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 6
 7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:	Case No. 2868
12 THOMAS WEBSTER	OAH No. N-2006040233
13 P.O. Box 4512	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER
14 Auburn, CA 95604-4512	
15 Pharmacist License No. RPH 26917	
16 Respondent.	

17
 18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
 19 above-entitled proceedings that the following matters are true:

20 PARTIES

- 21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
 22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
 23 by Bill Lockyer, Attorney General of the State of California, by Lorrie M. Yost, Deputy Attorney
 24 General.
- 25 2. Respondent Thomas Webster is represented in this proceeding by attorney
 26 Robert A. Young, whose address is 130 Maple Street, Suite 102, Auburn, CA 95603
- 27 3. On or about November 19, 1970, the Board of Pharmacy issued
 28 Pharmacist License No. RPH 26917 to Thomas Webster (Respondent). The license was in full

Robert A. Young 6/23/00

1 force and effect at all times relevant to the charges brought in Accusation No. 2868 and will
2 expire on May 31, 2006, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2868 was filed before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on January 31,
7 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2868 is attached as Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and
11 understands the charges and allegations in Accusation No. 2868. Respondent has also carefully
12 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation No. 2868.

26 9. Respondent agrees that his pharmacist license is subject to discipline and
27 he agrees to be bound by the Board of Pharmacy (Board) 's imposition of discipline as set forth in
28 the Disciplinary Order below.

Robert Young

6/23/06

1 CONTINGENCY

2 10. This stipulation shall be subject to approval by the Board of Pharmacy.
3 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
4 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
5 without notice to or participation by Respondent or his counsel. By signing the stipulation,
6 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind
7 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
8 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall
9 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
10 between the parties, and the Board shall not be disqualified from further action by having
11 considered this matter.

12 11. The parties understand and agree that facsimile copies of this Stipulated
13 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
14 force and effect as the originals.

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

18 DISCIPLINARY ORDER

19 IT IS HEREBY ORDERED that Pharmacist License No. RPH 26917 issued to
20 Respondent Thomas Webster (Respondent) is revoked. However, the revocation is stayed and
21 Respondent is placed on probation for three (3) years on the following terms and conditions.

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

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

- 26 • an arrest or issuance of a criminal complaint for violation of any provision of the
27 Pharmacy Law, state and federal food and drug laws, or state and federal
28 controlled substances laws

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- 1 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
- 2 any criminal complaint, information or indictment
- 3 • a conviction of any crime
- 4 • discipline, citation, or other administrative action filed by any state and federal
- 5 agency which involves Respondent's license or which is related to the practice
- 6 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
- 7 or charging for any drug, device or controlled substance.

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

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

17 **4. Cooperation with Board Staff.** Respondent shall cooperate with the
18 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
19 compliance with the terms and conditions of his probation. Failure to comply shall be
20 considered a violation of probation.

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

23 **6. Notice to Employers.** Respondent shall notify all present and
24 prospective employers of the decision in case number 2868 and the terms, conditions and
25 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
26 this decision, and within 15 days of Respondent undertaking new employment, Respondent
27 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
28 writing acknowledging the employer has read the decision in case number 2868.

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1 If Respondent works for or is employed by or through a pharmacy employment
 2 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
 3 every pharmacy of the and terms conditions of the decision in case number 2868 in advance of
 4 the Respondent commencing work at each pharmacy. "Employment" within the meaning of
 5 this provision shall include any full-time, part-time, temporary, relief or pharmacy
 6 management service as a pharmacist, whether the Respondent is considered an employee or
 7 independent contractor.

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

12 **8. Reimbursement of Board Costs.** Respondent shall pay to the Board
 13 its costs of investigation and prosecution in the amount of \$6,220.00. Respondent shall make
 14 said payments on a quarterly basis.

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

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

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

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

27 **11. License Surrender while on Probation/Suspension.** Following the
 28 effective date of this decision, should Respondent cease practice due to retirement or health, or

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1 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender
2 his license to the Board for surrender. The Board shall have the discretion whether to grant
3 the request for surrender or take any other action it deems appropriate and reasonable. Upon
4 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
5 terms and conditions of probation.

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

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

16 **13. Tolling of Probation.** Respondent shall work at least 15 hours in each
17 calendar month as a pharmacist. Failure to do so will be a violation of probation. If
18 Respondent has not complied with this condition during the probationary term, and
19 Respondent has presented sufficient documentation of his good faith efforts to comply with
20 this condition, and if no other conditions have been violated, the Board, in its discretion, may
21 grant an extension of Respondent's probation period up to one year without further hearing in
22 order to comply with this condition.

23 **14. Violation of Probation.** If Respondent violates probation in any
24 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
25 probation and carry out the disciplinary order which was stayed. If a petition to revoke
26 probation or an accusation is filed against Respondent during probation, the Board shall have
27 continuing jurisdiction and the period of probation shall be extended, until the petition to
28 revoke probation or accusation is heard and decided.

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1 If Respondent has not complied with any term or condition of probation, the
2 Board shall have continuing jurisdiction over Respondent, and probation shall automatically
3 be extended until all terms and conditions have been satisfied or the Board has taken other
4 action as deemed appropriate to treat the failure to comply as a violation of probation, to
5 terminate probation, and to impose the penalty which was stayed.

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

8 16. **Psychotherapy.** Within 30 days of the effective date of this decision,
9 Respondent shall submit to the Board, for its prior approval, the name and qualifications of a
10 licensed mental health practitioner of Respondent's choice. Should Respondent, for any
11 reason, cease treatment with the approved licensed mental health practitioner, Respondent
12 shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name
13 of a replacement psychotherapist or licensed mental health practitioner of Respondent's choice
14 to the Board for its prior approval.

15 Respondent shall receive therapy at a rate to be determined by Respondent's
16 therapist who will agree to set the therapy schedule in a manner to best ensure that Respondent
17 will be able to practice safely. Respondent will notify the therapist of any changes in his
18 employment so that the therapist may change his therapy schedule if he or she determines it is
19 necessary to ensure Respondent's ability to practice safely. Otherwise, therapy shall be at
20 least once a week unless otherwise determined by the Board. Respondent shall provide the
21 therapist with a copy of the Board's accusation and decision no later than the first therapy
22 session. Respondent shall take all necessary steps to ensure that the treating therapist submits
23 written quarterly reports to the Board concerning Respondent's fitness to practice, progress in
24 treatment, and to provide such other information as may be required by the Board. If the
25 treating therapist finds that Respondent cannot practice safely or independently, the therapist
26 shall notify the Board immediately by telephone and followed up by written letter within three
27 working days.

28 Upon approval of the licensed mental health practitioner, Respondent shall

6/23/06

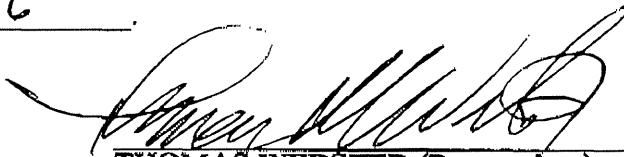
1 to undergo a mental health evaluation(s) by a Board-appointed or Board-approved licensed
2 mental health practitioner.

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

9 **ACCEPTANCE**

10 I have carefully read the above Stipulated Settlement and Disciplinary Order
11 and have fully discussed it with my attorney, Robert A. Young. I understand the stipulation
12 and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement
13 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the Board of Pharmacy.

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16 DATED: 06/12/06

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19 THOMAS WEBSTER (Respondent)
20 Respondent

21 I have read and fully discussed with Respondent Thomas Webster the terms
22 and conditions and other matters contained in the above Stipulated Settlement and
23 Disciplinary Order. I approve its form and content.

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25 DATED: 6/23/06

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28 ROBERT A. YOUNG
Attorney for Respondent


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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: S-30-06

BILL LOCKYER, Attorney General
of the State of California



LORRIE M. YOST

Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SA2005102038
10245361.wpd

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

In the Matter of the Accusation Against:

Thomas Webster
PO Box 4512
Auburn, CA 95604-4512

Pharmacist License No. RPH 26917

Respondent.

Case No. 2868

OAH No. N-200640233

DECISION AND ORDER

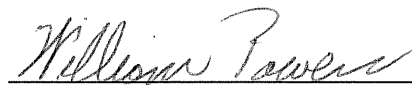
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This decision shall become effective on January 4, 2007.

It is so ORDERED on December 5, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

Exhibit A
Accusation No. 2868

6/23/06

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of the State of California
2 LORRIE M. YOST, State Bar No. 119088
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3 California Department of Justice
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2868

12 THOMAS WEBSTER
13 P.O. Box 4512
Auburn, CA 95604-4512

A C C U S A T I O N

14 Pharmacist License No. RPH 26917

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about November 19, 1970, the Board of Pharmacy issued
23 Pharmacist License Number RPH 26917 to Thomas Webster (Respondent). The Pharmacist
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on May 31, 2006, unless renewed. Furthermore, from on or about September 23, 1996 to
26 January 29, 2004, Respondent was the Pharmacist in Charge at Raley's Drug Center #229.

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JURISDICTION

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

5 4. Section 4300 of the Code states in pertinent part:

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

7 5. Section 4301 of the Code states in pertinent part:

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

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

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

18 6. Section 4081 of the Code states in pertinent part:

19 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
20 drugs or dangerous devices shall be at all times during business hours open to inspection by
21 authorized officers of the law, and shall be preserved for at least three years from the date of
22 making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy,
23 veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic,
24 hospital, institution, or establishment holding a currently valid and unrevoked certificate, license,
25 permit, registration, or exemption under Division 2 (commencing with Section 1200) of the
26 Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the
27 Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

28 ///

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

4 7. Section 4113 of the Code states in pertinent part:

5 (b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance
6 with all state and federal laws and regulations pertaining to the practice of pharmacy.

7 8. California Code of Regulations, title 16, section 1714, states in pertinent
8 part:

9 (d) Each pharmacist while on duty shall be responsible for the security of the
10 prescription department, including provisions for effective control against theft or diversion of
11 dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the
12 pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a
13 pharmacist.

14 9. California Code of Regulations, title 16, section 1718, states:

15 "'Current Inventory' as used in Sections 4081 and 4332 of the Business and
16 Professions Code shall be considered to include complete accountability for all dangerous drugs
17 handled by every licensee enumerated in Sections 4081 and 4332.

18 "The controlled substances inventories required by Title 21, CFR, Section 1304
19 shall be available for inspection upon request for at least 3 years after the date of the inventory."

20 10. Section 118, subdivision (b), of the Code provides that the expiration of a
21 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
22 period within which the license may be renewed, restored, reissued or reinstated.

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

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1 DRUGS

2 12. "Hydrocodone", is a Schedule III controlled substance pursuant to Health
3 and Safety Code section 11056(e)(4).

4 FIRST CAUSE FOR DISCIPLINE

5 (Failure to Maintain Records)

6 13. Respondent is subject to disciplinary action under section 4301,
7 subsections (j) and (o), as those sections interact with sections 4081(a) and 4113(b) in
8 conjunction with Title 16, California Code of Regulations, section 1718, in that Respondent
9 violated directly or indirectly, or assisted in or abetted the violation of a provision of the
10 pharmacy law with respect to controlled substances and dangerous drugs by failing to maintain
11 accurate records of the acquisition, disposition and inventory of hydrocodone. The facts and
12 circumstances are as follows. An inventory of controlled substances and an audit of acquisitions
13 and dispositions performed at Raleys Drug Center #229 for the period of April 30, 2003 to
14 February 25, 2004, found a shortage of hydrocodone, a Schedule III controlled substance.
15 Specifically, the review found that the pharmacy had no record of the disposition of, and could
16 not find or account for, approximately 6,080 tablets of hydrocodone with acetaminophen
17 10/325mg, 432 tablets of hydrocodone with acetaminophen 5/500mg., 160 tablets of Lortab
18 10/500mg., 61 tablets of hycodan, and 1,590 tablets of hydrocodone with homatropine, a total of
19 approximately 8,323 missing doses of hydrocodone.

20 SECOND CAUSE FOR DISCIPLINE

21 (Failure to Maintain Records)

22 14. Respondent is subject to disciplinary action under section 4301,
23 subsections (j) and (o), as those sections interact with sections 4081(a) and 4113(b) in
24 conjunction with Title 16, California Code of Regulations, section 1718, in that Respondent
25 violated directly or indirectly, or assisted in or abetted the violation of a provision of the
26 pharmacy law with respect to controlled substances and dangerous drugs by failing to maintain
27 accurate records of the disposition of hydrocodone. The facts and circumstances are as follows.
28 An audit of dispositions performed at Raleys Drug Center #229 for the period of April 30, 2003

1 to February 25, 2004, found that no hard copy could be found of prescription number 4705631
2 for 24 hydrocodone tablets dispensed to RG on July 11, 2003, prescription number 4705956 for
3 50 hydrocodone tablets dispensed to MM on July 31, 2003, prescription number 6848522 for 100
4 hydrocodone tablets dispensed to MH on September 12, 2003, and prescription number 4708420
5 for 100 hydrocodone tablets dispensed to BL on December 3, 2003.

6 THIRD CAUSE FOR DISCIPLINE

7 (Failure to Maintain Security)

8 15. Respondent is subject to disciplinary action under section 4301,
9 subsections (j) and (o), as those sections interact with Title 16, California Code of Regulations,
10 section 1714(d) and section 4113(b), in that he was responsible for pharmacy security during a
11 time when the theft or diversion of hydrocodone, a controlled substance, occurred. The facts
12 and circumstances are as follows. An inventory of controlled substances and an audit of
13 acquisitions and dispositions performed at Raleys Drug Center #229 for the period of April 30,
14 2003 to February 25, 2004, found that thousands of doses of hydrocodone, a Schedule III
15 controlled substance, were missing. Specifically, the review found that the pharmacy was
16 missing approximately 6,080 tablets of hydrocodone with acetaminophen 10/325mg, 432 tablets
17 of hydrocodone with acetaminophen 5/500mg., 160 tablets of Lortab 10/500mg., 61 tablets of
18 hycodan, and 1,590 tablets of hydrocodone with homatropine, a total of approximately 8,323
19 missing doses of hydrocodone.

20 PRAYER

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

23 A. Revoking or suspending Pharmacist License Number RPH 26917, issued
24 to Thomas Webster Thomas Webster.

25 B. Ordering Thomas Webster to pay the Board of Pharmacy the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

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

DATED: 1/25/06

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

SA2005102038

Webster.acc.10208110.wpd