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

In the Matter of the Accusation Against: SONYA LEE WELLS AKA SONYA LEE FOREST AKA SONYA WELLS ESHBAUGH 1407 Hillside Lane Roseville, California 95661 Pharmacist License No. RPH 41039 Respondent.	Case No. 2804 OAH No. **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and responsibility of the Board of Pharmacy, Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

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

2. Respondent Sonya Lee Wells aka Sonya Lee Forest aka Sonya Wells Eshbaugh (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about August 17, 1987, the Board of Pharmacy issued Pharmacist License No. RPH 41039 to Sonya Lee Wells aka Sonya Lee Forest aka Sonya Wells Eshbaugh (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2804 and will expire on September 30, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2804 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 January 3, 2005. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2804 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the charges and allegations in Accusation No. 2804. Respondent has also carefully read and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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 admits the truth of each and every charge and allegation in Accusation No. 2804.

9. Respondent agrees that her License is subject to discipline and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. 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 may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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.

11. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 41039, issued to Sonya Lee Wells aka Sonya Lee Forest aka Sonya Wells Eshbaugh (Respondent), is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **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.

2. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed by Board staff. 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.

3. **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.

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

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

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case Number 2804 and the terms, conditions and restrictions imposed on Respondent by the decision. Within thirty (30) days of the effective date of this decision and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause her 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 2804.

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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 2804 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.

7. **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 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.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $3,500.00. Payments shall be due on a quarterly basis, with the entire amount to be paid within three (3) years. Failure to make timely payments of Board costs as directed shall be considered a violation of probation.

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

9. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Probation monitoring costs are currently estimated at $520.00 per year, though the Board reserves the right to reimbursement of any actual and/or additional associated costs. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs in a timely manner shall be considered a violation of probation.

10. **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.

11. **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 her 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 her pocket license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three (3) 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.

12. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within ten (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 ten (10) days of a change in name, mailing address or phone number. Failure to timely report changes in employment shall be considered a violation of probation.

13. **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 ten (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 shall constitute a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three (3) years.

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

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14. **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 finally 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.

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

16. **Abstain from Non-Prescribed Drugs and Alcohol Use.** Respondent shall abstain from possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when 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. Possession or use of a drug for which documentation is not timely provided on request shall constitute a violation of probation.

17. **Random Drug Screening.** Respondent shall, at her own expense, 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 for a drug not authorized and documented in accordance with paragraph 16 shall result in an immediate suspension of Respondent's license pursuant to paragraph 20. Once a positive test for a non-authorized drug is confirmed, Respondent may not resume the practice of pharmacy until notified by the Board in writing.

18. **Mental Health Examinations.** Within sixty (60) days of the effective date of this decision, Respondent shall undergo, at her own expense, evaluations by two (2) Board-appointed or -approved psychiatrists, psychologists or other mental health practitioners experienced in diagnosis and treatment of chemical dependency and alcoholism. Respondent shall sign a release authorizing each to furnish the Board with a written diagnosis and report.

Each of the two evaluators shall be furnished with a copy of this decision and of Accusation No. 2804. Each evaluator shall evaluate Respondent and furnish the Board with a written diagnosis and report addressing at least the following questions:

- Is Respondent currently safe to practice independently as a pharmacist? If not, what steps do you think are necessary to render Respondent safe to practice?
- Is Respondent currently dependent on or abusing alcohol or any controlled substance or dangerous drug, including but not limited to Talwin or Ultram?
- In your professional opinion, can Respondent work as a pharmacist while taking Ultram or any other drug for pain management, exercising all of the privileges of a pharmacist license, without compromising public safety? If your answer is conditional or contextual (e.g., only if Respondent is enrolled in the Pharmacists Recovery Program, only if Respondent is subject to workplace monitoring), please specify the conditions or restrictions you recommend.
- Do you recommend that Respondent enroll in and/or participate in/complete the Pharmacists Recovery Program? Would you recommend any particular mode, type, or intensity of treatment for Respondent?
- Do you recommend that Respondent engage in individual or group therapy? If so, do you have a specific recommendation about type/intensity of therapy?
- Do you recommend that Respondent's prescriptions and use of prescription drugs be monitored?
- Do you recommend that Respondent be required to submit reports to the Board of total acquisition and disposition by Respondent or her employer(s) of any and all controlled substances?
- Do you recommend that Respondent be prohibited from ordering, possessing, dispensing or having access to any controlled substance in Schedules II, III, IV or V (Health and Safety Code sections 11055-58 inclusive), and/or that she be prohibited from ordering, receiving or retaining any prescription forms?

- Has Respondent attempted pain management modalities other than by use of medication? Are there alternative pain management modalities available?

Respondent shall comply with any recommendation made by either of the two (2) approved mental health evaluators if directed by the Board. Where appropriate, any such compliance shall be coordinated by Respondent with her personal physician(s).

If either evaluator opines or concludes that Respondent: (a) is not currently safe to practice independently as a pharmacist; (b) is currently dependent on or abusing alcohol, a controlled substance, or a dangerous drug; and/or (c) is currently taking Ultram or any other drug, Respondent's use of that drug compromises her ability to practice pharmacy safely, and Respondent is unable or unwilling to comply with any conditions that would in the evaluator's opinion render her safe to practice independently as a pharmacist while using that drug, then Respondent shall be immediately suspended from practice pursuant to paragraph 20.

19. **Psychotherapy.** If either evaluator recommends, and the Board directs, Respondent shall undergo psychotherapy. Respondent shall, within thirty (30) days of written notice of the need for psychotherapy, submit to the Board for its prior approval the name(s) and qualifications of one (1) or more licensed mental health practitioner(s) of Respondent's choice and a recommended program for ongoing psychotherapeutic care. Respondent shall undergo and continue psychotherapy, at Respondent's own expense, until further notice from the Board. Should Respondent, for any reason, cease treatment with the approved licensed mental health practitioner, Respondent shall notify the Board immediately and within thirty (30) days of ceasing treatment submit the name(s) of one (1) or more replacement licensed mental health practitioner(s) of Respondent's choice to the Board for its prior approval.

Therapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with copies of the Board's accusation and decision, and the written reports authored by the Board-approved evaluators, no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning Respondent's fitness to practice, progress in treatment, and such other information as may be required by the Board.

Upon approval of the licensed mental health practitioner(s), Respondent shall undergo and continue treatment with that/those therapist(s) and at Respondent's own expense, until the Board deems that no further psychotherapy is necessary. At any time during the term of therapy, the Board may require Respondent to undergo, at her expense, an evaluation by an independent Board-appointed or -approved licensed mental health practitioner.

If a treating therapist finds at any time that Respondent cannot practice safely or independently, the therapist shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. If recommended at any time by Respondent's treating therapist and approved by the Board, Respondent shall be suspended pursuant to paragraph 20 until the treating therapist recommends, in writing, stating the basis therefor, that Respondent can safely practice pharmacy, and the Board approves said recommendation.

20. **Suspension.** If a suspension is called for under any paragraph of this decision and order, the following terms shall apply to that suspension: License Number RPH 41039, issued to Respondent Sonya Lee Wells, shall be immediately suspended without further notice or opportunity for hearing until such time as Respondent is notified in writing by the Board that Respondent is permitted to resume practice. Respondent shall not practice pharmacy until informed by the Board in writing that this requirement has been met.

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.

During suspension, Respondent shall not engage in any activity requiring 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 she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

During suspension, if Respondent leaves California to reside or practice outside the state, for any period exceeding ten (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 ten (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.

21. **Prescription Monitoring.** If either evaluator recommends, and the Board directs, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware of Respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of probation Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine.

22. **Rehabilitation Program - Pharmacists Recovery Program (PRP).** If either evaluator recommends, and the Board directs, Respondent shall, within thirty (30) days of the effective date of this decision, contact the Pharmacists Recovery Program (PRP) for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The costs for PRP participation shall be borne by the Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete her current contract and any subsequent addendums with the PRP.

Probation shall be automatically extended until Respondent successfully completes her treatment contract. If Respondent is terminated from the program, she shall be automatically suspended upon notice by the Board pursuant to paragraph 20. 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.

23. **Report of Controlled Substances.** If either evaluator recommends, and the Board directs, Respondent shall submit reports to the Board of total acquisition and disposition by Respondent or her employer(s) of such controlled substances as the Board may direct. Respondent shall specify manner of disposition (e.g., prescription, burglary, etc.) or acquisition (e.g., from manufacturer, 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 ten (10) days after the reporting period.

24. **No Access to Controlled Substances**. If either evaluator recommends, and the Board directs, Respondent shall not order, possess, dispense or have access to any controlled substance in Schedule II, III, IV or V. Upon recommendation and Board direction, Respondent shall also not order, receive or retain any prescription forms.

25. **Reduction of Probation Period**. The base period of probation (subject to any tolling or extensions) shall be reduced to three (3) years if <u>all</u> of the following occur:

- both evaluators opine or conclude that Respondent is currently safe to practice independently as a pharmacist;
- both evaluators opine or conclude that Respondent is not now dependent on or abusing alcohol, any controlled substance, or any dangerous drug; <u>and</u>
- if Respondent is currently using Ultram or any other drug, both evaluators opine or conclude that Respondent's current use does not compromise her ability to practice pharmacy safely.

The reduction shall be effective upon written notification thereof by the Board.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my 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: 4/26/05.

Sonya Lee Wells

SONYA LEE WELLS AKA SONYA LEE FOREST
AKA SONYA WELLS ESHBAUGH
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: 4/29/05.

BILL LOCKYER, Attorney General
of the State of California

John Room

JOSHUA A. ROOM
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2004401269;40054308.wpd

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

In the Matter of the Accusation Against: SONYA LEE WELLS AKA SONYA LEE FOREST AKA SONYA WELLS ESHBAUGH 1407 Hillside Lane Roseville, California 95661 Pharmacist License No. RPH 41039 Respondent.	Case No. 2804 OAH No.

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 July 1, 2005.

It is so ORDERED June 1, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2804

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BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against: SONYA LEE WELLS AKA SONYA LEE FOREST AKA SONYA WELLS ESHBAUGH 1407 Hillside Lane Roseville, California 95661 Pharmacist License No. RPH 41039 Respondent.	Case No. 2804 OAH No. **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 17, 1987, the Board of Pharmacy issued Pharmacist License No. RPH 41039 to Sonya Lee Wells aka Sonya Lee Forest aka Sonya Wells Eshbaugh (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2006, unless renewed.

JURISDICTION

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

4. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

5. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

STATUTORY PROVISIONS

6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be 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.

. . .

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

. . .

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

. . .

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"(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.

. . .

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

8. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife, a nurse practitioner, or a physician assistant.

9. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell, dispense or compound any drug while under the influence of any dangerous drug or alcoholic beverage.

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

11. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

12. Health and Safety Code section 11350, subdivision (a), in pertinent part, makes it unlawful for any person to possess any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

15. Section 4022 of the Code states, in pertinent part

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

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

. . .

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

16. **Talwin NX®** is a brand name for a compound of 50 mg pentazocine hydrochloride and 0.5 mg naloxone hydrochloride, is a narcotic analgesic drug, and is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(g) as well as a dangerous drug as designated by Business and Professions Code section 4022.

FACTUAL BACKGROUND

17. On multiple occasions in and between 2000 and 2002, the particular dates of which are unknown, Respondent, while employed as a staff pharmacist at Sav-On Pharmacy #7222 (PHY 39189) in Sacramento, CA, appropriated for her own use/furnished to herself from the pharmacy stock, without authorization, tablets of Talwin NX and/or its generic equivalents, the exact number of which is unknown but approximately 1,500 tablets total.

18. Respondent acquired, possessed, furnished and administered to herself the appropriated Talwin NX tablets without a prescription from an authorized prescriber.

19. Respondent administered the Talwin NX tablets to herself while on duty as a staff pharmacist, and thus proceeded to sell, dispense and/or compound drugs to patients of the pharmacy while under the influence of a dangerous drug (and a controlled substance).

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Deceit or Corruption)

20. Respondent is subject to disciplinary action under section 4301(f) of the Code in that, as described in paragraphs 17-19 above, in and between 2000 and 2002 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, dishonestly appropriating without permission Talwin NX tablets from the stock of her pharmacy employer.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of a Controlled Substance)

21. Respondent is subject to disciplinary action under section 4301(h) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that, as described in paragraphs 17-19 above, in and between 2000 and 2002 Respondent unlawfully furnished and/or administered to herself unknown quantities of Talwin NX, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Possession of a Controlled Substance)

22. Respondent is subject to disciplinary action under section 4301(j) and/or 4301(o) of the Code in that, as described in paragraphs 17-19 above, in and between 2000 and 2002 Respondent violated and/or attempted to violate controlled substance and pharmacy laws by: (a) possessing Talwin NX, a controlled substance, without a prescription or drug order, in violation of section 4060 of the Code and/or Health and Safety Code section 11350(a); and by (b) obtaining controlled substances (Talwin NX) by fraud, deceit, misrepresentation, subterfuge, or concealment of a material fact, in violation of Health and Safety Code section 11173(a).

FOURTH CAUSE FOR DISCIPLINE

(Working as Pharmacist While Under the Influence)

23. Respondent is subject to disciplinary action under section 4301(j) and/or 4301(o) of the Code in that, as described in paragraphs 17-19 above, in and between 2000 and 2002 Respondent violated and/or attempted to violate controlled substance and pharmacy laws by being on duty dispensing, selling or compounding drugs while under the influence of a dangerous drug (Talwin NX, also a controlled substance), in violation of section 4327 of the Code.

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 Pharmacist License Number RPH 41039, issued to Sonya Lee Wells aka Sonya Lee Forest aka Sonya Wells Eshbaugh (Respondent).

2. Ordering Respondent to pay the Board of Pharmacy its reasonable costs of investigation and enforcement, pursuant to Business and Professions Code section 125.3; and

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

DATED: 12/31/04

P. F. Harris

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

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