ORIGINAL

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Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: FREDRIC C. HIRNING 1205 E. North Street Manteca, CA 95336-4932 Pharmacist No. RPH 26554 Respondent.	Case No. 2709 OAH No. N2004060241 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

2. Respondent Fredric C. Hirning (Respondent) is represented in this proceeding by attorney Gregory P. Matzen Esq., whose address is 2500 Ventura Oaks, Suite 200 Sacramento, CA 95833

. 3. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist No.

RPH 26554 to Fredric C. Hirning (Respondent). Respondent's license will expire April 30, 2005.

JURISDICTION

4. The First Amended Accusation in case No. 2709 was filed before the Board of Pharmacy (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense. A copy of the First Amended Accusation in Case No. 2709 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the First Amended Accusation in Case No. 2709. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

8. The parties agree that the First Amended Accusation shall be amended as follows:

14. Respondent is subject to disciplinary action under section 490 and 4301 (1) of the Code in that on or about December 5, 2003, in *People v. Fredric Carl Hirning*, County of Alameda Superior Court, Case No. 203082-7, respondent was convicted by a plea of

no contest of a violation of Penal Code section 484 (a), Petty theft, a crime which is substantially related to the qualifications, functions and duties of a Pharmacist.

The imposition of sentence was suspended and respondent was placed on conditional probation for three years. The terms and conditions of probation included serving one day in county jail, obey all laws, seek and maintain regular employment, pay a fine in the amount of $390, submit to search and seizure, stay away from Frys Electronics Fremont.

The circumstances surrounding the conviction are that on or about March 31, 2003, respondent entered Frys Electronics in Fremont, California and concealed upon himself a Cigar Pro USB Connector valued at $99 and left the store without paying for said item, **under the influence of alcohol**.

15. Respondent is subject to disciplinary action under section 4060 and 4301(j) and (o) of the Code that he possessed 49 Arnbien 5 mg tablets, a controlled substance, without a prescription therefor. The circumstances are as follows:

On or about September 30, 2002, during a routine search of respondent who was stopped, officers found an unmarked bottle of pills in which were 49 Ambien 5 mg tablets.

17. Respondent is subject to disciplinary action under 4301 (f), (g), (j), (o), and 4105 (a), 4081 (a) of the Code, and Health and Safety Code section 11173 in that he obtained 50 Ambien 5 mg. tablets on **one** occasion by falsifying records. The circumstances follow:

A. On or about September 30, 2002, respondent processed a request for 50 Ambien 5 mg tablets at Sun Script Pharmacy indication that Doctors Hospital of Manteca had a shortage and was requesting a loan, when in truth and in fact Doctor's Hospital of Manteca was not experiencing a shortage of Ambien 5 mg tablets on that date and there is no record of any loan request.

B. On an unkown date, after September 30, 2002, respondent filled out a document indicating the return of 50 Ambien 5mg. to Sun Script Pharmacy from Doctor's Hospital of Manteca, **respondent indicated that it was a return of 50 mg Ambien when in fact and in truth no loan was ever made by Sun Script Pharmacy to Doctor's Hospital of Manteca**."

9. The parties agree that the First Amended Accusation shall be further amended in that paragraphs 16 and 18 shall be stricken.

CULPABILITY

10. Respondent admits the following are true, paragraphs 13, without modification, and paragraphs 14, 15, and 17 as amended above.

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

CONTINGENCY

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist No. RPH 26554 issued to Respondent Fredric C. Hirning (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Actual Suspension - Pharmacist.** License numberRPH 26554, issued to Respondent, Fredric Hirning is suspended for a period of (4) four months.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to

any criminal complaint, information or indictment

- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

3. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

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

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

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

7. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2709 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2709.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2709 in advance of the Respondent commencing work at each pharmacy.

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

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

9. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $12,500. Respondent shall make said payments as follows: Respondent shall make monthly payments in the amount of $260.50.

The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board its costs of investigation and prosecution. Failure to make a payment shall be a violation of probation and subject respondent to the discipline which was stayed.

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

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

If Respondent's license expires or is canceled by operation of law or otherwise,

upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. **License Surrender while on Probation/Suspension.**

Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

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

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

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

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of

the Business and Professions Code.

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

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

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

17. **Rehabilitation Program - Pharmacists Recovery Program (PRP).** Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. Respondent shall not practice pharmacy unless and until approval for practice is given by the Pharmacist Recovery Program. The costs for PRP participation shall be borne by the Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified

by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

18. **Random Drug Screening.** Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the Respondent.
remedial education as set forth hereinabove is grounds for the filing of a petition to revoke probation.

20. **Supervised Practice.** Respondent shall practice only under the supervision of a pharmacist not on probation with the Board. Respondent shall not practice until the supervisor is approved by the Board. The supervision shall be, as required by the Board, either:

Continuous - 75% to 100% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24

hours

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the Board in writing stating the supervisor has read the decision in case number 2709 and is familiar with the level of supervision as determined by the Board.

If Respondent changes employment, Respondent shall have his new supervisor, within 15 days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 2709 and is familiar with the level of supervision as determined by the Board.

Within 10, days of leaving employment, Respondent shall notify the Board in writing.

21. **No Supervision.** Respondent shall not supervise any ancillary personnel, including, but not limited to, registered pharmacy technicians or exemptees, of any entity licensed by the Board.

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

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

Respondent shall not practice pharmacy upon returning to this state until notified by the Board that the period of suspension has been completed.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory F. Matzen Esq.. I understand the stipulation and the effect it will have on my Pharmacist. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 8/15/05.

FREDRIC C. HIRNING (Respondent)
Respondent
FREDRIC

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

DATED: 8/15/05.

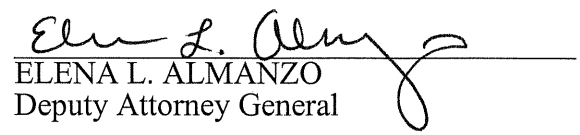
GREGORY F. MATZEN ESQ.
Attorney for Respondent

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: 8/15/05.

BILL LOCKYER, Attorney General
of the State of California



ELENA L. ALMANZO
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SA2003103938
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: FREDRIC C. HIRNING 1205 E. North Street Manteca, CA 95336-4932 Pharmacist No. RPH 26554 Respondent.	Case No. 2709 OAH No. N2004060241

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 November 2, 2005.

It is so ORDERED October 3, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

First Amended Accusation No. 2709

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **FREDRIC CARL HIRNING** **1205 E North Street** **Manteca, CA 95336-4932** **Pharmacist License Number No. RPH 26554** **Respondent.**	Case No. 2709 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 16, 1970, the Board of Pharmacy issued Pharmacist License Number RPH 26554 to Fredric Carl Hirning (Respondent). The Pharmacist License Number was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2005, unless renewed.

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JURISDICTION

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

4. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Section 4301 of the Code states in pertinent part:

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

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

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

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to

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the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

"(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

6. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

7. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.5 1, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

8. Section 4081 of the Code states in pertinent part:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with section 1200) of the Health and Safety Code or under Part 4 (commencing with section 16000) of

Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices."

9. Section 4105 of the Code states in pertinent part:

"(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form."

10. Health and Safety Code section 11173 provides 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."

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

11. "Ambien" whose trade name is Zolpidem Tartrate is a dangerous drug as defined by Section 4022 of the Business and Professions Code. It is a Schedule IV controlled substance as defined by Health and Safety Code section 11057.

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of crime)

13. Respondent is subject to disciplinary action under section 490 and 4301 (h) and (1) of the Code in that on or about November 18, 2002, in *People v. Fredric Carl Hirning*, San Joaquin County Superior Court, Case No. LP02-11718, respondent was convicted by a plea of guilty of a violation of Vehicle Code section 23 152 (B), driving a vehicle with .08 percent or more of alcohol in his blood, a crime which is substantially related to the qualifications, functions and duties of a Pharmacist.

The imposition of sentence was suspended and respondent was placed on conditional probation for five years. The terms and conditions of probation included two days county jail, obey all laws, do not commit same or similar offense, abstain from alcohol use for 150 days, report and enroll in a county approved alcohol program, submit to drug, narcotic, or alcohol testing, and pay fines in the amount of $1,820.

The circumstances surrounding the conviction are that on or about September 30, 2002, respondent was driving a vehicle with .08 percent or more of alcohol in his blood.

SECOND CAUSE FOR DISCIPLINE

(Conviction of crime)

14. Respondent is subject to disciplinary action under section 490 and 4301 (1) of the Code in that on or about December 5, 2003, in *People v. Fredric Carl Hirning*, County of Alameda Superior Court, Case No. 203082-7, respondent was convicted by a plea of no contest of a violation of Penal Code section 484 (a), Petty theft, a crime which is substantially related to the qualifications, functions and duties of a Pharmacist.

The imposition of sentence was suspended and respondent was placed on conditional probation for three years. The terms and conditions of probation included serving one day in county jail, obey all laws, seek and maintain regular employment, pay a fine in the amount of $390, submit to search and seizure, stay away from Frys Electronics Fremont.

The circumstances surrounding the conviction are that on or about March 31, 2003, respondent entered Frys Electronics in Fremont, California and concealed upon himself a Cigar Pro USB Connector valued at $99 and left the store without paying for said item.

THIRD CAUSE FOR DISCIPLINE

(possession of controlled substance)

15. Respondent is subject to disciplinary action under section 4060 and 4301(j) and (o) of the Code that he possessed 49 Ambien 5 mg tablets, a controlled substance, without a prescription therefor. The circumstances are as follows:

On or about September 30, 2002, during a routine search of respondent who was stopped, officers found an unmarked bottle of pills in which were 49 Ambien 5 mg tablets.

Respondent initially informed police officers that he had a prescription from Kaiser for the medication, when in truth and fact he did not.

FOURTH CAUSE FOR DISCIPLINE

(Use of controlled substance)

16. Respondent is subject to disciplinary action under section 4060 and 4301(h) and (j) of the Code that he used Ambien without a prescription therefor. The circumstances follow:

A. On or about September 30, 2002, respondent was arrested for driving under the influence of drugs or alcohol and submitted a blood sample to the Lodi Police Department. Respondent's blood sample was tested and was positive for Zolpidem, also known as Ambien. Respondent was found with Ambien tablets in his possesion upon his arrest on September 30, 2002.

FIFTH CAUSE FOR DISCIPLINE

(obtain or attempt to obtain controlled substance by false record)

17. Respondent is subject to disciplinary action under 4301 (f), (g), (j), (0), and 4105 (a) ,4081 (a) of the Code, and Health and Safety Code section 11173 in that he obtained 50 Ambien 5 mg tablets on two occasions by falsifying records. The circumstances follow:

A. On or about September 30, 2002, respondent processed a request for 50 Ambien 5 mg tablets at SunScript Pharmacy indicating that Doctor's Hospital of Manteca had a shortage and was requesting a loan, when in truth and in fact Doctor's Hospital of Manteca was not experiencing a shortage of Arnbien 5 mg tablets on that date and there is no record of any loan request.

B. On an unknown date, after September 30, 2002, respondent filled out a document indicating the return of 50 Ambien 5 mg tablets to Sun Script Pharmacy from Doctor's Hospital of Manteca. Respondent caused 50 tablets of Ambien 5 mg to be sent from Doctor's Hospital of Manteca to Sun Script Pharmacy indicating that it was a return of the 50 Ambien 5 mg tablets loaned to Sun Script Pharmacy when in truth and in fact, no loan was ever made to Sun Script Pharmacy by Doctor's Hospital of Manteca.

SIXTH CAUSE FOR DISCIPLINE

(failure to document transfer of controlled substance)

18. Respondent is subject to discipline pursuant to Code sections 4081 and 4105 in that on an unknown date when respondent caused a transfer of 50 tablets of Ambien 5 mg from Doctor's Hospital of Manteca to SunScript Pharmacy, he failed to record the disposition of a controlled substance in that he failed to follow the procedures of Doctor's Hospital of Manteca in completing the loan/borrow record for drugs transferred or notify the supply technician or the pharmacy director of the transfer of 50 tablets of Ambien 5 mg.

DISCIPLINE CONSIDERATIONS

19. To determine the degree of discipline, if any, to be imposed on Respondent, complainant alleges that on or about August 29, 1995, in a prior disciplinary action entitled, *In the Matter of the Accusation Against: Frederic Carl Hirning* before the Board of Pharmacy in Case Number 1726, Respondent's license was revoked, however the revocation was stayed and his license was placed on probation for five years for illegally obtaining and Furnishing controlled substances to himself while Director of Pharmacy Services at Doctor's Hospital in Manteca. That decision is now final and is incorporated by reference as if fully set forth. (A true and accurate copy of the Decision is attached as Exhibit A.)

Additionally, on or about June 21, 1986, in a prior disciplinary action entitled, *In the Matter of the Accusation Against: Fredric Carl Hirning* before the Board of Pharmacy, in Case Number 1275, Respondent's license was revoked; however, the revocation was stayed and his license was placed upon three years probation for illegally possessing and obtaining controlled substances while employed as the Chief Pharmacist at Sutter-Davis Hospital Pharmacy, as well as a petty theft conviction based upon his stealing controlled substances. That decision is now final and is incorporated by reference as if fully set forth. (A true and accurate copy of the Decision is attached as Exhibit B.)

PRAYER

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

A. Revoking or suspending Pharmacist License Number RPH 26554, issued to Fredric Carl Hirning;

B. Ordering Fredric Carl Hirning 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;

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

DATED: 7/5/05

P. F. Harris

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

Complainant

EXHIBIT A

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

In the Matter of the Accusation Against: FREDRIC CARL HIRNING Licentiate No. RPH 26554, Respondent.	No. 1726 OAH No. N-9407104

DECISION

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

This Decision shall become effective on August 29, 1995.

IT IS SO ORDERED July 28, 1995.

M. Standifer Shreve

M. Standifer Shreve, Board President
Board of Pharmacy

OAH 15 (Rev. 6/84)

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

In the Matter of the Accusation Against:	)	
	)	No. 1726
FREDRIC CARL HIRNING	)	
	)	OAH No. N-9407104
Licentiate No. RPH 26554,	)	
	)	
	)	
Respondent.	)	
	)	

PROPOSED DECISION

On January 18, 1995, in Stockton, California, M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Arthur Taggart, Deputy Attorney General, represented the Board of Pharmacy of the State of California.

Richard Turner, Attorney at Law, represented respondent.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Patricia F. Harris is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, and filed the Accusation in her official capacity.

II

On July 16, 1970, the Board of Pharmacy (hereinafter "the Board") issued Pharmacist Licentiate No. RPH 26554 to Fredric Carl Hirning[1] (hereinafter "respondent"). The license was scheduled to expire on April 30, 1995, unless renewed.

III

The Board's Decision of May 21, ~~1976~~ 86, in a proceeding captioned "In the Matter of the Accusation Against Frederic Carl Hirning," Case No. 1275, revoked respondent's license pursuant to a stipulation. Case No. 1275 was based on respondent's conduct as chief pharmacist at Sutter-Davis Hospital in Davis, California, in which he stole dangerous drugs and controlled substances from the hospital pharmacy from 1982 to 1985. Respondent obtained and furnished to himself for his personal use substantial amounts of Dolophine, Emperin with Codeine, Tylenol with Codeine, Damason-P, Percodan, Dilaudid, Methadone and 138.07 grams of cocaine. Respondent self-administered the substances, which were not prescribed or authorized by a physician or obtained with the consent of the pharmacy. In 1983 respondent was convicted on his plea of guilty of violation of Penal Code § 484(a), petty theft.

The Board's revocation in Case No. 1275 was stayed and respondent was placed on probation for three years on various terms and conditions, including immediate referral to the Impaired Pharmacist Program (IPP) and successful completion of that program.

Pursuant to the Board's Decision, respondent entered and successfully completed the IPP. He was accepted by the Evaluation Committee and entered into a contract on August 8, 1983, which provided that he would attend meetings, submit to random urine samples, report to the Board as required, abstain from drugs and alcohol, and participate in Naltrexone therapy if required. His license was fully restored after the three years of probation were fulfilled in compliance with all terms and conditions.

After the discovery of his diversion and use of drugs respondent did not work for six months. He then obtained employment as a relief pharmacist, and was later hired by a chain pharmacy in Stockton. In what he describes as his first period of recovery respondent was singularly active in giving presentations and speeches, some at the request of the Board, on the subject of impaired pharmacists. He co-founded the Southwest

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1 Respondent's name was spelled Frederic Carl Hirning in a prior Board proceeding described herein, Case No. 1275.

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Pharmacists Recovery Network, an organization which works with state licensing boards.

IV

Respondent has been employed as Director of Pharmacy Services at Doctors Hospital of Manteca, in Manteca, California, from 1987 through the date of hearing.

In January 1993, and in the course of his employment as pharmacist-in-charge, respondent obtained and furnished to himself for his personal use twelve tablets of Vicodin, a trade name for hydrocodone and acetaminophen bitartrate, a dangerous drug and Schedule III controlled substance. Respondent administered the Vicodin to himself, and it was not prescribed or authorized by a physician or obtained with the consent of the pharmacy.

From January through June 1993, and in the course of his employment as pharmacist-in-charge, respondent obtained and furnished to himself for his personal use two hundred tablets of Lortab, a trade name for hydrocodone bitartrate, a dangerous drug and Schedule III controlled substance. Respondent administered the Lortab to himself, and it was not prescribed or authorized by a physician or obtained with the consent of the pharmacy.

In June 1993, and in the course of his employment as pharmacist-in-charge, respondent obtained and furnished to himself for his personal use nine tablets of Percodan, a trade name for oxycodone hydrochloride with aspirin, a dangerous drug and Schedule II controlled substance. Respondent administered the Percodan to himself, and it was not prescribed or authorized by a physician or obtained with the consent of the pharmacy.

V

Respondent presently is a member of the Stockton Diversion Group of the Board's Diversion Program. The facilitator for the Stockton Diversion Group, Hugh McBride, is a professor of counseling psychology at the University of the Pacific. Dr. McBride also serves on the Evaluation Committee for Occupational Health Services, the corporation which operates the Board's Diversion Program. As a Committee member he evaluates whether licensees are "divertable," i.e. likely to successfully complete the program.

In approximately 1987, Dr. McBride became the facilitator of the Stockton Diversion Group, which he described as a "therapy group." He then met respondent who then, as now, attended weekly meetings. Respondent had a substantial period of sobriety in the program, approximately seven years, and then a relapse into drug use. Dr. McBride testified that "relapses do

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occur, but [respondent's] was unexpected." Dr. McBride opined that because respondent was "incredibly dedicated to the Impaired Pharmacist Program" and "how to be helpful to others," he "put himself in jeopardy" and "forgot his primary concern was his own [recovery] program."

Approximately one year before the subject hearing Dr. McBride completed a written report for the Diversion Program which recommended that respondent participate in individual therapy. Dr. McBride opined that respondent had "family of origin issues" and was a perfectionist. He believed that in his work as a pharmacist respondent attempted to cope with his standards and demands for perfection by using drugs. Although respondent initially "balked" at individual therapy, he did participate. Dr. McBride testified that at present he believes respondent need not continue that individual therapy.

Dr. McBride sees respondent currently "at least once a week" in the Stockton Diversion Group. He views respondent as "more than compliant" with the requirements of the Diversion Program and "not a danger" as a licensee. Dr. McBride recommends that respondent "not work in the field of rehabilitation" and "not work with others" but focus only on his own recovery. Dr. McBride would "impose a moratorium on public activities" regarding the recovery of others. He believes that he "would know if there were a deterioration in [respondent's] program," and would "turn [respondent] in" if that occurred. In Dr. McBride's experience symptoms of problems with sobriety are that the participant is "restless, irritable and discontented," or there is a change in attendance pattern, or "stalling" on urine testing. He notes that requiring daily urine testing of respondent "would be fail-safe."

VI

Glenhall E. Taylor, M.D., a psychiatrist at Kaiser Medical Group, has been respondent's sponsor in Narcotics Anonymous for approximately one year. Dr. Taylor believes that "slips are tremendous learning experiences," and that there is "minimal risk" in respondent's continued practice of pharmacy "because of the nature of his recovery." He opines "we grow in recovery and are better than before" and would recommend respondent take Trexene, an opiate blocker, which Dr. Taylor could administer twice per week.

VII

Richard Robinson, Chief Executive Officer of Doctors Hospital, described respondent's duties as overall charge of the pharmacy, employee supervision, budgeting, ensuring the inventory of controlled substances, and performing as pharmacist-in-charge. Mr. Robinson was aware of respondent's prior discipline by the

Board, and his participation in teaching, public speaking, and institutional efforts to educate the public and licensees about impaired pharmacists.

Respondent's use of drugs from January through June 1993, described in Finding IV above, was discovered by a pharmacy technician who observed and reported a mishandling of controlled substances by respondent. She reported respondent, who was her supervisor, to the hospital which immediately reviewed pharmacy records. Respondent admitted his diversion and use of the drugs during that investigation, and advised Mr. Robinson of the proper Board staff to notify of that violation. The subject Accusation followed.

Doctors Hospital and Mr. Robinson determined, after consideration of respondent's record and their internal safeguards, to continue respondent's employment. Respondent and Doctors Hospital entered a "PROBATIONARY EMPLOYMENT AGREEMENT" by which respondent was placed on probation for three years on condition that he participate in the Board's Diversion Program and take part in random drug tests. The "PROBATIONARY EMPLOYMENT AGREEMENT" provides that if he does not fully comply or has a positive test his employment is immediately terminated.

Mr. Robinson observes that respondent has done "an outstanding job" at Doctors Hospital, and believes that "with the diversion program and drug testing" he is safe to practice. He notes that a small hospital often has difficulty recruiting "a pharmacist of [respondent's] caliber, and that "it's almost a requirement" that any pharmacist at the hospital "be able to work independently."

VIII

Respondent's testimony displayed insight into his behavior and substance abuse. He described that "being a star was a factor in [his] relapse," that he "became overextended and lost track of maintenance of [his] own program. He was "more involved in other people's programs than [his] own."

Respondent re-enrolled in the Board's Diversion Program immediately upon being confronted by the hospital and admitting his drug use. He attends the meetings required by his contract, and regularly goes to Alcoholics Anonymous meetings. Respondent estimates that he attends approximately eight meetings per week related to his recovery. Respondent stepped down from the presidency of the local pharmacy association to devote his time to his own recovery.

Respondent described the controls presently in place at Doctors Hospital pharmacy, including that entries are made on a controlled drug transfer sheet when drugs are forwarded to a

nursing station. Respondent has "taken [himself] out of the loop" of inventory procedures and records, as well as the ordering of Schedule II narcotics. His current worksite monitor is Mr. Robinson.

Respondent has been sober since July 14, 1993. He displays admiration, rather than resentment, for the technician who noted and reported his discrepancies. That technician later told respondent that the professional proficiency and accuracy she learned from his tutelage was what permitted her to discover his diversion of drugs. Thomas Walker, a pharmacist supervised by respondent, testified that he was not intimidated by respondent and would promptly report any discrepancy.

If respondent is permitted to continue in his current employment he will continue to supervise the technician who reported him to Doctors Hospital. Her professionalism, respondent's attitude, and the hospital's appropriate response to her report, are all considered in the proposed Order that respondent may continue as a pharmacist-in-charge.[2]

IX

Business and Professions Code § 125.3 provides that a licentiate found to have committed a violation(s) of the licensing act may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In this proceeding the Board incurred costs of $1,109.60 for investigation and prosecution of the matter.

DETERMINATION OF ISSUES

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent's license pursuant to Business and Professions Code § 4227, § 4230, § 4350.5, and § 4350.5(c), and Health and Safety Code § 11170 and § 11171.

ORDER

Pharmacist Licentiate No. RPH 26554 issued to respondent Fredric Carl Hirning is revoked. That revocation is stayed, however, and respondent is placed on probation for five years, subject to the following terms and conditions of probation:

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2 The Board's Guidelines recommend that a licensee not hold the position of pharmacist-in-charge after violations such as those set forth in Finding IV above.

1. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

2. Respondent shall report to the Board or its designee quarterly. Said report shall be either in person or in writing, as directed. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

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

4. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

5. Respondent shall notify all present and prospective employers of the Decision in this case and the terms, conditions and restrictions imposed on respondent by said Decision.

   Within 30 days of the effective date of this Decision, and within 15 days of respondent undertaking new employment, respondent shall cause respondent's employer to report to the Board in writing acknowledging the employer has read the Decision in this case.

   Should respondent work for or be employed by or through a pharmacy employment service, it shall be the obligation of the respondent to ensure the pharmacy at which he is to be employed or used of the facts and terms of this disciplinary order in advance of the respondent commencing work at the pharmacy.

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

6. Should respondent leave California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

7. Should respondent leave California to reside or practice outside this state, or for any period exceeding 30 days, respondent must notify the Board in writing of the dates of departure and return. Periods of residency, or practice outside the state, or any absence exceeding a period of 30 days, shall not apply to the reduction of the suspension period.

   Respondent shall not practice pharmacy upon returning to this state until notification by the Board the period of suspension has been completed.

8. Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Upon successful completion of probation, respondent's certificate will be fully restored.

10. Respondent shall, upon the effective date of this Decision, circulate a notice to all Doctors Hospital of Manteca employees involved in pharmacy operations which accurately recites the terms and conditions of probation. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation. Should the notice required by this provision be posted, it shall be posted in a prominent place and shall remain posted throughout probation.

11. Respondent shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Should respondent's certificate, by operation of law or otherwise, expire, upon renewal or reinstatement, respondent's certificate shall be subject to any and all terms of this probation not previously satisfied.

12. Respondent's participation in the IPP is now mandatory, effective the date of this Decision.

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Respondent shall successfully participate in and complete his current contract with the IPP, and Trexene therapy and daily or less frequent biological fluid testing, at respondent's cost, as directed by the IPP.

13. Respondent shall immediately cease and refrain from participation in any public speaking, service activities, presentations, publications (except republication of materials published before the effective date of this Decision) related to chemical dependency or his recovery. Respondent may remain a member of professional and civic organizations, but shall hold no office in such organizations until the completion of his probation or advised by the Board or its designee in writing.

14. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $1,109.60 at a payment schedule satisfactory to the Board or its designee. Should any part of cost recovery not be paid, probation shall be extended until said amount is paid.

Dated: May 8, 1995

M. AMANDA BEHE,
Administrative Law Judge
Office of Administrative Hearings

DANIEL E. LUNGREN, Attorney General
of the State of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: FREDRIC CARL HIRNING 2831 Marietta Court Stockton, CA 95207-2306, Respondent.	No. 1726 ACCUSATION

Complainant Patricia F. Harris (hereinafter "Complainant") alleges as causes for discipline the following:

1. Complainant is the Executive Officer of the California State Board of Pharmacy, Department of Consumer Affairs, State of California (hereinafter the "Board"). Complainant makes and issues this accusation in her official capacity with the Board, and in no other capacity.

2. Fredric Carl Hirning (hereinafter "Respondent") was issued original licentiate No. RPH 26554 (hereinafter "license") to practice pharmacy on July 16, 1970; said license is currently in full force and effect and will expire on July 1, 1994.

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3. Business and Professions Code section 4211(a) defines a dangerous drug to be any drug unsafe for self-medication, and includes any drug which bears the legend: "Caution: federal law prohibits dispensing without prescription" or words of similar import.

4. Business and Professions Code section 4227, subdivision (a), provides that no person shall furnish any dangerous drug or device except upon the prescription of a physician, dentist, podiatrist or veterinarian.

5. Business and Professions Code section 4230 provides no person shall have in possession any controlled substance, except that furnished to such person upon the prescription of a physician, dentist, podiatrist or veterinarian.

6. Business and Professions Code section 4350.5 provides that it is unprofessional conduct for a licensee to violate, or to attempt to violate, directly or indirectly, or to assist in, or to abet the violation of, or to conspire to violate any provision or term of Chapter 9, Business and Professions Code section 4000 *et seq.*, or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the Board.

7. Business and Professions Code section 4350.5, subdivision (c), provides that the commission of any act involving moral turpitude, dishonesty, fraud, deceit or corruption, whether the act is committed in the course of relations or otherwise, is unprofessional conduct.

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8. Health and Safety Code section 11170 provides that no person shall prescribe, administer or furnish a controlled substance for himself.

9. Health and Safety Code section 11171 provides that no person shall prescribe, administer or furnish a controlled substance except under the conditions and in the manner prescribed in the California Uniform Controlled Substance Act (Health and Safety Code section 11000 *et seq.*).

10. Drugs:

A. Lortab (narcotic analgesic and antitussive), a trade name for hydrocodone bitartrate, is a dangerous drug within the meaning of Business and Professions Code section 4211(a) and is classified as a Schedule III controlled substance in Health and Safety Code section 11056(e)(4).

B. Percodan (narcotic analgesic), a trade name for oxycodone hydrochloride with aspirin, is a dangerous drug within the meaning of Business and Professions Code section 4211(a) and is classified as a Schedule II controlled substance in Health and Safety Code section 11055(b)(1)(n).

C. Vicodin (narcotic analgesic), a trade name for hydrocodone and acetaminophen bitartrate, is a dangerous drug within the meaning of Business and Professions Code section 4211(a) and is classified as a Schedule III controlled substance in Health and Safety Code section 11056(e)(4).

11. Respondent has subjected his license to disciplinary action pursuant to Business and Professions Code section 4350.5 for engaging in acts constituting violations of Business and Professions Code sections 4227 and 4230 and Health

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and Safety Code sections 11170 and 11171; said violations occurred as follows:

A. During 1991, Respondent was employed at Doctors Hospital of Manteca, in Manteca, California, in the capacity of a pharmacist-in-charge.

B. In the period of January 1993 through June 1993, in the course of his employment as a pharmacist-in-charge, Respondent obtained, possessed and furnished to himself for his own personal use the following approximate quantities of dangerous drugs and controlled substances without a prescription:

Drug	Quantity	Month
Vicodin or Percodan	12 tablets	January, 1993
Percodan	9 tablets	June, 1993
Lortab 5 mg or 7.5 mg	200 tablets	January-June, 1993

12. Respondent has subjected his license to disciplinary action pursuant to Business and Professions Code section 4350.5 for engaging in acts constituting violations of Business and Professions Code section 4353 and Health and Safety Code sections 11170 and 11171; said violations occurred as follows:

A. During a period commencing on or about January of 1993 and continuing for an unknown period of time, Respondent administered to himself the dangerous drugs and controlled substances set forth at subparagraph B of paragraph 11 of this accusation.

B. The self-administration by Respondent of said dangerous drugs and controlled substances without the authorization of a physician, and outside the course of any medical treatment prescribed by a physician, constitutes use of

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dangerous drugs and controlled substances in a manner as to be dangerous or injurious to Respondent, or to the public.

13. Respondent has subjected his license to disciplinary action pursuant to Business and Professions Code section 4350.5 for engaging in acts constituting unprofessional conduct within the meaning of Business and Professions Code section 4350.5(c); said acts occurred as follows:

A. In January of 1993 and in June of 1993, Respondent obtained, possessed and furnished to himself for his own personal use the dangerous drugs and controlled substances set forth *infra* at subparagraph B of paragraph 11 of this accusation without a prescription and without payment to the pharmacy, or the consent of the pharmacy. Said acts by respondent constitute acts involving moral turpitude, dishonesty, deceit or corruption.

14. In a decision of May 21, 1986 entitled "In the Matter of the Accusation Against Fredric Carl Hirning," case No. 1275, the Board issued an order revoking the pharmacist license of Respondent, staying the revocation order, and placing Respondent on probation for a period of three (3) years upon terms and conditions. The decision of the Board is now final. The admissions, order of discipline and other information contained in the decision are relevant in formulating what measure of discipline, if any, should be applied in the present case.

WHEREFORE, Complainant prays that an administrative hearing be held on this accusation and that the Board make its order:

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1. Revoking or suspending License No. RPH 26554 issued to Respondent.

2. Requiring Respondent to pay reasonable costs of investigation and prosecution, as provided in Business and Professions Code section 4366.

3. Taking such other and further action as may be deemed proper and appropriate.

Dated: 5/20/94

P. F. Harris

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

Complainant

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EXHIBIT B

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Attorneys for Complainant

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

In the Matter of the Accusation against: FREDRIC CARL HIRNING 2831 Marietta Court Stockton, CA 95207 Licentiate Certificate No. PU 26554 Respondent.	Case No. 1275 STIPULATION, DECISION AND ORDER

IT IS HEREBY STIPULATED by the parties to the above entitled matter that the following is true:

1. On or about July 16, 1970, respondent Fredric Carl Hirning was issued licentiate certificate number PU 26554 under the laws of the State of California. Said license is presently in full force and effect.

2. On September 23, 1985, accusation number 1275 was filed by Lorie Garris Rice, Executive Officer of the Board of Pharmacy, in her official capacity as such. Said accusation alleged causes for disciplinary action against respondent Hirning

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and said accusation (attached hereto as Exhibit A) is incorporated herein by reference as though set forth in full at this point. Respondent was duly and properly served with accusation number 1275 by certified mail, and respondent filed a timely notice of defense and requested a hearing on the charges contained in the accusation.

3. Respondent Hirning has retained as his counsel Gregory P. Matzen, Esq., of the law offices of Donahue and Callaham, 791 University Avenue, P.O. Box 254000, Sacramento, California 95865. Respondent has fully discussed with his counsel the charges and allegations of violations of California Business and Professions Code sections alleged in accusation number 1275 and has been fully advised of his rights under the Administrative Procedure Act of the State of California, including the right to a formal hearing and opportunity to defend against the charges contained therein, and reconsideration and appeal of any adverse decision that might be rendered following said hearing. Respondent knowingly and intelligently waives his right to a hearing, reconsideration, appeal, and to any and all other rights which may be accorded him pursuant to the Administrative Procedure Act regarding the charges contained in accusation number 1275 subject, however, to the provisions of paragraph 6 herein.

4. Respondent Hirning admits as follows:

A. On January 23, 1985, respondent admitted that while employed as the chief pharmacist at the Sutter-Davis Hospital Pharmacy, Road 99 and Covell Boulevard, Davis, California, he had illegally obtained and possessed 3½ Dolophine

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10 mg. tablets, 3 Emperin with codeine #4 tablets, 4 Tylenol with codeine tablets and 2 Damason-P tablets by taking said drugs from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription therefor. Said drugs were for his own use.

B. Respondent admitted that during the period of March 2, 1982, to February 7, 1985, that while employed as chief pharmacist at the Sutter-Davis Hospital Pharmacy, Road 99 and Covell Boulevard, Davis, California he diverted an unknown quantity of the following controlled substances and dangerous drugs: Dolophine 10 mg. tablets, Emperin compound with codeine #4 tablets, Tylenol with codeine #4 tablets, Damason-P tablets, Percodan tablets, Dilaudid tablets, Methadone 5 mg. tablets and cocaine. Said drugs were taken from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription therefor. Said drugs were for respondent's personal use.

C. Respondent admitted that between November 1, 1982, and February 7, 1985, while employed as chief pharmacist at the Sutter-Davis Hospital in Davis, California he diverted an unknown quantity of Percodan tablets and Tylenol with codeine #4 tablets from the Kay-Med Pharmacy, 5654 North Pershing Avenue, Stockton, California, by taking said drugs from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription therefor. Said drugs were for respondent's personal use.

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D. On May 9, 1985, respondent admitted that he diverted drugs listed in paragraphs 4A and 4B hereinabove for his own use, and that he ingested part of the drugs diverted from the Sutter-Davis hospital pharmacy while on duty in the pharmacy.

E. On May 9, 1985, respondent admitted that while he was employed at the St. Joseph's Hospital Pharmacy in Stockton, California in 1982, he diverted cocaine from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription therefor. Said drug was for self use and respondent used some of the cocaine while on duty in the pharmacy.

F. On January 7, 1983, in a proceeding in the Municipal Court of California, County of San Joaquin, Stockton Judicial District, entitled The People of the State of California Fredric Carl Hirning, Case No. M-98544, respondent, following plea of guilty, was convicted of violating Penal Code section subdivision (a), for petty theft.

5. Pursuant to the facts admitted in paragraph 4A 4F hereinabove, respondent Hirning admits that his e certificate is subject to disciplinary action in that has violated section 11170 of the Health and Safety and sections 4350.5, 4350.5, subdivision (c), 4353, 4354, 4230, and 4363 of the Business and Professions Code.

6. In the event that this stipulation, decision and order is not accepted and adopted by the Board of Pharmacy of the State of California, the admissions and characterizations of law

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and fact made by all parties herein shall be null, void, and inadmissible in any proceeding involving the parties.

WHEREFORE, it is stipulated that the Board of Pharmacy may issue the following decision and order:

1. Respondent Fredric Carl Hirning's pharmacy certificate number PU 26554 is hereby revoked, provided, however, that said revocation shall be stayed and respondent shall be placed on probation for a period of three (3) years on the following terms and conditions:

A. Immediate referral to the Impaired Pharmacist Program and successful completion of treatment in the program.

B. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

C. Respondent shall report to the Board or its designee quarterly. Said report shall be either in person or in writing, as directed. Should the final probation report not be made as directed the period of probation shall be extended until such time as the final report is made.

D. Respondent shall submit to peer review as deemed necessary by the Board.

E. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

F. Respondent shall notify all present and prospective employers of the decision in case number 1275 and the terms, conditions and restrictions imposed on respondent by said decision.

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Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case number 1275.

G. Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor.

H. Should respondent leave California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

I. Should respondent violate probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation if filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

J. Upon successful completion of probation, respondent's certificate will be fully restored.

DATED: April 17, 1986

JOHN K. VAN DE KAMP, Attorney General
of the State of California
JUNE LAVERNE LONG
Deputy Attorney General

By June LaVerne Long
JUNE LAVERNE LONG
Deputy Attorney General

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DATED: 4/9/86

Law Office of DONAHUE & CALLAHAM

By _____
GREGORY P. MATZEN
Attorney for Respondent
Fredric Carl Hirning

I HAVE READ the stipulation, decision and order. I understand I have the right to a hearing on the charges contained in the accusation, the right to cross-examine witnesses and the right to introduce evidence in mitigation. I knowingly and intelligently waive all of these rights, and understand that by signing this stipulation, I am permitting the Board of Pharmacy to impose discipline against my license. I understand the terms and conditions of the stipulation, decision and order, and agree to be bound by its terms.

DATED: 4/5/86

Fredric Carl Hirning
FREDRIC CARL HIRNING
Respondent

DECISION AND ORDER

The foregoing is adopted as the Decision of the Board of Pharmacy in this matter and shall become effective on the 21st day of June, 198__.

IT IS SO ORDERED this 21st day of May, 198__.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
ROBERT TOOMAJIAN, PRESIDENT

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JOHN K. VAN DE KAMP, Attorney General
of the State of California
JUNE LAVERNE LONG
Deputy Attorney General
1515 K Street, Suite 511
Sacramento, California 95814
Telephone: (916) 324-5329

Attorneys for Complainant

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

In the Matter of the Accusation against: FREDERIC CARL HIRNING 2831 Marietta Court Stockton, California 95207 Licentiate Certificate No. PG 26554 Respondent.	Case No. 1275 ACCUSATION

Lorie Garris Rice, the complainant herein, alleges as follows:

I

She is the Executive Officer of the Board of Pharmacy of the State of California (hereinafter the "Board") and makes and files this accusation solely in her official capacity as such and not otherwise.

II

On July 16, 1970, Frederic Carl Hirning (hereinafter "respondent") was issued licentiate certificate number PG 26554

under the laws of the State of California. Said license is in full force and effect until April 30, 1987. Respondent's official address of record is 2831 Marietta Court, Stockton, California 95207.

III

Sections 4350 and 4359 of the Business and Professions Code[1/] provides that the Board may take disciplinary action against a licensee for unprofessional conduct.

IV

Section 4350.5 provides in pertinent part that unprofessional conduct includes the violating of or attempting to violate, directly or indirectly, any provision of this chapter or of the laws governing pharmacy.

V

Section 4350.5, subdivision (c), provides in pertinent part that unprofessional conduct includes the commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

VI

Section 4230 provides in pertinent part that no person shall have in his possession any controlled substance except that furnished to him upon the prescription of a physician, dentist, podiatrist or veterinarian.

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1. All section references are to the Business and Professions Code unless otherwise stated.

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VII

Section 4353 provides in pertinent part that it is unprofessional conduct to self-administer any controlled substance, or to use any of the dangerous drugs specified by section 4211 in such a manner as to be dangerous or injurious to the license holder, or to any other person or to the public, or to the extent that such use impairs the ability of the license holder to conduct with safety to the public the practice authorized by his license.

VIII

Section 4363 provides that it is unprofessional conduct to violate any of the statutes of this state regulating controlled substances and dangerous drugs.

IX

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

X

At all times herein mentioned, Tylenol with codeine, Damason-P (hydrocodone/dihydrocodeione), Emperin compound with codeine, Percodan (oxycodone), Dilaudid (hydromorphone), Methadone (dolophine), and cocaine were dangerous drugs within the meaning of section 4211 and were controlled substances within the meaning of the Health and Safety Code.

XI

On January 23, 1985, respondent admitted that while employed as the chief pharmacist at the Sutter-Davis Hospital

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Pharmacy, Highway 99 and Covell Boulevard, Davis, California, he had illegally obtained and possessed 3½ Dolophine 10 mg. tablets, 3 Emperin with codeine #4 tablets, 4 Tylenol with codeine tablets and 2 Damason-P tablets by taking said drugs from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription therefor. Said drugs were for his own use.

XII

A. During the period of March 2, 1982 to February 7, 1985, respondent, while employed as chief pharmacist at the Sutter-Davis Hospital, Highway 99 and Covell Boulevard, Davis, California, stole the following controlled substances and dangerous drugs: 240 Dolophine 10 mg. tablets, 3,692 Emperine compound with codeine #4 tablets, 4,818 Tylenol with codeine #4 tablets, 2,419 Damason-P tablets, 367 Percodan tablets, 290½ Dilaudid tablets, 312 Methadone 5 mg. tablets and 138.07 grams of cocaine, by taking said drugs from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription therefor. Said drugs were for his personal use.

B. Between November 1,.1982, and February 7, 1985, respondent, while employed as chief pharmacist at the Sutter-Davis Hospital in Davis, California, diverted 1218 Percodan tablets and 401 Tylenol with codeine #4 tablets from the Kay-Med Pharmacy, 5654 North Pershing Avenue, Stockton, California, by taking said drugs from the pharmacy stock without authorization therefor, without making payment therefor, and without a written prescription

1 therefor. Said drugs were for his personal use.

2 C. On May 9, 1985, respondent admitted that he diverted

3 all of the drugs listed in paragraphs XII A and XII B hereinabove

4 for his own use, and that he ingested part of the drugs diverted

5 from the Sutter-Davis hospital pharmacy while on duty in the

6 pharmacy.

7 D. On May 9, 1985, respondent admitted that while he

8 was employed at the St. Joseph's Hospital Pharmacy in Stockton,

9 California in 1982, he diverted cocaine from the pharmacy stock

10 without authorization therefor, without making payment therefor,

11 and without a written prescription therefor. Said drug was

12 for self use and respondent used some of the cocaine while on

13 duty in the pharmacy.

14 XIII

15 On January 7, 1983, in a proceeding in the Municipal

16 Court of California, County of San Joaquin, Stockton Judicial

17 District, entitled The People of the State of California v.

18 Frederic Carl Hirning, Case No. M-98544, respondent, following his

19 plea of guilty, was convicted of violating Penal Code section 484,

20 subdivision (a), for petty theft. Said conviction was substantially

21 related to the qualifications, functions and duties of a licensed

22 pharmacist in that respondent stole controlled substances and

23 drugs from his employer while on duty as a pharmacist.

24 XIV

25 Respondent is subject to discipline pursuant to

26 sections 4350.5, 4353, and section 11170 of the Health and Safety

27 Code in that he prescribed, furnished, and administered to

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himself narcotics and dangerous drugs, as all such is more specifically set forth in paragraphs XI, XII A, XII B, and XII D hereinabove, and is incorporated herein by reference as though fully set forth at this point.

XV

Respondent is subject to discipline pursuant to sections 4350.5 and 4230 in that he possessed controlled substances without a prescription therefor, as all such is more specifically set forth in paragraph XI hereinabove, and is incorporated herein by reference as though fully set forth at this point.

XVI

Respondent is subject to discipline pursuant to sections 4350.5 and 4363 for violating statutes of this state regulating controlled substances and dangerous drugs as all such is more specifically set forth in paragraphs XI, XII A, XII B, XII C, and XII D hereinabove and is incorporated herein by reference as though fully set forth at this point.

XVII

Respondent is subject to discipline pursuant to sections 4350.5 and 4350.5 subdivision (c) in that he did willfully and unlawfully obtain controlled substances and drugs for self-use as all such is more specifically set forth in paragraphs XI, XII A, XII B, XII C, AND XII D hereinabove, and is incorporated herein by reference as though fully set forth at this point.

///

XVIII

Respondent is subject to discipline pursuant to sections 4350.5 and 4350.5 subdivision (c) in that he was convicted of petty theft as all such is more specifically set forth in paragraph XIII hereinable and is incorporated herein by reference as though fully set forth at this point.

XIX

Section 4367 provides, in pertinent part, that any person whose license, permit or registration has been revoked or is under suspension, or has been placed on probation, and while acting as such member, officer, director, associate or partner had knowledge of or knowingly participated in any conduct for which the license, permit or registration was revoked, suspended or placed on probation, shall be prohibited from serving as an officer, director, associate or partner of a licensee, permittee or registrant.

XX

Pursuant to the provisions of section 4367, in the event ·t the license issued to respondent is suspended, revoked or ·d on probation, said respondent shall be prohibited from serving as an officer, director, associate or partner of any licensee, permittee or registrant in that said respondent had knowledge of or knowingly participated in the acts or omissions alleged herein.

WHEREFORE, complainant prays that the Board hold a hearing on the matters alleged herein and following said hearing issue a decision:

1. Suspending or revoking the license to practice pharmacy issued to respondent;

2. Prohibiting respondent from acting as an officer, director, associate or partner of any licensee, permittee or registrant; and

3. Taking such other and further action as may be proper.

DATED: 9-23-85

LORIE GARRIS RICE
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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