba Respondent Pharmacy

I concur in the stipulation and order.

DATED: June 20, 1999 Anthony A. Barrueta  
ANTHONY A. BARRUETA  
Attorney for Respondent Kaiser  
Foundation Hospital

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RESPONDENT GERALD JERRY TANAKA

I have carefully read and fully understand the stipulation and order set forth above. I have discussed the terms and conditions set forth in the stipulation and order with my attorney, Anthony A. Barrueta. I understand that in signing this stipulation I am waiving all rights to a hearing on the charges set forth in the Accusation on file in this matter. I further understand in signing this stipulation, that the Board shall enter the foregoing order placing certain requirements, restrictions and limitations on my license to practice pharmacy in the State of California.

DATED: 6/21/99  
[Signature]  
GERALD JERRY TANAKA

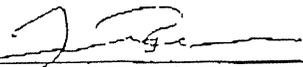
I concur in the stipulation and order.  
DATED: 6/21/99  
[Signature]  
ANTHONY A. BARRUETA  
Attorney for Respondent Tanaka

RESPONDENT GERALD JERRY TANAKA

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DATED: 4/2/99

  
GERALD JERRY TANAKA

I concur in the stipulation and order.

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

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ANTHONY A. BARRUETA  
Attorney for Respondent Tanaka

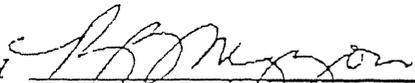
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DECISION AND ORDER  
OF THE BOARD OF PHARMACY

The foregoing Stipulation and Order, in No. 1897 is hereby adopted as the Order of the California Board of Pharmacy. An effective date of June 1, 2000, has been assigned to this Decision and Order.

Made this 2nd day of May, 2000.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

BY   
RICHARD B. MAZZONI  
Board President