

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

In the Matter of the Petition to Revoke Probation  
Against:

**PATRICE MARLENE DELAPLANE**

P O Box 484  
Kahului, Hawaii 96733

3318 Canyonlands Avenue  
Santa Rosa, California 95407

Pharmacist License No. RPH 26424

Respondent

Case No. 2745

PETITION TO REVOKE  
PROBATION

**WITHDRAWAL OF PETITION TO REVOKE PROBATION**

Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, hereby withdraws the petition to revoke probation against Patrice M. Delaplane in the above referenced matter.

Dated: January 14, 2005

*P. F. Harris*

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PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy

1 BILL LOCKYER, Attorney General  
of the State of California  
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6 Attorneys for Complainant

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

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

Case No. 2745

11 PATRICE MARLENE DELAPLANE  
12 3318 Canyon Lands Avenue  
Santa Rosa, CA 95407  
13 Pharmacist License No. RPH 26424

**PETITION TO REVOKE  
PROBATION**

14 Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Patricia F. Harris (Complainant) brings this Petition to Revoke Probation  
19 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of  
20 Consumer Affairs.

21 2. On or about July 15, 1969, the Board of Pharmacy issued Pharmacist  
22 License Number RPH 26424 to Patrice Marlene Delaplane (Respondent). The Pharmacist  
23 License was in effect at all times relevant to the charges brought herein and will expire on  
24 November 30, 2004, unless renewed.

25 3. In a disciplinary action entitled "In the Matter of the Accusation Against  
26 Patrice Marlene Delaplane," Case No. 1781, the Board of Pharmacy issued a decision, effective  
27 September 3, 1996, in which Respondent's Pharmacist License was suspended for 120 days.  
28

*Cooper*

1 However, the suspension was stayed and Respondent's license was placed on probation for a  
2 period of two (2) years with certain terms and conditions. A copy of that decision is attached as  
3 Exhibit A and is incorporated by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board of  
6 Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.  
7 All section references are to the Business and Professions Code unless otherwise indicated.

8 5. Section 4300 of the Code states:

9 "(a) Every license issued may be suspended or revoked.

10 "(b) The board shall discipline the holder of any license issued by the board,  
11 whose default has been entered or whose case has been heard by the board and found guilty, by  
12 any of the following methods:

13 "(1) Suspending judgment.

14 "(2) Placing him or her upon probation.

15 "(3) Suspending his or her right to practice for a period not exceeding one year.

16 "(4) Revoking his or her license.

17 "(5) Taking any other action in relation to disciplining him or her as the board in  
18 its discretion may deem proper.

19  
20 "(d) The board may initiate disciplinary proceedings to revoke or suspend any  
21 probationary certificate of licensure for any violation of the terms and conditions of probation.  
22 Upon satisfactory completion of probation, the board shall convert the probationary certificate to  
23 a regular certificate, free of conditions.

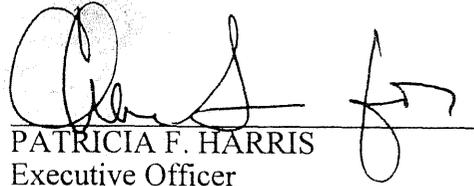
24 "(e) The proceedings under this article shall be conducted in accordance with  
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,  
26 and the board shall have all the powers granted therein. The action shall be final, except that the  
27 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the  
28 Code of Civil Procedure."



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

DATED: 4/14/04



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

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**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. Case No. 2745**

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

In the Matter of the Accusation )  
Against: )

No. 1632

PATRICE MARLENE DELALPLANE )  
P. O. Box 484 )  
Kahului, Hawaii 92110 )

OAH No. N 9508177

Respondent. )  
\_\_\_\_\_ )

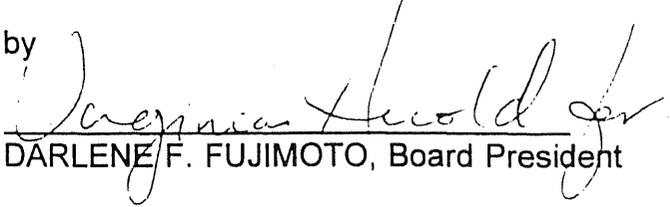
**ORDER DENYING RECONSIDERATION**

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the Board's decision which will become effective September 3, 1996, NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied.

IT IS SO ORDERED THIS 5th day of August, 1996.

Board of Pharmacy  
Department of Consumer Affairs  
State of California

by

  
DARLENE F. FUJIMOTO, Board President

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

In the Matter of the Accusation Against: )  
)  
PATRICE MARLENE DELAPLANE ) CASE NO. 1781  
P.O. BOX 484 )  
Kahului, Hawaii 92110 ) OAH No. N 9508177  
)  
RPH 26424 )  
)  
Respondent. )  
\_\_\_\_\_)

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 September 3, 1996.

IT IS SO ORDERED on August 5, 1996.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

BY: Darlene F. Fujimoto  
DARLENE F. FUJIMOTO  
Board President

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

In the Matter of the Accusation Against: )  
 )  
PATRICE MARLENE DELAPLANE ) Case No. 1781  
P.O. Box 484 )  
Kahului, Hawaii 92110 ) OAH No. N 9508177  
Licentiate No. RPH 26424, )  
 )  
Respondent. )  
\_\_\_\_\_ )

PROPOSED DECISION

This matter was heard before Cheryl R. Tompkin, Administrative Law Judge, State of California, Office of Administrative Hearings on May 13, 1996, in Oakland, California.

Complainant was represented by Richard Arnold, Deputy Attorney General.

Respondent Patrice Marlene Delaplane was present and represented herself.

FINDINGS OF FACT

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

2. On July 15, 1969, the Board issued licentiate number RPH 26424 to Patrice Marlene Delaplane (respondent). The license was in full force and effect at all times pertinent herein and has been renewed through November 30, 1996. No prior disciplinary action has been taken against respondent's license.

3. At hearing the parties stipulated that the following allegations of the Accusation are true and correct:

"6. The following drugs are controlled substances and dangerous drugs as defined in the California Con-

trolled Substances Act and Business and Professions Code section 4211(a) respectively:

- a. Dexedrine, a brand of dextroamphetamine, is a Schedule II controlled substance as defined in Section 11055(d)(1) of the Health and Safety Code and is a dangerous drug.
  - b. Fiorinal, a brand of butalbital, aspirin, and caffeine, is a Schedule III controlled substance as defined in Section 11056(c)(3) of the Health and Safety Code and is a dangerous drug.
  - c. Halcion, a brand of triazolam, is a Schedule IV controlled substance as defined in Section 11057(d)(24) of the Health and Safety Code and is a dangerous drug.
  - d. Hydrocodone with acetaminophen is a Schedule III controlled substance as defined in Section 11056(e)(4) of the Health and Safety Code and is a dangerous drug.
  - e. Methylphenidate is a Schedule II controlled substance as defined in Section 11055(d)(6) of the Health and Safety Code and is a dangerous drug.
  - f. Phentermine is a Schedule IV controlled substance as defined in section 11057(f)(2) of the Health and Safety Code and is a dangerous drug.
  - g. Tylenol with Codeine, a brand of acetaminophen with codeine, is a Schedule III controlled substance as defined in Section 11056(e)(2) of the Health and Safety Code and is a dangerous drug.
  - h. Xanax, a brand of alprazolam, is a Schedule IV controlled substance as defined in Section 11057(d)(1) of the Health and Safety Code and is a dangerous drug."
- "8. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5, and 4359 for the violation of section 4230 as follows:

On or about July 5, 1993, respondent unlawfully possessed the following controlled substances:

<u>DRUG</u>	<u>QUANTITY</u>
Dexedrine 5mg.	1
Fiorinal	12
Halcion .25mg.	1
Hydrocodone 5 mg. with acetaminophen 500 mg.	2
Methylphenidate 10 mg	1
Phentermine 30mg.	1
Tylenol w/codeine 30mg.	1
Xanax .25mg.	4
Xanax .5mg.	1
Xanax 1mg.	12"

"9. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5 and 4363 in conjunction with Health and Safety Code section 11350(a) as follows:

Pursuant to the matters alleged in paragraph 8 above, respondent unlawfully possessed the drugs Tylenol with codeine 30 mg. and Hydrocodone with acetaminophen 500 mg."

"10. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5 and 4363 in conjunction with Health and Safety Code section 11377(a) as follows:

Pursuant to the matters alleged in paragraph 8 above, respondent unlawfully possessed the drugs Dexedrine, Fiorinal, Halcion and Methylphenidate."

4. On or about July 5, 1993, respondent parked her car on the shoulder of Highway 101 near Novato, California to take a nap. Respondent was subsequently awakened by a California Highway Patrol Officer, who questioned her, and then searched her vehicle. The officer found numerous drugs, which are set forth in paragraph 8 of the Accusation and Finding of Fact 3 above. Criminal charges were filed against respondent. Respondent was diverted into an 18 month drug program in lieu of criminal prosecution. Respondent successfully completed the drug program.

5. Respondent admits having the drugs in her possession. She testified the drugs were an "emergency stash" and represented an accumulation of various drugs given to her by other people. Respondent admits the drugs were for her own use "in case of emergency," but denies actually using the drugs or

having a drug problem. Respondent claims she does not take any drugs except hormones. She also states she no longer accumulates drugs or has an emergency stash.

With respect to why she stopped on the highway shoulder, respondent explained that she lives in Hawaii, but does "relief pharmacy work" in California.<sup>1</sup> She is often tired because she travels so much. Respondent claims that on July 5, 1993, she stopped along the side of the road to take a nap because she was tired, it was affecting her driving, and it seemed like the responsible thing to do.

6. Respondent still does relief pharmacy work in California, although she resides in Hawaii. She states she is tired of shuttling back and forth between Hawaii and California but feels she cannot get a regular job until she knows whether her license will be revoked. She feels that she has paid for her offense and asks that if probation is imposed, it be made retroactive to the date of her arrest.

7. Pursuant to Business and Professions Code section 125.3, the Board may request that "a licentiate found to have committed a violation or violations of the licensing act [be required] to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

The Board certifies that the following costs were incurred in connection with the investigation and prosecution of this Accusation prior to the date of hearing:

Inspector Costs: 30.5 hours at \$65/hour	\$1,982.50
Attorney General's costs: 18 hours at \$95/hour	1,710.00
Further Attorney General's costs: 6.5 hours at \$98/hour (after filing of accusation)	<u>637.00</u>
TOTAL COSTS INCURRED:	\$4,329.50

Respondent does not contest these costs.

#### DETERMINATION OF ISSUES

1. Cause for disciplinary action against respondent exists under Business and Professions Code sections 4350, 4350.5 and 4359 in that respondent violated Business and Professions

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<sup>1</sup> A pharmacist does "relief work" when s/he serves as temporary pharmacist, filling in when a pharmacy needs someone on a temporary or short term basis.

Code section 4230. Specifically, as set forth in Findings 3 through 5, respondent was in possession of a controlled substance without having a valid prescription.

2. Cause for disciplinary action against respondent exists under Business and Professions Code sections 4350, 4350.5 and 4363 as those sections interact with Health and Safety Code section 11350, subdivision (a). Specifically, as set forth in Findings 3 through 5, respondent unlawfully possessed a controlled substance without having a valid prescription.

3. Cause for disciplinary action against respondent exists under Business and Professions Code sections 4350, 4350.5 and 4363 as those sections interact with Health and Safety Code section 11377, subdivision (a). Specifically, as set forth in Findings 3 through 5, respondent unlawfully possessed a controlled substance without having a valid prescription.

4. Although respondent unlawfully possessed controlled substances without having a valid prescription, it is nevertheless determined that it would not be against the public interest to permit respondent to retain her pharmacist license upon appropriate terms and conditions. In this regard, it is noted that although respondent has been licensed as a pharmacist since 1969, she has no prior history of disciplinary action against her license; it has been nearly three years since respondent was arrested on the charges which form the basis for this Accusation; and it has been over a year since respondent successfully completed a drug diversion program. It is somewhat troubling, however, that respondent denies ever having a drug problem despite her past arrest for unlawful possession of controlled substances and her subsequent participation in a drug treatment program. In addition, there is no evidence respondent has a support network in place to help prevent future problems. It is therefore determined respondent should be required to participate in the Impaired Pharmacists Program as a condition of retaining her license.

Respondent's request that any probation imposed be made retroactive to the date of her arrest is denied. The purpose of license probation is to allow the Board to monitor the licensee and the licensee's practice to assure that the public is protected from future violations of the type which caused the disciplinary action. Even though respondent has not engaged in any known illegal conduct since her arrest and diversion into a drug program, a period of probation to permit the Board to monitor her practice seems appropriate.

5. The reasonable costs of investigating and enforcing this matter under Business and Professions Code section 125.3 are \$4,329.50, by reason of the matters set forth in Finding 7.

ORDER

Licentiate No. RPH 26424, issued to respondent Patrice Marlene Delaplane, is suspended for a period of one hundred and twenty (120) days. However, the suspension, is stayed and respondent is placed on probation for a period of two (2) years upon the following terms and conditions:

1. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.
2. Within 30 days of the effective date of this decision, respondent shall contact the Impaired Pharmacists Program for evaluation and shall successfully participate in and complete the treatment contract as recommended by the IPP. Should respondent fail to complete the treatment contract as recommended by IPP within the probationary period, probation shall be extended until completion of said contact. The costs for IPP participation shall be borne by the respondent.
3. Respondent shall submit to peer review as deemed necessary by the Board.
4. 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.
5. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.
6. Respondent shall notify all present and prospective employers of the decision in Case No. 1781 and the terms, conditions and restriction 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 Case No. 1781.

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 respondent is to be employed or

used is aware of the fact 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.

7. Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any pharmacy licensed by the Board.
8. 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.
9. 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.
10. 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.
11. Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$4,329.50. Respondent shall pay said amount as follows: 11 monthly payments of \$360.79 and one monthly payment of \$360.81, due on or before the fifth day of each month, commencing with the first month after the effective date of this decision.

Should any part of the cost recovery not be paid, probation shall be extended until said amount is paid.

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

DATED: 6/4/96

  
\_\_\_\_\_  
CHERYL R. TOMPKIN  
Administrative Law Judge

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 RICHARD ARNOLD, State Bar No. 55418  
Deputy Attorney General  
3 50 Fremont Street, Suite 300  
San Francisco, CA 94105-2239  
4 Telephone: (415) 356-6283

5 Attorneys for Complainant

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

9

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11 In the Matter of the Accusation )  
Against: ) NO. 1781.  
12 )  
PATRICE MARLENE DELAPLANE ) ACCUSATION  
13 P.O. BOX 484 )  
Kahului, Hawaii 96732 )  
14 Licentiate No. RPH 26424 )  
15 )  
Respondent. )  
16 )

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Complainant, Patricia F. Harris, alleges that:

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1. She is the Executive Officer of the Board of  
19 Pharmacy (hereafter "Board") of the State of California and makes  
20 and files this Accusation in her official capacity.

21

2. On or about July 15, 1969, the Board issued  
22 Licentiate No. RPH 26424 to Patrice Marlene Delaplane (hereafter  
23 "respondent"). At all times mentioned herein, said license has  
24 been in full force and effect.

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3. Business and Professions Code section 118(b)  
26 provides that the suspension, expiration or forfeiture by  
27 operation of law of a license issued by a Board in the

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1 department, or its suspension, forfeiture, or cancellation by  
2 order of the Board or by order of a Court of law, or its  
3 surrender without the written consent of the Board, shall not,  
4 during any period in which it may be renewed, restored, reissued,  
5 or reinstated, deprive the Board of its authority to institute or  
6 continue a disciplinary proceeding against the licensee upon any  
7 ground provided by law or to enter an order suspending or  
8- revoking the license or otherwise taking disciplinary action  
9 against the licensee on any such ground.

10           4. Business and Professions Code sections 4350,  
11 4350.5 and 4359 provide, *inter alia*, that the Board may take  
12 disciplinary action against holders of licenses, permits and  
13 certificates.

14           5. Business and Professions Code section 4350.5 of  
15 the code provides, *inter alia*, that the Board shall take action  
16 against any holder of a certificate, license, or permit who is  
17 guilty of unprofessional conduct. Unprofessional conduct is  
18 defined therein to include the violation, directly or indirectly,  
19 or assisting or abetting in the violation of any provision or  
20 term of the California Pharmacy Law (Business and Professions  
21 Code § 4000, et seq.), or regulation established by the Board.

22           6. The following drugs are controlled substances and  
23 dangerous drugs as defined in the California Controlled  
24 Substances Act and Business and Professions Code section 4211(a)  
25 respectively:

26           a. Dexedrine, a brand of dextroamphetamine, is a  
27 Schedule II controlled substance as defined in Section  
11055(d)(1) of the Health and Safety Code and is a  
dangerous drug.

1           b. Fiorinal, a brand of butalbital, aspirin, and  
2           caffeine, is a Schedule III controlled substance as  
3           defined in Section 11056(c)(3) of the Health and Safety  
4           Code and is a dangerous drug.

5           c. Halcion, a brand of triazolam, is a Schedule  
6           IV controlled substance as defined in Section  
7           11057(d)(24) of the Health and Safety Code and is a  
8           dangerous drug.

9           d. Hydrocodone with acetaminophen is a Schedule  
10           III controlled substance as defined in Section  
11           11056(e)(4) of the Health and Safety Code and is a  
12           dangerous drug.

13           e. Methylphenidate is a Schedule II controlled  
14           substance as defined in Section 11055(d)(6) of the  
15           Health and Safety Code and is a dangerous drug.

16           f. Phentermine is a Schedule IV controlled  
17           substance as defined in Section 11057(f)(2) of the  
18           Health and Safety Code and is a dangerous drug.

19           g. Tylenol with Codeine, a brand of  
20           acetaminophen with codeine, is a Schedule III  
21           controlled substance as defined in Section 11056(e)(2)  
22           of the Health and Safety Code and is a dangerous drug.

23           h. Xanax, a brand of alprazolam, is a Schedule  
24           IV controlled substance as defined in Section  
25           11057(d)(1) of the Health and Safety Code and is a  
26           dangerous drug.

27           7. Business and Professions Code section 4230  
28           provides, *inter alia*, that no person shall have in possession any  
29           controlled substance, except that furnished to such person upon  
30           the prescription of a physician, dentist, podiatrist, or  
31           veterinarian.

32           8. Respondent is subject to disciplinary action  
33           pursuant to Business and Professions Code sections 4350, 4350.5,  
34           and 4359 for the violation of section 4230 as follows:

35           On or about July 5, 1993, respondent unlawfully  
36           possessed the following controlled substances:

	<u>DRUG</u>	<u>QUANTITY</u>
1		
2	Dexedrine 5mg.	1
	Fiorinal	12
3	Halcion .25mg.	1
	Hydrocodone 5 mg.	
4	with acetaminophen 500mg.	2
	Methylphenidate 10mg.	1
5	Phentermine 30mg.	1
	Tylenol w/codeine 30mg.	1
6	Xanax .25mg	4
	Xanax .5mg	1
7	Xanax 1mg.	12

8 9. Respondent is subject to disciplinary action  
9 pursuant to Business and Professions Code sections 4350, 4350.5  
10 and 4363 in conjunction with Health and Safety Code section  
11 11350(a) as follows:

12 Pursuant to the matters alleged in paragraph 8 above,  
13 respondent unlawfully possessed the drugs Tylenol with  
14 condeine 30mg. and Hydrocodone with acetaminophen 500 mg.

15 10. Respondent is subject to disciplinary action  
16 pursuant to Business and Professions Code sections 4350, 4350.5  
17 and 4363 in conjunction with Health and Safety Code section  
18 11377(a) as follows:

19 Pursuant to the matters alleged in paragraph 8 above,  
20 respondent unlawfully possessed the drugs Dexedrine,  
21 Fiorinal, Halcion and Methylphenidate.

22 11. Pursuant to Business and Professions Code section  
23 125.3, the Board requests the administrative law judge to direct  
24 the respondent to pay the Board a sum not to exceed the  
25 reasonable costs of the investigation and enforcement of the  
26 case.

27 WHEREFORE, complainant prays that the Board hold a

1 hearing on the matters alleged herein and thereafter issue a  
2 decision suspending or revoking the pharmacist license of  
3 respondent, recovering its costs of investigation and enforcement  
4 pursuant to Business and Professions Code section 125.3 and  
5 taking such other and further action as the Board deems proper.

6 DATED: 8/3/95

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*P. J. Harris*

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PATRICIA F. HARRIS

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

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Complainant

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