

ORIGINAL

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7 Attorneys for Complainant

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

10 In the Matter of the First Amended Accusation
11 Against:

12 FREDRIC C. HIRNING
1205 E. North Street
13 Manteca, CA 95336-4932

14 Pharmacist No. RPH 26554

15 Respondent.

Case No. 2709

OAH No. N2004060241

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 PARTIES

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

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

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

1 RPH 26554 to Fredric C. Hirning (Respondent). Respondent's license will expire April 30,
2 2005.

3 JURISDICTION

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

10 ADVISEMENT AND WAIVERS

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

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

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

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

26 14. Respondent is subject to disciplinary action under section 490 and
27 4301 (1) of the Code in that on or about December 5, 2003, in *People v. Fredric Carl Hirning*,
28 County of Alameda Superior Court, Case No. 203082-7, respondent was convicted by a plea of

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

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

7 The circumstances surrounding the conviction are that on or about March 31,
8 2003, respondent entered Frys Electronics in Fremont, California and concealed upon himself a
9 Cigar Pro USB Connector valued at \$99 and left the store without paying for said item, **under**
10 **the influence of alcohol.**

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

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

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

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

24 B. On an unknown date, after September 30, 2002, respondent filled out a
25 document indicating the return of 50 Ambien 5mg. to Sun Script Pharmacy from Doctor's
26 Hospital of Manteca, **respondent indicated that it was a return of 50 mg Ambien when in**
27 **fact and in truth no loan was ever made by Sun Script Pharmacy to Doctor's Hospital of**
28 **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:

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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.

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.

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

- 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

1 any criminal complaint, information or indictment

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

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

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

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

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

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

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

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

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

13 **9. Reimbursement of Board Costs.** Respondent shall pay to the Board
14 its costs of investigation and prosecution in the amount of \$12,500. Respondent shall make
15 said payments as follows: Respondent shall make monthly payments in the amount of
16 \$260.50.

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

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

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

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

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

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

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

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

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

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

27 "Cessation of practice" means any period of time exceeding 30 days in which

28 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of

1 the Business and Professions Code.

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

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

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

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

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

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

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

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

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

25 Continuous - 75% to 100% of a work week

26 Substantial - At least 50% of a work week

27 Partial - At least 25% of a work week

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

1 hours

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

5 If Respondent changes employment, Respondent shall have his new supervisor,
6 within 15 days after employment commences, submit notification to the Board in writing
7 stating the direct supervisor and pharmacist-in-charge have read the decision in case number
8 2709 and is familiar with the level of supervision as determined by the Board.

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

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

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

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

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

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8/15/2006 12:47 FAX 3278643

DEPARTMENT OF JUSTICE

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. HURNING (Respondent)
Respondent
FREDRIC

I have read and fully discussed with Respondent Fredric C. Hurning 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

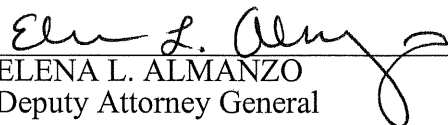

GREGORY F. MATZEN ESQ.
Attorney for Respondent

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby
3 respectfully submitted for consideration by the Board of Pharmacy of the Department of
4 Consumer Affairs.

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6 DATED: 8/15/05.

7 BILL LOCKYER, Attorney General
8 of the State of California

9
10 
ELENA L. ALMANZO
11 Deputy Attorney General

12 Attorneys for Complainant

13 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

BILL LOCKYER, Attorney General
of the State of California
ELENA L. ALMANZO, State Bar No. 13 1058
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P.O. Box 944255
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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:

Case No. 2709

**FREDRIC CARL HIRNING
1205 E North Street
Manteca, CA 95336-4932**

FIRST AMENDED ACCUSATION

Pharmacist License Number No. RPH 26554

Respondent.

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

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

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

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

26 6. Section 4022 of the Code states:

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

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

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

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

9 7. Section 4060 of the Code states:

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

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

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

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

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

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

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

7 10. Health and Safety Code section 11173 provides in pertinent part that:

8 "(a) No person shall obtain or attempt to obtain controlled substances, or
9 procure or attempt to procure the administration of or prescription for controlled substances,
10 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material
11 fact."

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

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

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

21 FIRST CAUSE FOR DISCIPLINE

22 (Conviction of crime)

23 13. Respondent is subject to disciplinary action under section 490 and 4301
24 (h) and (1) of the Code in that on or about November 18, 2002, in *People v. Fredric Carl*
25 *Hirning*, San Joaquin County Superior Court, Case No. LP02-11718, respondent was convicted
26 by a plea of guilty of a violation of Vehicle Code section 23152(B), driving a vehicle with .08
27 percent or more of alcohol in his blood, a crime which is substantially related to the qualifica-
28 tions, 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.

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

3 FOURTH CAUSE FOR DISCIPLINE

4 (Use of controlled substance)

5 16. Respondent is subject to disciplinary action under section 4060 and
6 4301(h) and (j) of the Code that he used Ambien without a prescription therefor. The
7 circumstances follow:

8 A. On or about September 30, 2002, respondent was arrested for driving under the
9 influence of drugs or alcohol and submitted a blood sample to the Lodi Police Department.
10 Respondent's blood sample was tested and was positive for Zolpidem, also known as Ambien.
11 Respondent was found with Ambien tablets in his possession upon his arrest on September 30,
12 2002.

13 FIFTH CAUSE FOR DISCIPLINE

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

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

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

23 B. On an unknown date, after September 30, 2002, respondent filled out a
24 document indicating the return of 50 Ambien 5 mg tablets to Sun Script Pharmacy from Doctor's
25 Hospital of Manteca. Respondent caused 50 tablets of Ambien 5 mg to be sent from Doctor's
26 Hospital of Manteca to Sun Script Pharmacy indicating that it was a return of the 50 Ambien
27 5 mg tablets loaned to Sun Script Pharmacy when in truth and in fact, no loan was ever made to
28 Sun Script Pharmacy by Doctor's Hospital of Manteca.

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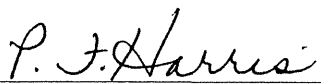
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A. Revoking or suspending Pharmacist License Number RPH
26554, issued to Fredric Carl Hirning;

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



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, Board President
Board of Pharmacy

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

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 Hirning¹ (hereinafter "respondent"). The license was scheduled to expire on April 30, 1995, unless renewed.

III

The Board's Decision of May 21, ⁸⁶~~1976~~, 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

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

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

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 licensee 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 License 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:

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.

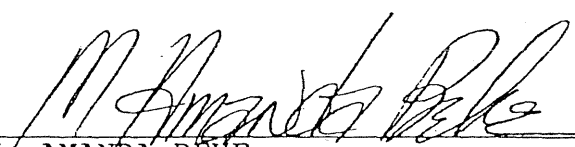
Respondent shall not practice pharmacy upon returning to this state until notification by the Board the period of suspension has been completed.

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.

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

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JOEL S. PRIMES (State Bar No. 42568),
Supervising Deputy Attorney General
3 ARTHUR TAGGART (State Bar No. 83047),
Deputy Attorney General
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 324-5339

6 Attorneys for Complainant

7
8 BEFORE THE
BOARD OF PHARMACY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the) No. 1726
Accusation Against:)
12) ACCUSATION
FREDRIC CARL HIRNING)
13 2831 Marietta Court)
Stockton, CA 95207-2306,)
14)
Respondent.)
15)

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

18 1. Complainant is the Executive Officer of the
19 California State Board of Pharmacy, Department of Consumer
20 Affairs, State of California (hereinafter the "Board").

21 Complainant makes and issues this accusation in her official
22 capacity with the Board, and in no other capacity.

23 2. Fredric Carl Hirning (hereinafter "Respondent")
24 was issued original licentiate No. RPH 26554 (hereinafter
25 "license") to practice pharmacy on July 16, 1970; said license is
26 currently in full force and effect and will expire on July 1,
27 1994.

28 / / /

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

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

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

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

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

27 / / /

28 / / /

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

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

9 10. Drugs:

10 A. Lortab (narcotic analgesic and antitussive),
11 a trade name for hydrocodone bitartrate, is a dangerous drug
12 within the meaning of Business and Professions Code section
13 4211(a) and is classified as a Schedule III controlled substance
14 in Health and Safety Code section 11056(e)(4).

15 B. Percodan (narcotic analgesic), a trade name
16 for oxycodone hydrochloride with aspirin, is a dangerous drug
17 within the meaning of Business and Professions Code section
18 4211(a) and is classified as a Schedule II controlled substance
19 in Health and Safety Code section 11055(b)(1)(n).

20 C. Vicodin (narcotic analgesic), a trade name
21 for hydrocodone and acetaminophen bitartrate, is a dangerous drug
22 within the meaning of Business and Professions Code section
23 4211(a) and is classified as a Schedule III controlled substance
24 in Health and Safety Code section 11056(e)(4).

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

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

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

6 B. In the period of January 1993 through June
7 1993, in the course of his employment as a pharmacist-in-charge,
8 Respondent obtained, possessed and furnished to himself for his
9 own personal use the following approximate quantities of
10 dangerous drugs and controlled substances without a prescription:

11	<u>Drug</u>	<u>Quantity</u>	<u>Month</u>
12	Vicodin or Percodan	12 tablets	January, 1993
12	Percodan	9 tablets	June, 1993
13	Lortab 5 mg or 7.5 mg	200 tablets	January-June, 1993

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

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

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

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

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

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

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

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

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

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

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

8

9 Dated: 5/20/94

P. J. Harris

10

PATRICIA F. HARRIS

11

Executive Officer

12

California State Board of Pharmacy

13

Department of Consumer Affairs

14

State of California

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Complainant

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EXHIBIT B

1 JOHN K. VAN DE KAMP, Attorney General
of the State of California
2 JUNE LAVERNE LONG
Deputy Attorney General
3 P.O. Box 944255
Sacramento, CA 94244-2550
4 Telephone: (916) 324-5329

5 Attorneys for Complainant

6
7
8 BEFORE THE
9 BOARD OF PHARMACY
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation) Case No. 1275
12 against:)
13 FREDRIC CARL HIRNING) STIPULATION, DECISION
2831 Marietta Court) AND ORDER
14 Stockton, CA 95207)
Licentiate Certificate)
15 No. PU 26554)
16 Respondent.)
17

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

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

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

1 and said accusation (attached hereto as Exhibit A) is incorporated
2 herein by reference as though set forth in full at this point.
3 Respondent was duly and properly served with accusation number
4 1275 by certified mail, and respondent filed a timely notice of
5 defense and requested a hearing on the charges contained in the
6 accusation.

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

23 4. Respondent Hirning admits as follows:

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

1 10 mg. tablets, 3 Emperin with codeine #4 tablets, 4 Tylenol with
2 codeine tablets and 2 Damason-P tablets by taking said drugs from
3 the pharmacy stock without authorization therefor, without making
4 payment therefor, and without a written prescription therefor.

5 Said drugs were for his own use.

6 B. Respondent admitted that during the period of
7 March 2, 1982, to February 7, 1985, that while employed as
8 chief pharmacist at the Sutter-Davis Hospital Pharmacy, Road 99
9 and Covell Boulevard, Davis, California he diverted an unknown
10 quantity of the following controlled substances and dangerous
11 drugs: Dolophine 10 mg. tablets, Emperin compound with codeine
12 #4 tablets, Tylenol with codeine #4 tablets, Damason-P tablets,
13 Percodan tablets, Dilaudid tablets, Methadone 5 mg. tablets
14 and cocaine. Said drugs were taken from the pharmacy stock
15 without authorization therefor, without making payment therefor,
16 and without a written prescription therefor. Said drugs were
17 for respondent's personal use.

18 C. Respondent admitted that between November 1,
19 1982, and February 7, 1985, while employed as chief pharmacist
20 at the Sutter-Davis Hospital in Davis, California he diverted
21 an unknown quantity of Percodan tablets and Tylenol with codeine
22 #4 tablets from the Kay-Med Pharmacy, 5654 North Pershing Avenue,
23 Stockton, California, by taking said drugs from the pharmacy
24 stock without authorization therefor, without making payment
25 therefor, and without a written prescription therefor. Said
26 drugs were for respondent's personal use.

27 /

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

6 E. On May 9, 1985, respondent admitted that while
7 he was employed at the St. Joseph's Hospital Pharmacy in Stockton,
8 California in 1982, he diverted cocaine from the pharmacy stock
9 without authorization therefor, without making payment therefor,
10 and without a written prescription therefor. Said drug was for
11 self use and respondent used some of the cocaine while on duty
12 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 DATED: April 17, 1986

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

26 By June Laverne Long

JUNE LAVERNE LONG
Deputy Attorney General

1 DATED:

4/9/86

2 Law Office of DONAHUE & CALLAHAN

3
4 By

GREGORY P. MATZEN

Attorney for Respondent

Fredric Carl Hirning

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

16 DATED:

4/5/86

17
18 *Fredric Carl Hirning*
19 FREDRIC CARL HIRNING
Respondent

20 DECISION AND ORDER

21 The foregoing is adopted as the Decision of the Board
22 of Pharmacy in this matter and shall become effective on the
23 21st day of June, 1988.

24 IT IS SO ORDERED this 21st day of May,
25 1988.

26 BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

27 By

Robert Toomajian
ROBERT TOOMAJIAN, PRESIDENT

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SA85AD1311

1 JOHN K. VAN DE KAMP, Attorney General
2 of the State of California
3 JUNE LAVERNE LONG
4 Deputy Attorney General
5 1515 K Street, Suite 511
6 Sacramento, California 95814
7 Telephone: (916) 324-5329

8 Attorneys for Complainant

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

13 In the Matter of the Accusation)
14 against:)

Case No. 1275

15 FREDERIC CARL HIRNING)
16 2831 Marietta Court)
17 Stockton, California 95207)

ACCUSATION

18 Licentiate Certificate)
19 No. PG 26554)

20 Respondent.)
21)

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

I

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

II

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

1 under the laws of the State of California. Said license is in
2 full force and effect until April 30, 1987. Respondent's official
3 address of record is 2831 Marietta Court, Stockton, California
4 95207.

5 III

6 Sections 4350 and 4359 of the Business and Professions
7 Code^{1/} provides that the Board may take disciplinary action
8 against a licensee for unprofessional conduct.

9 IV

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

14 V

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

20 VI

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

25 ///

26

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

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

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

8 XII

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

21 B. Between November 1, 1982, and February 7, 1985,
22 respondent, while employed as chief pharmacist at the Sutter-Davis
23 Hospital in Davis, California, diverted 1218 Percodan tablets and
24 401 Tylenol with codeine #4 tablets from the Kay-Med Pharmacy,
25 5654 North Pershing Avenue, Stockton, California, by taking said
26 drugs from the pharmacy stock without authorization therefor,
27 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

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

5 XV

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

12 XVI

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

19 XVII

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

27 ///

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 that the license issued to respondent is suspended, revoked or placed 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 1. Suspending or revoking the license to practice
2 pharmacy issued to respondent;
3 2. Prohibiting respondent from acting as an officer,
4 director, associate or partner of any licensee, permittee or
5 registrant; and
6 3. Taking such other and further action as may be
7 proper.

8 DATED: 9-23-85

9
10 

11 LORIE GARRIS RICE
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California

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26 Complainant
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