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Attorneys for Complainant

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

In the Matter of the Accusation Against: KIM COLETTE PEARSON a.k.a. KIM WINBURN 15130 Sycamore St. Hesperia, CA 92345 Original Pharmacist License No. RPH 43483 Respondent.	Case No. 2859 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 3, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2859 against Kim Colette Pearson a.k.a. Kim Winburn (Respondent) before the Board of Pharmacy.

2. On or about July 26, 1990, the Board of Pharmacy (Board) issued Original Pharmacist License No. RPH 43483 to Respondent. The Original Pharmacist License expired on November 30, 2005.

3. On or about October 11, 2005, Rebecca Garcia, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2859, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 15130

Sycamore St., Hesperia, California 92345. A copy of the Accusation is attached as exhibit A, and incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about October 31, 2006, the aforementioned Certified Mail documents were returned by the U.S. Postal Service marked "Unclaimed."

6. Government Code section 11506 states, in pertinent part:

"(c) The Respondent shall be entitled to a hearing on the merits if the Respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of Respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2859.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the Respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the Respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to Respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A and B finds that the allegations in Accusation No. 2859 are true.

10. The total costs for investigation and enforcement are $10,543.50 as of December 31, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kim Colette Pearson a.k.a. Kim Winburn has subjected her Original Pharmacist License No. RPH 43483 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Original Pharmacist License based upon the following violations alleged in the Accusation:

a. Obtaining controlled substances by fraud [Bus. & Prof. Code §§ 4300, 4301(f) and 4301(j), and Health & Saf. Code § 11173(a)].

b. Falsifying documents to obtain controlled substances [Bus. & Prof. Code §§ 4300, 4301(f), 4301(g) and 4324(a), and Health & Saf.. Code §§ 11173(b) and 11174].

c. Furnishing drugs without a prescription [Bus. & Prof. Code §§ 4300, 4301(f), 4301(j) and 4059(a), and Health & Saf.. Code §§ 11158(a), 11152, 11171 and 11180].

d. Falsification of documents to subvert investigation [Bus. & Prof. Code §§ 4300, 4301(f), 4301(g) and 4301(q), and Health & Saf.. Code §§ 11173(b), 11157 and 11174].

e. Deviating from prescriptions [Bus. & Prof. Code §§ 4300, 4301(b) and 4301(c) and Cal. Code Regs., ttl. 16, §§ 1716 and 1761].

f. Gross negligence and/or incompetence [Bus. & Prof. Code §§ 4300, 4301(b) and 4301(c)].

ORDER

IT IS SO ORDERED that Original Pharmacist License No. RPH 43483, heretofore issued to Respondent Kim Colette Pearson a.k.a. Kim Winburn, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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

In the Matter of the Accusation Against:	Case No. 2859
KIM COLETTE PEARSON aka KIM WINBURN 15310 Sycamore St Hesperia, CA 92345 Pharmacist License No. RPH 43483 Respondent.	**DEFAULT DECISION AND ORDER**

DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This decision shall become effective on April 5, 2006.

It is so ORDERED on March 6, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Attachments:
Exhibit A: Accusation No. 2859

Exhibit A

Accusation No. 2859

BILL LOCKYER, Attorney General
of the State of California
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KIM COLETTE PEARSON, a.k.a. KIM WINBURN 15130 Sycamore St. Hesperia, CA 92345 Original Pharmacist License No. RPH 43483 Respondent.	Case No. 2859 O.A.H. No. **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 26, 1990, the Board of Pharmacy issued Original Pharmacist License No. RPH 43483 to Kim Colette Pearson (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board),

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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 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending ore revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

5. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation, that the Board in its discretion may deem proper.

6. Section 4301 of the Code states:

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

* * *

"(b) Incompetence.

"(c) Gross negligence.

* * *

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

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

"(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.

* * *

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board. . . ."

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

8. Section 4060 of the Code states in pertinent part, that a person may not possess any controlled substance, except that furnished to the person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife, nurse practitioner, or a physician assistant.

9. Section 4324, subdivision (a), of the Code states:

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

10. California Code of Regulations, title 16, section 1716, states:

"Pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

11. California Code of Regulations, title 16, section 1761 states:

"(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose."

12. Health and Safety Code section 11152, states:

"No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division."

13. Section 11157 of the Health and Safety Code states:

"No person shall issue a prescription that is false or fictitious in any respect."

14. Health and Safety Code section 11158, subdivision (a), states:

"Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter."

15. Health and Safety Code section 11170, states:

"No person shall prescribe, administer, or furnish a controlled substance for himself."

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

17. Section 11173 of the Health and Safety Code states:

"(a) 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.

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

18. Health and Safety Code section 11174 provides that no person shall, in connection with the prescribing, furnishing, administering, or dispensing of a controlled substance, give a false name or false address.

19. Health and Safety Code section 11180 provides that no person shall obtain or possess a controlled substance obtained by a prescription that does not comply with this division.

20. A "dangerous drug" is any drug unsafe for self-medication within the meaning of section 4022 in that it requires a prescription under federal law.

21. California Code of Regulations, title 16, section 1760 states that in reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 1/2001). Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation--the presence of mitigating factors; the age of the case; evidentiary problems.

22. Section 4313 provides that:

"In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence."

23. Section 125.3, subdivision (a), provides that except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

24. CONTROLLED SUBSTANCE

1. "Darvocet," a combination drug containing propoxyphene napsylate and acetaminophen, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(c)(2) and is a "dangerous drug" pursuant to section 4022 of the Code.

2. "Oxycodone," is a schedule II control substance pursuant to Health and Safety Code section 11055(b)(1)(N) and is a "dangerous drug" pursuant to section 4022 of the Code.

25. DANGEROUS DRUG

1. "Soma," a brand name for Carisoprodol, a muscle relaxant, is categorized as a "dangerous drug" pursuant to section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Obtain Controlled Substances By Fraud)

26. Respondent was employed as a pharmacist for Sav-On Drugs #9650, in Victorville, California from January 11, 1999 until her employment was terminated on May 21, 2004. Respondent is subject to disciplinary action for unprofessional conduct under Code sections 4300 and 4301, subdivisions (f) and (j), in conjunction with Health and Safety Code section 11173(a) and Code section, in that while, Respondent obtained controlled substance(s) and/or and dangerous drug(s) by fraud, deceit and subterfuge, when she falsified records involving prescriptions for generic Soma 350 mg., Darvocet-N 100mg., in order to remove the controlled substances and dangerous drug from the pharmacy. The circumstances are as follows:

27. On or about April 12, 2004, while working as a pharmacist at the Sav-On Drugs #9650 in Victorville, CA, Respondent fabricated false, orally transmitted prescriptions from the office of Amipama Shama, M.D., for generic Soma 350 mg. (Rx. no. 0899937) and Darvocet-N 100mg. (Rx. No. 0899935), for patient "Don Shelton", which she then filled, in order to obtain the foregoing drugs without a legitimate prescription.

28. On or about May 11, 2004, prior to 8:00 am when the pharmacy opened, Respondent scanned as "picked up", refill prescriptions for the two original prescriptions set forth in the preceding paragraph 27, Soma and Darvocet N-100, for patient "Robert D. Shelton".

Respondent had filled these prescriptions on or about May 9, 2004. Subsequently, the Pharmacist -in-Charge telephoned the physician's office, and confirmed that neither the physician nor any of the office staff had called in any prescriptions for "Don Shelton" or "Robert D. Shelton", nor did the physician have any patients with either of those names.

SECOND CAUSE FOR DISCIPLINE

(Falsify Documents to Obtain Controlled Substances)

29. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (f) and (g) of the Code, for unprofessional conduct, in conjunction with Code sections 4324 subdivision (a), and Health and Safety Code sections 11173, subdivision (b), and 11174, in that Respondent falsified prescriptions to obtain controlled substance(s) and/or and dangerous drug(s). The circumstances are that Respondent fabricated false, orally transmitted prescriptions from Amipama Shama, M.D.'s office.

THIRD CAUSE FOR DISCIPLINE

(Furnishing Drugs Without a Prescription)

30. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (f) and (j), on the grounds of unprofessional conduct, for violating section 4059, subdivision (a); in conjunction with Health and Safety Code sections 11158, subdivision (a), 11152, 11171, and 11180, in that on or about April 12, 2004 and May 11, 2004 Respondent furnished a controlled substance, Darvocet-N 100mg., and a dangerous drug, Soma 350mg., without a legitimate prescription, as more fully set forth in the preceding paragraphs 27 through 28.

FOURTH CAUSE FOR DISCIPLINE

(Falsification of Documents to Subvert Investigation)

31. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (f), (g) and (q), on the grounds of unprofessional conduct, in conjunction with Health and Safety Code sections 11173, subdivision (b), 11157 and 11174, in that Respondent falsified patient records and prescriptions in order to obtain controlled substance and to thwart any possible investigation, as follows:

32. On or about April 12, 2004, Respondent filled two prescriptions for "Don Shelton", as alleged in the preceding paragraph 27. However, the signature written on the April 12, 2004 signature log for ostensible pick-up of the drugs, was "Ronald Shelton". On April 26, 2004, two weeks after the prescription was initially filled, Respondent changed the patient record for "Don Shelton" to the name "Robert D. Shelton."

FIFTH CAUSE FOR DISCIPLINE

(Deviation From Prescriptions)

33. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (b) and (c) on the grounds of unprofessional conduct, as defined in California Code of Regulations, title 16, sections 1716 and 1761, in that while employed as a Pharmacist at Sav-On Drugs #9650, in Victorville, CA, Respondent deviate from the requirements of a prescription without prior consent of the prescriber and/or compounded or dispensed prescriptions which contained significant error, omission, irregularity, uncertainty, ambiguity or alteration. The circumstances are as follows:

A. On or about March 17, 2004, Respondent filled a prescription, #892182, for Prozac for patient C. A., under the name of patient O. A.

B. On or about March 25, 2004, Respondent filled a prescription, #894717, for Robitussin Plain for patient M. P. with Robitussin D. M.

C. On or about December 3, 2003, Respondent filled a prescription, #858484, for Ortho Tri-Cyclen for patient J. S., with Ortho Tri-Cyclen-Lo. The prescription error was not caught until the prescription was refilled on April 2, 2004.

D. On or about April 5, 2004, Respondent filled a prescription, #880506, for Premarin 1.25mg. with Premarin 0.9mg. for patient D. H.

SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence and/or Incompetence)

37. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (b) and (c) on the grounds of unprofessional conduct, in that while employed as a

Pharmacist at Sav-On Drugs #9650, in Victorville, CA, Respondent committed acts that were substantial departures from the standard of care and/or failed to exercise the appropriate levels of lacked possession and failed to exercise the requisite degree of learning, skill, care and experience in filling or dispensing prescriptions. While employed at Sav-On Drugs, all pharmacists were required to fill, check and bag prescriptions. In addition to the allegations of the preceding paragraphs 36 (A) through (D), the circumstances are as follows:

A. On or about March 14, 2004, Respondent filled a prescription, #890951, for Tramadol 50mg. for patient R. S., but placed "Return to Stock" prescription #883521 for Tramadol 50mg. for patient J. W. in the bag to be handed out to patient R. S.

B. On or about March 15, 2004, Respondent filled a prescription, #891074, for Amoxicillin for patient M. S., and placed it together in a bag with prescription #845467 for Warfarin 5mg. for patient E. A.

C. On or about March 25, 2004, Respondent filled prescription, #894590, for Actonel 5mg. for patient J. M., then placed the medication back on the shelf, leaving only the patient label in the bag for patient J. M.

D. On or March 29, 2004, Respondent filled prescription, #877636, for Isosorbide 10mg. for patient J. G., then placed it together in a bag with prescription #866869 for Pravachol 40mg. for patient R. M.

E. On or about March 30, 20004, Respondent filled prescription, #828799, for Thioridazine 50mg. for patient A. M., and prescription #888809 for Phenclorimine Tannate Pediatric Suspension for patient J. Z., but switched the bottles so that each prescription was in the other patient's bag.

F. On or about March 30, 2004, Respondent filled prescription, #865193, for Cephalexin 500mg. for patient D. H., and placed it together in a bag with prescription #885813 for Prempro 0.45/1 for patient L. P.

G. On or about April 6, 2004, Respondent filled prescription, #898380, for Carbamazepine 200mg. for patient D. T., and placed it together in a bag

with prescription #898387 for Atenolol 100mg. for patient S. S.

H. On or about April 29, 2004, Respondent filled prescription, #836773, for Triamterene/HCTZ for patient D. H.(2), and placed it together in a bag bag with prescription #886035 for Pravachol 40mg. for patient J. K. and prescription #896244 for Lisinopril 20mg. for patient M. K.

I. On or about May 3 2004, Respondent filled prescription, #905612, for APAP with Codeine 30mg. for patient N. S., and placed it together in a bag with prescription #905820 for Gemfibrozil 600mg. for patient J. S.(2)

PRAYER

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

1. Revoking or suspending Original Pharmacist License No. RPH 43483, issued to Kim Colette Pearson.

2. Ordering Kim Colette Pearson to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 10/3/05

P. F. Harris

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

LA2005500969/ PEarson.wpd/ CML (06/14/2005)

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **Kim Colette Pearson**

Case No.: **2859**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 11, 2005, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2); REQUEST FOR DISCOVERY; DISCOVERY STATUTES** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2); REQUEST FOR DISCOVERY; DISCOVERY STATUTES** was enclosed in a sealed envelope as first class mail with postage there
collection system at the Office of the Attorney Gener
Los Angeles, CA 90013, addressed as follows:

Kim Colette Pearson
Pharmacist-In-Charge
15130 Sycamore St.
Hesperia, CA 92345

CERTIFIED MAIL NO.
7001 0360 0003 2702 0313

U.S. Postal Service
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Sent To: Kim Colette Pearson
Street, Apt. No.; or PO Box No.: Pharmacist-In-Charge, 15130 Sycamore St.
City, State, ZIP+ 4: Hesperia, CA 92345

PS Form 3800, January 2001 — See Reverse for Instructions

I declare under penalty of perjury under the laws of the
and correct and that this declaration was executed on O
California.

Rebeca Garcia
Declarant

Rebeca Garcia
Signature

60103726.wpd