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3 **BEFORE THE**
4 **BOARD OF PHARMACY**
5 **DEPARTMENT OF CONSUMER AFFAIRS**
6 **STATE OF CALIFORNIA**

7 In the Matter of the Accusation Against:

Case No. 2774

8 M. KEITH LORANG
9 2371 Erling Way
10 Kingsburg, California 93631

**ORDER DENYING PETITION
FOR RECONSIDERATION**

Original Pharmacist License No. RPH 30813

11 Respondent

12
13 **ORDER DENYING RECONSIDERATION**

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15 The Board of Pharmacy having read and considered respondent's petition for reconsideration of
16 the board's decision initially effective May 27, 2005 and thereafter stayed to June 6, 2005 to permit the
17 board to consider the petition, NOW THEREFORE IT IS ORDERED that the petition for
18 reconsideration is denied.

19 IT IS SO ORDERED this 7^h day of June 2005.

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21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By



25 STANLEY W. GOLDENBERG
26 Board President
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3 **BEFORE THE**
4 **BOARD OF PHARMACY**
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6 **STATE OF CALIFORNIA**

7 In the Matter of the Accusation Against:

Case No. 2774

8 M. KEITH LORANG
9 2371 Erling Way
Kingsburg, California 93631

OAH No. N2004110174

10 Pharmacist License No. RPH 30813

11 Respondent.

12
13 **STAY ORDER**

14 A stay of execution of the Board of Pharmacy's decision effective May 27, 2005, is hereby
15 ordered until June 6, 2005.

16 The decision in this matter is stayed to permit the board to consider a petition for reconsideration
17 filed by the petitioner and received by the board on May 17, 2005.

18 It is so ORDERED on May 26, 2005.

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20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 

24 By _____
25 STANLEY W. GOLDENBERG
26 Board President
27
28

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

In the Matter of the Accusation Against:

M. KEITH LORANG
A.K.A. KEITH LORANG
2371 Erling Way
Kingsburg, CA 93631

Original Pharmacist License No. RPH 30813

Respondent.

Case No. 2774

OAH No. N2004110174

PROPOSED DECISION

This matter was heard on March 3, 2005, before Ann Elizabeth Sarli, Administrative Law Judge, State of California, Office of Administrative Hearings, in Fresno, California.

Complainant was represented by Jessica M. Amgwerd, Deputy Attorney General.

Respondent was represented by Charles Benninghoff.

Oral and documentary evidence was submitted. The record was closed and the matter submitted on March 3, 2005.

FACTUAL FINDINGS

1. On January 28, 1977, the Board of Pharmacy (Board) issued Original Pharmacist License Number RHP 30813 to M. Keith Lorang. The license was in full force and effect at all times pertinent herein, and will expire on August 31, 2006, unless renewed.
2. On September 16, 2004, complainant, Patricia F. Harris made and filed an Accusation against respondent in her official capacity as Executive Officer of the Board.
3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code sections 11505 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an

independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et.seq.

4. On March 10, 2004, respondent was convicted, on a plea of nolo contendere, of a misdemeanor violation of Health and Safety Code section 11377, subdivision (a), (possession of a controlled substance). Respondent was sentenced to conditional release and unsupervised probation for a period of three years. He was ordered to pay fines and restitution and to complete the Board of Pharmacy drug diversion program. He was ordered to serve one day in jail. The conviction arose from respondent's theft of Benzphetamine (Didrex), a Schedule III controlled substance from his employer, Save Mart Corporation (Save Mart). This offense is one of moral turpitude and is substantially related to the qualifications and duties of a pharmacist.

5. Save Mart employed respondent in early 2002, as a rotating pharmacist. Respondent regularly traveled from his home in Kingsburg to Save Mart pharmacies in the Central Valley, including Lemoore, Modesto and Visalia. On October 1, 2002, respondent contacted physician's assistant, Curt Tanner. Mr. Tanner was employed by Richard Lusby, M.D. Mr. Tanner was respondent's friend and they belonged to the same church. Respondent asked Mr. Tanner to issue him a prescription for Didrex 50 mg., claiming he had previously had a prescription for it and he needed it for weight control. At the same time, respondent requested a prescription for Norco, Halcion, Lomotil, Adipex, and several other medications; totaling 20 medications. Respondent wrote on the fax to Mr. Tanner; "Dear Curtis, Here is a list of the meds I have had laying around for years and are really old. ...Would you Okay these?" Mr. Tanner did not examine respondent, or create a medical chart. He did not get his physician's approval for prescribing these medications. He called in the prescriptions to the Save Mart pharmacies where respondent filled them.

Respondent took the original prescription for Didrex as a telephoned prescription at the Save Mart in Fresno, on October 1, 2002. The pharmacist in charge was concerned about the interaction of Didrex with the others prescriptions respondent had Tanner call in. He refused to fill the Didrex prescription. Respondent transferred the Didrex prescription to the Save Mart, in Lemoore and filled it. The prescription was filled for 30 tablets on January 28, 2003, and again on March 25, 2003, at the Leemore store. Mr. Tanner and respondent continued this practice. Respondent would call Tanner for a refill of Didrex and Mr. Tanner would call a Save Mart pharmacy with refill authorization. Mr. Tanner approved refills of Didrex on January 27, 2003, and on March 24, 2003. Another prescription was phoned in on October 26, 2003, but it is unclear whether Tanner phoned this one in.

6. The pharmacist in charge at the Lemoore store, Clifford Burgin, noticed that Didrex was missing from his store. He began to keep track of the Didrex count and noticed it was short after respondent worked a shift. Mr. Burgin and the Save Mart Asset Protection Supervisor began video surveillance of the Lemoore pharmacy on October 5, 2003.

The video recording of October 10, 2003, revealed respondent removing a container from the area of the pharmacy where Didrex was stored, and placing the container in his coat

pocket. He moved to another corner of the pharmacy, looked around to ensure he was not observed, and transferred the container to his pants pocket. He went to a refrigerator and drank water. He later replaced the container back on the shelf.

When respondent was confronted with the video surveillance, he confessed to stealing Didrex from several Save Mart pharmacies. Audits showed 193 tablets of Didrex missing from three pharmacies. Respondent was terminated from employment and \$150 was docked from his pay to compensate Save Mart for the thefts.

7. Mr. Burgin and a Save Mart pharmacist, Richard Reis, observed that respondent frequently displayed nervous and unusual behaviors, consistent with use of a central nervous system stimulant like Didrex. Respondent worked very long hours, often working an entire day and driving two hours each way in his commute. Respondent worked at a "high speed." He talked constantly and ate several containers of breath mints continuously throughout his shifts. Mr. Burgin observed that respondent had been responsible for prescription errors which had been caught and corrected.

Michael Maloney, the pharmacist in charge at the Visalia Save Mart, observed that respondent displayed unusual nervous behavior. Phillip Smith, pharmacist in charge at the Modesto Save Mart observed that respondent ground his teeth and frequently appeared to be nervous.

Factors in Justification, Mitigation, Aggravation and Rehabilitation

8. In order to determine whether and to what extent it is appropriate to discipline respondent's license, it is necessary to weigh and balance respondent's violations of law as well as factors in justification, aggravation, mitigation and rehabilitation. There were no factors which justified respondent's conduct. In aggravation, respondent's conduct continued for a year and all indications are it would have continued had he not been caught on videotape.

In mitigation, respondent had a long period of licensure and no previous record of discipline. Respondent testified as to several factors he believed mitigated his conduct. First, he contended that he called Mr. Curtis and asked for a prescription for Didrex after he nearly fell asleep at the wheel of his car. After he filled the prescription, he continued taking the medication throughout the day to stay alert, and he became addicted. However, the documentary evidence shows that respondent contacted Mr. Curtis and represented that he had had a prescription for Didrex, as well as several other drugs, and wanted a refill. Further, respondent persuaded Mr. Curtis to say the medication was prescribed for weight loss in the event there was ever a question.

Respondent also maintained that he believed it was legal for a physician's assistant to prescribe controlled substances to him over the telephone, without a physical examination. Respondent was not credible. As a pharmacist, respondent was trained in valid prescribing practices. Further, respondent and Mr. Tanner were secretive and conspiratorial about

respondent's prescriptions. Respondent initially told Save Mart security personnel that he did not have a prescription for Didrex. Tanner initially denied even knowing what Didrex was when investigators questioned him about prescribing to respondent. Later Tanner admitted that the two had decided if they were ever questioned they would say Tanner prescribed the medication for weight loss. Mr. Tanner personally phoned the prescriptions into respondent at the pharmacy, even though Tanner's assistant phoned all other patient prescriptions to pharmacies. Both Tanner and respondent avoided creating any medical chart at Tanner's office; respondent never went in to the doctor or to Tanner and Tanner never created a chart. All indicia are that the two conspired together to provide drugs to respondent without creating a trail.

Respondent also maintained that he took the medication from the pharmacy because he was afraid to refill his prescription. He explained that he felt that if he filled his prescription he would take more than he should. Instead, he believed he could limit his use by taking a few Didrex here and there from the pharmacy. He now recognizes that his reasoning was flawed and affected by his addiction.

Respondent denied that he ever worked while under the influence of Didrex and maintained that his professional judgment was never affected. Respondent cannot have it both ways. The evidence was persuasive from the statements of Save Mart pharmacists and respondent's admission that respondent's mental state was adversely affected by the Didrex.

Respondent has made important strides towards rehabilitation. He enrolled in the Board's diversion program and presented a September 2004 letter from the Fresno Diversion Facilitator, which confirmed he was compliant with the program. His random drug screenings have been negative. He attends four regular meetings of narcotics anonymous and two of group counseling every week.

For a while after he was terminated from Save Mart, respondent continued working as a relief pharmacist. His site monitor initially was Paul Kruper, M.D. Dr. Kruper testified that respondent did an excellent job and that he watched respondent closely for signs of drug use. He monitored respondent for eight months. The diversion program ultimately required that respondent give up working as a rotating pharmacist because the program required a site monitor at every work site.

Four months prior to the hearing of this matter, respondent took a position as a full time pharmacist in charge at Longs Drugs in Tulare County. He has applied to the Board for approval as the pharmacist in charge, but functions in that capacity while awaiting the Board's decision. There are no other pharmacists employed at the pharmacy and respondent supervises four pharmacy technicians. One of those technicians is his site monitor.

Respondent presented several character witnesses who attested to respondent's sobriety and integrity. These witnesses did not add measurably to respondent's evidence of rehabilitation. Respondent had told them that he had a legitimate prescription for diet pills. He told the witnesses that he did not have his prescription with him at work and he

improperly filled a prescription for himself at the pharmacy. One character witness, a dentist friend of respondent, did not know respondent suffered a criminal conviction. One witness, Dr. Kruper, referred to the conviction as an "infraction." These witnesses clearly did not understand the gravity of respondent's offense.

Respondent himself did not appear to comprehend the gravity of his offense. He does not recognize that his arrangement with Curtis Tanner was improper and jeopardized Tanner's license. When he was interviewed by the Lemoore police on October 23, 2004, respondent stated that he did not know why they were "making such a big issue of this." He told the officer he knew taking the pills was wrong, but he considered it only a technicality in paperwork and he did not think it was illegal.

Respondent exhibited frustration that his "indiscretion" cost him financially, in terms of giving up a 70 hour a week job as a rotating pharmacist, and spending his time and money on drug testing and required meetings. He agreed that he owed Save Mart \$150 for the stolen medications, and he agreed to have the money deducted from his next pay check. After he was terminated, he attempted to get the \$150 back. He told the police and Mr. Burgin that he had replaced some of the stolen stock with his prescription pills and what he had given the store caused him to break even with the store.

Respondent also attempted to show rehabilitation by characterizing his involvement with his church as community service. However, his church activities include working in the church owned vineyard and assisting other church members when they need assistance, as well as functioning as a church elder. These are insular activities not benefiting the community and do not show a commitment to the community.

As a factor in rehabilitation, respondent is the sole support of his wife and four children and he is meeting his financial commitments.

Costs

9. At hearing, the parties were advised that the Administrative Law Judge would take evidence relating to the factors set forth in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32. The parties were advised that these factors would be considered in determining the reasonableness of costs. These factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Complainant established that the reasonable costs of investigation of this matter were \$3,705. The reasonable costs of prosecution of this matter were \$4,893. The total costs of investigation and prosecution were \$8,598. Complainant established that the scope of the investigation was appropriate to the alleged misconduct. Complainant prevailed on all of the charges.

Respondent did not submit evidence on any of the Zuckerman factors, except an argument that he could not pay costs unless they were spread over a two year period. Respondent earns over \$100,000 per year. There was no persuasive evidence that he is unable to pay costs.

LEGAL CONCLUSIONS

1. A profession is a vocation or occupation requiring special and advanced education and skill predominately of an intellectual nature. The practice of pharmacy, like the practice of medicine, is a profession. *Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19.

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583. "Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence." *BAJI* 2.62. "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. *In re David C.* (1984) 152 Cal.App.3d 1189.

3. Business and Professions Code section 4300, provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

4. Business and Professions Code section 490, provides in pertinent part:

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

Business and Professions Code section 4301, subdivision (1), provides in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or

misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

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

It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code sections 490, and section 4301, subdivision (1), as set forth in Factual Findings 4 through 6, inclusive

5. Business and Professions Code section 4301, subdivision (f), provides in pertinent part:

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

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.

It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code section 4301, subdivision (f), as set forth in Factual Findings 4 through 6, inclusive

6. Business and Professions Code section 4301, subdivision (h), provides in pertinent part:

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

The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code section 4301, subdivision (h), as set forth in Factual Findings 4 through 6, inclusive.

7. Business and Professions Code section 4301, subdivision (o), provides in pertinent part:

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

The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

Business and Professions Code section 4327, provides in pertinent part:

Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code sections 4301, subdivision (o), and 4327, as set forth in Factual Findings 4 through 7, inclusive

8. Business and Professions Code section 125.3, provides that the Board may request the administrative law judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Factual Finding 9, the reasonable costs of investigation and prosecution of this matter were established as \$8,598.

9. The factors in aggravation were weighed and balanced against the factors in mitigation and rehabilitation. Respondent's participation in the Board's diversion program has ensured that his risk to the public is controlled. However, respondent has participated in the diversion program for less than a year and he remains on court ordered probation for another two years. It would not now be against public interest to issue respondent a probationary license, with terms and conditions designed to protect the public.

ORDER

1. Original Pharmacist License Number RPH 30813, issued to M. Keith Lorang A.K.A. Keith Lorang is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

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 of any drug, device or controlled substance.

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.

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.

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.

Continuing Education

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

Notice to Employers

Respondent shall notify all present and prospective employers of the decision in case number 2774 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 2774.

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 terms and conditions of the decision in case number 2774 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.

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.

Reimbursement of Board Costs

Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$8,598, within 90 days of the effective date of this decision and order.

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

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.

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 cancelled 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.

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.

Notification of Employment/Mailing Address Change

Respondent shall notify the board in writing within ten 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.

Tolling of Probation

Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of eighty 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.

Examination

Respondent shall take and pass the ethics, or other applicable section(s) of the pharmacist licensure examination as scheduled by the Board after the effective date of this decision at respondent's own expense. If respondent fails to take and pass the examination within six months after the effective of this decision, respondent shall be suspended from practice upon written notice. Respondent shall not resume the practice of pharmacy until he takes and passes the same section(s) at a subsequent examination and is notified, in writing, that he has passed the examination.

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 controlled substances.

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

Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until respondent passes the examination and is notified in writing.

Pharmacists Recovery Program

Respondent is currently enrolled in the PRP, and said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until respondent successfully completes his treatment contract. Any person terminated from the program shall

be automatically suspended upon notice by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing. The board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

Random Drug Screening

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

Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board, respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the respondent. Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs.

Report of Controlled Substances

Respondent shall submit quarterly reports to the board the total acquisition and disposition of such controlled substances as the board may direct. Respondent shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than 10 days following the end of the reporting period.

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 a 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.

Completion of Probation

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

2. M. Keith Lorang A.K.A. Keith Lorang is ordered to pay the Board of Pharmacy the sum of \$8,598, within 90 days of the effective date of this decision and order.

Dated: March 30, 2015



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA,

In the Matter of the Accusation Against:

File No. 2774

OAH No. N-2004110174

M. KEITH LORANG
2371 Erling Way
Kingsburg, CA 93631
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 May 27, 2005.

IT IS SO ORDERED April 27, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANELY W. GOLDENBERG
Board President

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

11 In the Matter of the Accusation Against:

Case No. 2774

12 **M. KEITH LORANG,**
13 **A.K.A. KEITH LORANG**
2071 Erling Way
Kingsburg, CA 93631
14 **Original Pharmacist License No. RPH 30813**

ACCUSATION

15 Respondent.

16 Complainant alleges:

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

20 2. On or about January 28, 1977, the Board of Pharmacy ("Board") issued
21 Original Pharmacist License Number RPH 30813 to M. Keith Lorang, also known as Keith
22 Lorang ("Respondent"). The license will expire on August 31, 2004, unless renewed.

23 **I.**

24 **STATUTORY PROVISIONS**

25 3. Section 490 of the Business and Professions Code ("Code") provides:

26 "A board may suspend or revoke a license on the ground that the licensee
27 has been convicted of a crime, if the crime is substantially related to the qualifications, functions,
28 or duties of the business or profession for which the license was issued. A conviction within the

1 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
2 contendere. Any action which a board is permitted to take following the establishment of a
3 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
4 been affirmed on appeal, or when an order granting probation is made suspending the imposition
5 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
6 Penal Code."

7 4. Section 4059, subdivision (a) of the Code provides:

8 "(a) A person may not furnish any dangerous drug, except upon the
9 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian."

10 5. Section 4060 of the Code provides, in pertinent part:

11 "No person shall possess any controlled substance, except that furnished to
12 a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
13 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
14 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
15 section shall not apply to the possession of any controlled substance by a manufacturer,
16 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
17 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
18 and address of the supplier or producer."

19 6. Section 4300 of the Code provides, in pertinent part:

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

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

24 (1) Suspending judgment.

25 (2) Placing him or her upon probation.

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

28 (4) Revoking his or her license.

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

3 7. Section 4301 of the Code provides:

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

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

11 (h) The administering to oneself, of any controlled substance, or the use of
12 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
13 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
14 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
15 the public the practice authorized by the license.

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

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a violation of
20 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating
21 controlled substances or of a violation of the statutes of this state regulating controlled substances
22 or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases,
23 the record of conviction shall be conclusive evidence only of the fact that the conviction
24 occurred. The board may inquire into the circumstances surrounding the commission of the
25 crime, in order to fix the degree of discipline or, in the case of a conviction not involving
26 controlled substances or dangerous drugs, to determine if the conviction is of an offense
27 substantially related to the qualifications, functions, and duties of a licensee under this chapter.
28 A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a

1 conviction within the meaning of this provision. The board may take action when the time for
2 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
3 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
4 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
5 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
6 accusation, information, or indictment.

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

11 8. Section 4327 of the Code provides:

12 "Any person who, while on duty, sells, dispenses or compounds any drug
13 while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a
14 misdemeanor."

15 9. Health and Safety Code section 11350, subdivision (a) provides that
16 except as otherwise provided in this division, every person who possesses (1) any controlled
17 substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of section 11054,
18 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
19 subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in
20 Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a
21 physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished
22 by imprisonment in the state prison.

23 10. Health and Safety Code section 11377, subdivision (a) provides that
24 except as authorized by law and as otherwise provided in subdivision (b) or in Article 7
25 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions
26 Code, every person who possesses any controlled substance which is (1) classified in Schedule
27 III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,
28 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or

1 (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of section
2 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
3 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
4 than one year or in the state prison.

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

7 12. Health and Safety Code section 11171 provides that no person shall
8 prescribe, administer, or furnish a controlled substance except under the conditions and in the
9 manner provided by this division.

10 13. Health and Safety Code section 11550, subdivision (a) provides that no
11 person shall use, or be under the influence of any controlled substance which is (1) specified in
12 subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in
13 paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in
14 subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or
15 in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule
16 III, IV, or V, except when administered by or under the direction of a person licensed by the state
17 to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense
18 to show that it comes within the exception.

19 14. California Code of Regulations, title 16, section 1770, provides:

20 "For the purpose of denial, suspension, or revocation of a personal or
21 facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and
22 Professions Code, a crime or act shall be considered substantially related to the qualifications,
23 functions or duties of a licensee or registrant if to a substantial degree it evidences present or
24 potential unfitness of a licensee or registrant to perform the functions authorized by his license or
25 registration in a manner consistent with the public health, safety, or welfare."

26 15. Section 125.3 of the Code provides that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations
28 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case.

2 **II.**

3 **DRUGS**

4 16. "Benzphetamine" is a Schedule III controlled substance as designated by
5 Health and Safety Code section 11056, subdivision (b)(2).

6 **III.**

7 **GENERAL BACKGROUND**

8 17. Respondent worked as a rotating pharmacist in the Central Valley
9 (Lemoore, Modesto, and Visalia) for Save Mart Pharmacy Corporation circa February 2002
10 through October 18, 2003. While working as a rotating pharmacist, Respondent stole
11 Benzphetamine on numerous occasions, and did not have prescriptions for said controlled
12 substance. On October 10, 2003, video surveillance filmed Respondent stealing Benzphetamine
13 while working at the Save Mart Pharmacy located at Lemoore.

14 18. Police investigation of the theft resulted in a criminal complaint filed
15 against Respondent in the Superior Court of Kings County, in an action entitled, *People v. Keith*
16 *Lorang*, (Super. Ct. Kings County, 1999, Case No. 03CM5074). The criminal complaint alleged
17 violation of Health and Safety Code section 11377(a) (possession of controlled substance) and
18 violation of Penal Code section 484(a) (theft). On March 10, 2004, Respondent pled nolo
19 contendere to a violation of Health and Safety Code section 11377, subdivision (a).

20 **IV.**

21 **VIOLATIONS**

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Conviction of Crime)

24 19. Paragraphs 17 and 18 are incorporated herein. Respondent is subject to
25 discipline under Business and Professions Code section 490 and section 4301, subdivision (1),
26 due to his criminal conviction of Health and Safety Code section 11377(a), on March 10, 2004.
27 The criminal conviction was based upon Respondent wrongfully possessing a controlled
28 substance.

1 20. The circumstances of the conviction are substantially related to the
2 qualifications, functions or duties of a licensed pharmacist, as defined by California Code of
3 Regulations, title 16, section 1770, in that the conviction evidences to a substantial degree a
4 present or potential unfitness on the part of Respondent to perform the functions authorized by
5 that license in a manner consistent with the public health, safety, or welfare when, or about
6 October 2003, Respondent wrongfully possessed a controlled substance.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Commission of Dishonesty, Fraud, Deceit, Corruption)

9 21. Paragraphs 17 and 18 are incorporated herein. Respondent is subject to
10 discipline under Business and Professions Code section 4301, subdivision (f). On multiple
11 occasions from circa September 2002 through October 2003, while employed by the Save Mart
12 Pharmacy Corporation located in Modesto, California, Respondent dishonestly appropriated and
13 self-furnished approximately 190 tablets of medications containing Benzphetamine, without
14 valid prescriptions therefor, or the valid order of a physician.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Unlawful Self-Administration and/or Furnishing of Controlled Substances)

17 22. Paragraphs 17 and 18 are incorporated herein. Respondent is subject to
18 discipline under Business and Professions Code section 4301, subdivision (h), for self-furnishing
19 and self-administering controlled substances by fraud, deceit, misrepresentation, or concealment
20 of facts. Specifically, on multiple occasions in and during 2002 through October 2003, while
21 employed by the Save Mart Pharmacy Corporation located in Modesto, California, Respondent
22 dishonestly appropriated, self-furnished, and self-administered approximately 190 tablets of
23 medications containing Benzphetamine, without valid prescriptions therefor.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 (Working While Under the Influence)

26 21. Respondent is subject to discipline under Business and Professions Code
27 section 4301, subdivision (o), and section 4327 of the Code, for violating or attempting to
28 violate, directly or indirectly, provisions or terms of the Pharmacy Law (Bus. & Prof. Code, §

1 4000 et seq.), or other applicable federal and/or state laws or regulations governing pharmacy.
2 Specifically, on multiple occasions in and during 2002 through October 2003, while on-duty as a
3 licensed pharmacist with the Save Mart Pharmacy Corporation located in Modesto, California,
4 Respondent committed acts of unprofessional conduct by dispensing or compounding drugs
5 while under the influence of the drug Benzphetamine, and under circumstances that such usage
6 was dangerous or injurious to Respondent, any other person, or to the public, and to the extent
7 that such usage impaired Respondent's ability to safely conduct the practice of pharmacy.

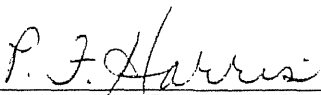
8 V.

9 PRAYER

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

- 12 1. Revoking or suspending Original Pharmacist License Number RPH 30813
13 issued to M. Keith Lorang, also known as Keith Lorang;
- 14 2. Ordering M. Keith Lorang, also known as Keith Lorang to pay the
15 reasonable costs incurred by the Board in the investigation and enforcement of this case pursuant
16 to section 125.3 of the Code; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 9/16/04

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21 
22 PATRICIA F. HARRIS
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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