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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: AUGUSTINE ERAUCHABOR ATIYOTA, RPH 740 Oleander Lane Blythe, CA 92225 Original Pharmacist License No. RPH 46883 Respondent.	Case No. 2769 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

2. Respondent Augustine Erauchabor Atiyota, RPH (Respondent) is represented in this proceeding by attorney Ronald S. Marks, whose address is 6320 Canoga Avenue, Suite 1550, Woodland Hills, CA 91367.

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3. On or about March 11, 1994, the Board of Pharmacy issued Original Pharmacist License No. RPH 46883 to Augustine Erauchabor Atiyota, RPH. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 2769 and will expire on June 30, 2005, unless renewed.

JURISDICTION

4. Accusation No. 2769 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 29, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2769 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2769. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 2769, if proven at hearing, constitute cause for discipline.

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9. For the purposes of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that pharmacist license RPH 46883 is subject to discipline, and he agrees to be bound by the Board's imposition of discipline as set forth in the disciplinary order below.

CIRCUMSTANCE IN MITIGATION

11. Respondent has never been the subject of any prior disciplinary action by the Board.

RESERVATION

12. The admissions made by Respondent are only for the purpose of this proceeding and any other proceeding in which the Board is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. 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.

OTHER MATTERS

14. 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.

15. Costs of investigation and enforcement of this case are $8,500 as of September 24, 2004, of which Respondent agrees to pay $5,000.00.

16. Respondent has been prohibited to practice has a pharmacist since July 27, 2004 as a condition of release on his own recognizance in a criminal matter arising out of the same facts and circumstances as the Accusation herein.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 46883 issued to Respondent Augustine Erauchabor Atiyota, RPH is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. **Actual Suspension - Pharmacist.** License number RPH 46883, issued to Respondent Augustine Erauchabor Atiyota, RPH is suspended for a period of one hundred and eighty (180) consecutive days from the effective date of the Board's decision herein; however, Respondent shall receive credit towards the 180 days for the time he has been prohibited from practice since July 27, 2004, pursuant to his criminal case.

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

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.

Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board.

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

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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

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

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

considered a violation of probation.

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

7. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2769 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2769.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2769 in advance of the Respondent commencing work at each pharmacy.

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

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

9. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $5,000. Respondent shall make said payments as follows: in equal quarterly installments accompanying his quarterly reports to the Board such that the entire amount is repaid no later than six (6) months before the termination of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

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

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

If Respondent's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

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

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

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

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14. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

Respondent shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will be a violation of probation. <u>If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition.</u>

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

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

probation, and to impose the penalty which was stayed.

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

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

Continuous - 75% to 100% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

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

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the Board in writing stating the supervisor has read the decision in case number 2769 and is familiar with the level of supervision as determined by the Board.

If Respondent changes employment, Respondent shall have his new supervisor, within 15 days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 2769 and is familiar with the level of supervision as determined by the Board.

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

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

19. **Criminal Probation/Parole Reports.** Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his

probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after Respondent receives a copy of such a report.

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

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation and the effect it will have on my Original Pharmacist License . 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: 10/18/04.

AUGUSTINE ERAUCHABOR ATIYOTA, RPH
Respondent

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I have read and fully discussed with Respondent Augustine Erauchabor Atiyota, RPH the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/22/04.

RONALD S. MARKS, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 10/26/04.

BILL LOCKYER, Attorney General
of the State of California

SUSAN FITZGERALD
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: AUGUSTINE ERAUCHABOR ATIYOTA, RPH 740 Oleander Lane Blythe, CA 92225 Original Pharmacist License No. RPH 46883 Respondent.	Case No. 2769

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 January 5, 2005.

It is so ORDERED December 6, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2769

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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: AUGUSTINE ERAUCHABOR ATIYOTA, RPH 740 Oleander Lane Blythe, CA 92225 Original Pharmacist License No. RPH 46883 Respondent.	Case No. 2769 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 11, 1994, the Board of Pharmacy issued Original Pharmacist License Number RPH 46883 to Augustine Erauchabor Atiyota, RPH (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following sections of the Business and Professions

Code:

A. Section 4301 of the Code states:

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

". . .

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

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

". . .

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

". . .

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

". . ."

B. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

C. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized

officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

". . ."

D. Section 4324 of the Code states:

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

"(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year."

E. Section 4113(b) provides that a pharmacist-in-charge (PIC) shall be responsible for a pharmacy's compliance with all state and federal laws and regulations related to the practice of pharmacy.

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

4. This Accusation is also brought under the authority of section 11153 of the California Health & Safety Code (H&S Code), which states in pertinent part as follows:

"(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research...

". . ."

5. This Accusation is also brought under the authority of title 16, California Code of Regulation (CCR) section 1715, which requires that a PIC complete every odd-numbered year a self-assessment of his pharmacy's compliance with federal and state pharmacy law.

DRUGS

6. The following drugs are classified as dangerous drugs under Business & Professions Code section 4022. Where noted, one of the below listed drugs is also a controlled substance under the California H&S Code:

A. Ativan is a brand name for lorazepam, a Schedule IV controlled substance under H&S Code section 11057.

B. Paxil is a brand name for paraxetine, an antidepressant.

C. Diabeta is a brand name for glyburide, a diabetes medication.

D. Actos is a brand name for pioglitazone, a diabetes medication.

E. Motrin is a brand name for ibuprofen, an anti-inflammatory.

CHARGES AND ALLEGATIONS

7. During all times relevant herein, Respondent was the PIC of Rite Aid Pharmacy #5673 at 890 E. Hobson Way, Blythe, California.

8. Onome Atiyota is Respondent's wife.

9. Helen Atiyota is Respondent's sister who, at all times relevant herein, lived in Lansdowne, Pennsylvania.

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10. Monica Atiyota is Respondent's mother who, at all relevant times herein, lived in or near Lansdowne, Pennsylvania.

11. Between approximately July 16, 2003 and October 13, 2003, Respondent forged/falsely created approximately eleven unauthorized prescriptions in the name of his wife, Onome Atiyota. Respondent entered the forged prescription records into the computer at Rite Aid #5673 in Blythe, California. Respondent then transferred those forged records to Rite Aid Pharmacy #2298 in Lansdowne, Pennsylvania, where the prescriptions were billed, filled, and dispensed to either Helen or Monica Atiyota:

RX 315983	Onome Atiyota	7/16/03	Dr. Tan	Ibuprofen 600 mg.-original
RX 315983	Onome Atiyota	9/06/03	Dr. Tan	Ibuprofen 600 mg. -refill
RX 315983	Onome Atiyota	10/16/03	Dr. Tan	Ibuprofen 600 mg. -refill
RX 315984	Onome Atiyota	7/16/03	Dr. Tan	Glyburide 5 mg. -original
RX 315985	Onome Atiyota	7/16/03	Dr. Tan	Lorazepam 1 mg. -original
RX 315985	Onome Atiyota	9/06/03	Dr. Tan	Lorazepam 1 mg. -refill
RX 318654	Onome Atiyota	8/13/03	Dr. Tan	Glyburide 5 mg. -original
RX 318654	Onome Atiyota	9/06/03	Dr. Tan	Glyburide 5 mg. -refill
RX 318654	Onome Atiyota	10/6/03	Dr. Tan	Glyburide 5 mg. -refill
RX 321660	Onome Atiyota	9/14/03	Dr. Tan	Actos 30 mg. -original
RX 321660	Onome Atiyota	10/13/03	Dr. Tan	Actos 30 mg. -refill

12. On or about May 28, 2003, Respondent forged/falsely created and dispensed (at the Blythe Rite Aid pharmacy) RX 192855 (Paxil CR 12.5 mg.) in the name of Monica Atiyota.

13. In creating the above false records, Respondent used the name, DEA license number, and state license number of Brawley, California physician, Dr. Y. Tan, without Dr. Tan's knowledge or authorization. In fact, Dr. Tan had never treated or prescribed for Onome Atiyota. Further, although Dr. Tan examined Monica Atiyota on or about May 12, 2003, he did not prescribe Paxil at any time for her.

14. Respondent failed to maintain disposition records pursuant to Code section 4081(a) and (b). Specifically, on January 7, 2004, the following prescriptions documents were

not readily retrievable for medications dispensed to Monica Atiyota on RX 188928, RX 188927, and RX 192855 and for a medication dispensed to Onome Atiyota on RX 197843. On January 8, 2004, RXs 197263, 197264, 197265, and 199690 were not readily retrievable and deleted from Rite Aid Pharmacy #5673's computer database for Onome Atiyota.

15. Respondent failed to do a self-assessment, as specified by CCR §1715(a), for the years 2001 and 2003.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption - §4301(f))

16. Respondent is subject to disciplinary action under section 4301(f) for moral turpitude, dishonesty, fraud, and deceit in that he created a fraudulent scheme to supply prescription medications for his mother and/or sister, as more particularly alleged above and incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Knowing Falsification of Documents - 4301(g))

17 Respondent is further subject to disciplinary action under section 4301(g) for knowingly making any document that falsely represents the existence or nonexistence of a state of facts in that he created false prescription records, as more particularly alleged above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Prescription Forgery - Section 4301(o) + 4324)

18. Respondent is further subject to disciplinary action under section 4301(o) in conjunction with section 4324(a) for falsely making/forging prescriptions, as more particularly alleged above and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Controlled Substance Law - 4301(j) + H&S 11153)

19. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11153 in that he violated H&S Code section 11153 by his illegal

prescribing of lorazepam, as more particularly alleged above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Unauthorized Furnishing - 4301(o) + 4059(a))

20. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4059(a) in that he furnished[1] dangerous drugs without the prescription of a physician, as more particularly alleged above and incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain Records - 4301(o) + 4081(a) & (b))

21. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4081(a) and (b) in that he failed to maintain records of the disposition of the various dangerous drugs for which he created the fraudulent prescriptions, as more particularly alleged above and incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Board Regulation - 4301(o) + CCR 1715(a))

22. Respondent is subject to disciplinary action under section 4301(o) in conjunction with CCR section 1715(a) in that he, as PIC, failed to do a self-assessment of his pharmacy's compliance with state and federal pharmacy laws for the years 2001 and 2003.

PRAYER

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

1. Revoking or suspending Original Pharmacist License Number RPH 46883, issued to Augustine Erauchabor Atiyota, RPH;

2. Ordering Augustine Erauchabor Atiyota, RPH to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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1. "'Furnish' means to supply by any means, by sale or otherwise." Code section 4026.

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

DATED: 7/29/04

P. F. Harris

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