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

OAH No. L-2004020191

**STIPULATED REVOCATION OF
PHARMACY PERMIT AND
DISCIPLINARY ORDER**

16 Original Pharmacy Permit No. PHY 43301

17 and

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

20 Original Pharmacist License No. RPH 38430

21 Respondents.

22
23 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
24 entitled proceedings that the following matters are true:

25 PARTIES

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

1 CULPABILITY

2 8. Respondent admits the truth of the charges and allegations in Accusation No.
3 2699, agrees that its Original Pharmacy Permit is subject to discipline, and agrees to be bound by
4 the Board's imposition of discipline as set forth in the Disciplinary Order below.

5 CONTINGENCY

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

16 10. The parties understand and agree that facsimile copies of this Stipulated
17 Revocation of Pharmacy Permit and Disciplinary Order, including facsimile signatures thereto,
18 shall have the same force and effect as the originals.

19 11. In consideration of the foregoing admissions and stipulations, the parties agree
20 that the Board may, without further notice or formal proceeding, issue and enter the following
21 Disciplinary Order:

22 DISCIPLINARY ORDER

23 IT IS HEREBY ORDERED that Original Pharmacy Permit No. PHY 43301 issued to
24 Respondent KM Corporation dba Elliott Pharmacy is revoked.

25 ACCEPTANCE

26 I have carefully read the above Stipulated Revocation of Pharmacy Permit and
27 Disciplinary Order and have fully discussed it with my attorney, Shari I. Weintraub. I understand
28 the stipulation and the effect it will have on my Original Pharmacy Permit. I enter into this

1 Stipulated Revocation of Pharmacy Permit and Disciplinary Order voluntarily, knowingly, and
2 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

3 DATED: 9/24/2004.

4 KM CORPORATION dba ELLIOTT PHARMACY

5
6 By: Kirit B. Shah
KIRIT B. SHAH, President

7 Respondent

8
9 I have read and fully discussed with Respondent KM Corporation dba Elliott
10 Pharmacy the terms and conditions and other matters contained in the above Stipulated
11 Revocation of Pharmacy Permit and Disciplinary Order. I approve its form and content.

12 DATED: 27 September 2004.

13
14 Shari I. Weintraub
SHARI I. WEINTRAUB
15 Attorney for Respondent

16
17 ENDORSEMENT

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

21 DATED: Sept. 27, 2004.

22 BILL LOCKYER, Attorney General
of the State of California

23
24 Susan Fitzgerald
25 SUSAN FITZGERALD
Deputy Attorney General

26 Attorneys for Complainant

27
28

**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 RESPONDENT KM CORPORATION

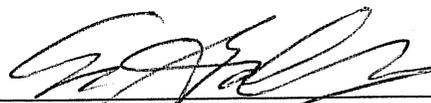
The attached Stipulated Revocation of Pharmacy Permit and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 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
2 SUSAN FITZGERALD, State Bar No. 112278
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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
14 KIRIT SHAH, President
MEERA SHAH, Vice President
15 9049 Garfield Avenue
Fountain Valley, CA 92708-6560

A C C U S A T I O N

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 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