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of the State of California
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3 California Department of Justice
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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2699

12 KM CORPORATION, dba ELLIOTT
PHARMACY
13 KIRIT SHAH, President
MEERA SHAH, Vice President
14 9049 Garfield Avenue
Fountain Valley, CA 92708-6560

OAH No. L-2004020191

**STIPULATED SURRENDER OF
LICENSE AND ORDER RE KIRIT B.
SHAH, RPH**

15 Original Pharmacy Permit No. PHY 43301

16 and

17 KIRIT B. SHAH, RPH
18 21 Castillo
Irvine, CA 92714

19 Original Pharmacist License No. RPH 38430

20 Respondents.
21

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
23 Proceeding that the following matters are true:

24 PARTIES

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

1 CULPABILITY

2 8. Respondent Shah understands and agrees that if he ever applies for licensure or
3 petitions for reinstatement in the State of California, either individually or as a partner, associate,
4 or officer or other stakeholder in any corporation seeking licensure from the Board, the Board
5 shall treat it as a new application for licensure. Respondent must comply with all the laws,
6 regulations and procedures for licensure in effect at the time the application or petition is filed,
7 and all of the charges and allegations contained in Accusation No. 2699 shall be deemed to be
8 true, correct, and admitted by Respondent when the Board determines whether to grant or deny
9 the application or petition.

10 9. Respondent agrees that cause exists for discipline and hereby surrenders his
11 Original Pharmacist License No. RPH 38430 for the Board's formal acceptance.

12 10. Respondent understand that by signing this stipulation he enables the Board to
13 issue an order accepting these surrenders without further process.

14 CONTINGENCY

15 11. This stipulation shall be subject to approval by the Board of Pharmacy.
16 Respondents understand and agree 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 surrender and order shall be of no force
22 or effect, except for this paragraph, it shall be inadmissible in any legal action between the
23 parties, and the Board shall not be disqualified from further action by having considered this
24 matter.

25 OTHER MATTERS

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

1 E. Respondent shall pay the Board its costs of investigation and enforcement in the
2 amount of \$20,000.00 prior to issuance of a new or reinstated individual pharmacist license or
3 any original pharmacy permit.

4 ACCEPTANCE

5 I have carefully read the above Stipulated Surrender of License and Order and have fully
6 discussed it with my attorney, Shari I. Weintraub. I understand the stipulation and the effect it
7 will have on my Original Pharmacist License. I enter into this Stipulated Surrender of License
8 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
9 Order of the Board of Pharmacy.

10 DATED: 9-24-04.

11
12 Kirit B. Shah
13 KIRIT B. SHAH

14 Respondent

15
16
17 I have read and fully discussed with Respondent Kirit B. Shah the terms and conditions
18 and other matters contained in this Stipulated Surrender of License and Order. I approve its
19 form and content.

20 DATED: 27 September 2004.

21 FREDRICKSON, MAZEIKA & GRANT, LLP

22
23 By: Shari I. Weintraub
24 SHARI I. WEINTRAUB
Attorney for Respondent

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ENDORSEMENT

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

DATED: Sept. 27, 2002.

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:

KM CORPORATION, dba ELLIOTT
PHARMACY
KIRIT SHAH, President
MEERA SHAH, Vice President
9049 Garfield Avenue
Fountain Valley, CA 92708-6560

Original Pharmacy Permit No. PHY 43301

and

KIRIT B. SHAH, RPH
21 Castillo
Irvine, CA 92714

Original Pharmacist License No. RPH 38430

Respondents.

Case No. 2699

OAH No. L-2004020191

DECISION AND ORDER RE RPH KIRIT B. SHAH

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 23, 2004.

It is so ORDERED November 23, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2699

1 BILL LOCKYER, Attorney General
of the State of California
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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2699

13 KM CORPORATION, dba ELLIOTT
PHARMACY

A C C U S A T I O N

14 KIRIT SHAH, President
MEERA SHAH, Vice President
15 9049 Garfield Avenue
Fountain Valley, CA 92708-6560

16 Original Pharmacy Permit No. PHY 43301

17 and

18 KIRIT B. SHAH, RPH
19 21 Castillo
Irvine, CA 92714

20 Original Pharmacist License No. RPH 38430

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

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

28 ///

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

3 "...

4 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving
5 away, or administering or offering to sell, furnish, give away, or administer any
6 controlled substance to an addict.

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

9 "...

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

14 "..."

15 B. Section 4324 of the Code states in pertinent part:

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

21 "..."

22 E. Section 4081 of the Code states:

23 "(a) All records of manufacture and of sale, acquisition, or disposition of
24 dangerous drugs or dangerous devices shall be at all times during business hours
25 open to inspection by authorized officers of the law, and shall be preserved for at
26 least three years from the date of making. A current inventory shall be kept by
27 every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
28 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,

1 or establishment holding a currently valid and unrevoked certificate, license,
2 permit, registration, or exemption under Division 2 (commencing with Section
3 1200) of the Health and Safety Code or under Part 4 (commencing with Section
4 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
5 of dangerous drugs or dangerous devices.

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

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

14 F. Section 4059 of the Code states in pertinent part:

15 "(a) A person may not furnish any dangerous drug, except upon the prescription of
16 a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not
17 furnish any dangerous device, except upon the prescription of a physician, dentist,
18 podiatrist, optometrist, or veterinarian.

19 "..."

20 G. Section 4063 of the Code states:

21 " No prescription for any dangerous drug or dangerous device may be refilled
22 except upon the authorization of the prescriber. The authorization may be given
23 orally or at the time of giving the original prescription. No prescription for any
24 dangerous drug that is a controlled substance may be designated refillable as
25 needed."

26 H. Section 4113 of the Code states in pertinent part:

27 "...

28 ///

1 "(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
2 with all state and federal laws and regulations pertaining to the practice of
3 pharmacy.

4 "..."

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

9 6. This Accusation is brought before the Board under the authority of the
10 following sections of Title 16, California Code of Regulation (CCR):

11 A. CCR Section 1715.6 states:

12 "The owner [of a pharmacy] shall report to the Board within thirty (30) days of
13 discovery of any loss of the controlled substances, including their amounts and
14 strengths."

15 B. CCR Section 1716 states:

16 "Pharmacists shall not deviate from the requirements of a prescription except
17 upon the prior consent of the prescriber or to select the drug product in accordance
18 with Section 4073 of the Business and Professions Code. Nothing in this
19 regulation is intended to prohibit a pharmacist from exercising commonly-
20 accepted pharmaceutical practice in the compounding or dispensing of a
21 prescription."

22 C. CCR Section 1718 states:

23 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and
24 Professions Code shall be considered to include complete accountability for all
25 dangerous drugs handled by every licensee enumerated in Sections 4081 and
26 4332.

27 "The controlled substances inventories required by Title 21, CFR, Section 1304
28 shall be available for inspection upon request for at least 3 years after the date of

1 the inventory."

2 7. This Accusation is brought before the Board under the authority of the
3 following sections of the California Health and Safety Code (H&S Code):

4 A. H&S Code Section 11200 in pertinent part:

5 "...

6 "(b) No prescription for a Schedule III or IV substance may be refilled more than
7 five times and in an amount, for all refills of that prescription taken together, exceeding a 120-
8 day supply.

9 "..."

10 B. H&S Code Section 11153 states in pertinent part:

11 "(a) A prescription for a controlled substance shall only be issued for a legitimate
12 medical purpose by an individual practitioner acting in the usual course of his or
13 her professional practice. The responsibility for the proper prescribing and
14 dispensing of controlled substances is upon the prescribing practitioner, but a
15 corresponding responsibility rests with the pharmacist who fills the prescription.

16 Except as authorized by this division, the following are not legal prescriptions: (1)
17 an order purporting to be a prescription which is not issued in the usual course of
18 professional treatment or in legitimate and authorized research; or (2) an order for
19 an addict or habitual user of controlled substances, which is issued not in the
20 course of professional treatment or as part of an authorized narcotic treatment
21 program, for the purpose of providing the user with controlled substances,
22 sufficient to keep him or her comfortable by maintaining customary use.

23 "... (Emphasis added.)

24 C. H&S Code Section 11171 states that "[n]o person shall prescribe,
25 administer, or furnish a controlled substance except under the conditions and in the manner
26 provided by this division."

27 D. H&S Code Section 11173 states in pertinent part:

28 "...

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

3 "..."

4 8. This Accusation also refers to Title 21, Federal Code of Regulation section
5 1304.11 which requires that inventories be kept of all controlled substances.

6 **DRUGS**

7 9. The following are all dangerous drugs, pursuant to Business & Professions
8 Code section 4022 and are also controlled substances, if so identified below:

9 A. Hydrocodone with Acetaminophen 7.5 mg/750 mg, a brand name for
10 which is Vicodin ES, is a Schedule III controlled substance under H&S Code section 11056;

11 B. Hydrocodone with Acetaminophen 10 mg/500 mg, a brand name for
12 which is Lortab-10, is a Schedule III controlled substance under H&S Code section 11056;

13 C. Soma is a brand name for carisoprodol 350 mg.

14 **CHARGES AND ALLEGATIONS**

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct: Failure to Maintain Inventory)

17 10. Respondent Shah and Respondent Pharmacy are subject to disciplinary
18 action under Code §4081 in conjunction with CCR §1718 in that they failed to maintain
19 complete accountability for dangerous drugs and controlled substances between May 1, 2000 and
20 July 15, 2002. The circumstances are as follows:

21 An audit of Respondent Pharmacy's records of acquisition and disposition for the
22 above time period revealed that Respondents were unable to account for a loss of 76,549 Lortab-
23 10 tablets, 1,287 Vicodin ES tablets, and 7,087 Soma tablets.

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Unprofessional Conduct: Furnishing Dangerous Drugs Without a Prescription)

26 11. Respondent Shah and Respondent Pharmacy are subject to disciplinary
27 action under Code §4059 in that they furnished dangerous drugs and/or controlled substances
28 without authorization or prescription from the allegedly prescribing physician. The

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Clearly Excessive Furnishing of Controlled Substances)

3 16. Respondent Shah and Respondent Pharmacy are subject to disciplinary
4 action under Code §4301(d) for the clearly excessive furnishing of controlled substances. The
5 circumstances are as follow:

6
7 A. Data re Respondents' dispensing of hydrocodone with acetaminophen to
8 customer Robert B. show that he was dispensed enough tablets to take 23 per day. The
9 prescribed direction was for 1 tablet every 4 to 6 hours as needed, which indicated a maximum of
10 8 tablets per day.

11 B. Data re Respondents' dispensing of the hydrocodone with acetaminophen
12 to both Robert B. and Charles C. show dispensing of controlled substances at intervals which
13 were not consistent with the drugs' directions for use.

14 EIGHTH CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct: Violation of Code §4063- Unauthorized Refills)

16 17. Respondent Shah and Respondent Pharmacy are subject to disciplinary
17 action under Code §4301(o) in conjunction with Code section 4063 in that even when there was a
18 legitimate prescription for a drug with regard to Robert B., Respondent Shah dispensed
19 dangerous drugs and controlled substances to him without authorized refills.

20 NINTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct: Violation of CCR §1716 - Deviation from Rx's)

22 18. Respondent Shah and Respondent Pharmacy are subject to disciplinary
23 action under Code §4301(o) in conjunction with Title 16, CCR §1716 in that with regard to
24 various prescriptions for hydrocodone with acetaminophen for at least Charles C. and Robert B.,
25 Respondent Shah changed the quantity dispensed either up or down, and changed the drug from
26 Vicodin to Vicodin-ES to Lortab-10, using the same prescription number on a refill.

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1 TENTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Violation of CCR§1715.6 - Reporting Loss of Controlled Substance)

3 19. Respondent Shah and Respondent Pharmacy are subject to disciplinary
4 action under Code §4301(o) in conjunction with Title 16, CCR §1715.6 in that they failed to
5 report to the Board a theft in 2000 of controlled substances from the pharmacy.

6 ELEVENTH CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct: Violation of Health & Safety Code Laws)

8 20. Respondent Shah and Respondent Pharmacy are subject to
9 discipline under Code §4301(j) for violation of California Health & Safety Code laws
10 concerning controlled substances. The circumstances are as follows:

11 A. Respondents prescribed and/or dispensed controlled substances on
12 prescriptions not issued in the usual course of professional treatment, which violates H&S Code
13 §11153(a);

14 B. Respondents made false statements in prescriptions and other records (as
15 outlined above in this pleading) required by the H&S Code regarding controlled substances,
16 which violates H&S Code §11173;

17 C. Respondents refilled Schedule III controlled substance prescriptions for at
18 least Robert B. and Charles C. more than five times and in an amount, for all refills of that
19 prescription taken together, exceeding a 120-day supply, which violates H&S Code §11200.

20 D. Respondents prescribed or furnished a controlled substance not in
21 accordance with the Health and Safety Code (as outlined above in this Cause for Discipline), a
22 violation of H&S Code §11171;

23 PRAYER

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

26 1. Revoking or suspending Original Pharmacy Permit Number PHY 43301,
27 issued to KM Corporation, dba Elliott Pharmacy, Kirit Shah, President, Meera Shah, Vice
28 President;

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2. Revoking or suspending Original Pharmacist License Number RPH 38430, issued to Kirit B. Shah, RPH;

3. Ordering KM Corporation, dba Elliott Pharmacy and Kirit B. Shah, RPH to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 1/12/04

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