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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2874

11 KATHY O'SHAUGHNESSY
1972 Fingerpeak Way
12 Antioch, CA 94531

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Pharmacist License No. 41532

14 Respondent.
15

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the
18 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order to
20 be submitted to the Board for approval and adoption as the final disposition of the Accusation.
21

22 **PARTIES**

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

27 2. Kathy O'Shaughnessy (Respondent) is represented in this proceeding by
28 attorney Robert J. Sullivan, whose address is 915 L Street, Suite 1000, Sacramento, CA 95814.

3. On or about April 23, 1988, the Board of Pharmacy issued Pharmacist License No. 41532 to Kathy O'Shaughnessy (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2874 and will expire on December 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2874 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 August 1, 2005. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2874 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2874. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of 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.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2874.

4 9. Respondent agrees that her Pharmacist License is subject to discipline and
5 she agrees to be bound by the Board of Pharmacy (Board)'s imposition of discipline as set forth
6 in the Disciplinary Order below.

7
8 CONTINGENCY

9 10. This stipulation shall be subject to approval by the Board of Pharmacy.
10 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
11 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
12 without notice to or participation by Respondent or her counsel. By signing this stipulation,
13 Respondent understands and agrees that she may not withdraw her agreement or seek to rescind
14 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
15 this stipulation as its Decision and Order, it shall be of no force or effect, except for this
16 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
17 be disqualified from further action by having considered this matter.

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

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

24
25 DISCIPLINARY ORDER

26 IT IS HEREBY ORDERED that Pharmacist License No. 41532, issued to Kathy
27 O'Shaughnessy (Respondent) is revoked. However, the revocation is stayed and Respondent is
28 placed on probation for five (5) years on the following terms and conditions.

1 1. **Suspension.** The discipline imposed shall officially include a suspension
2 of Respondent's license for sixty (60) days. However, Respondent is credited for, and the full
3 sixty (60) day suspension is deemed to have been served during, the period between on or about
4 November 9, 2004 and on or about January 25, 2005 when Respondent, following her voluntary
5 admission into the Pharmacists Recovery Program (PRP), was not permitted to return to work.

6 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
7 regulations substantially related to or governing the practice of pharmacy. Respondent shall
8 report any of the following to the Board, in writing, within seventy-two (72) hours:

- 9 • an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal
 controlled substances laws
- 11 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
12 any criminal complaint, information or indictment
- 13 • a conviction of any crime
- 14 • discipline, citation, or other administrative action filed by any state and federal
15 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.

16 Any violation of pertinent law or any failure to timely report to the Board in
17 writing any of the foregoing occurrences shall be considered a violation of probation.

18 3. **Reporting to the Board.** Respondent shall report to the Board on a
19 quarterly basis, in person or in writing, as directed. In each such report, Respondent shall state
20 under penalty of perjury whether there has been compliance with all the terms and conditions
21 of probation. Failure to make any report timely and complete as directed shall be considered a
22 violation of probation. If the final probation report is not made as directed, probation shall be
23 extended automatically until such time as the final report is made and accepted by the Board.

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

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

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

7 7. **Notice to Employers.** Respondent shall notify all present and
8 prospective employers of the decision in Case Number 2874 and the terms, conditions and
9 restrictions imposed on Respondent by this decision. Within thirty (30) days of the effective
10 date of this decision, and within fifteen (15) days of Respondent beginning new employment,
11 Respondent shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to
12 the Board in writing acknowledging the employer has read the decision in Case Number 2874.

13 If Respondent works for or is employed by or through a pharmacy employment
14 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
15 every pharmacy of the terms and conditions of the decision in Case Number 2874 in advance
16 of the Respondent commencing work at each such pharmacy.

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

19 8. **No Supervision of Interns/Preceptorships, No Being Pharmacist-in-**
20 **Charge.** Respondent shall not supervise intern pharmacist(s) or perform any preceptor duties,
21 nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board.

22 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
23 its costs of investigation and prosecution in the amount of \$5,348.25. Payments shall be due
24 on a quarterly basis, with the entire amount to be paid within four (4) years. Failure to make
25 timely payments of Board costs as directed shall be considered a violation of probation.

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

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

5 11. **Rehabilitation Program - Pharmacists Recovery Program (PRP).**

6 Within thirty (30) days of the effective date of this decision, Respondent shall
7 contact the Pharmacists Recovery Program (PRP) for evaluation and shall successfully
8 participate in and complete the treatment contract and any subsequent addendums as
9 recommended and provided by the PRP and as approved by the Board. The costs for PRP
10 participation shall be borne by the Respondent.

11 If Respondent is currently enrolled in the PRP, said participation is now
12 mandatory and is no longer considered a self-referral under Business and Professions Code
13 section 4363, as of the effective date of this decision. Respondent shall hereafter successfully
14 participate in and complete her current contract and any subsequent addendums with the PRP.
15 Probation shall be automatically extended until Respondent successfully completes any such
16 treatment contract(s). If Respondent is terminated from the program, her license to practice
17 shall be automatically suspended upon notice by the Board. Respondent may not resume the
18 practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction
19 to institute action to terminate probation for any violation of this term.

20 During any period of suspension, Respondent shall not enter any pharmacy area
21 or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or
22 any other distributor of drugs which is licensed by the board, or any manufacturer, or any
23 place where dangerous drugs and devices or controlled substances are stored or maintained.
24 Respondent shall not practice pharmacy nor do any act involving drug selection, selection of
25 stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent
26 manage, administer, or be a consultant to any licensee of the board, or have access to or
27 control the ordering, manufacturing or dispensing of dangerous drugs and devices or
28 controlled substances.

1 During any period of suspension, Respondent shall not engage in any activity
2 that requires the professional judgment of a pharmacist. Respondent shall not direct or control
3 any aspect of the practice of pharmacy. Respondent shall not perform the duties of a
4 pharmacy technician or an exemptee or registrant for any entity licensed by the board. Subject
5 to the above restrictions, Respondent may continue to own or hold an interest in any pharmacy
6 in which she holds an interest at the time this decision becomes effective.

7 12. **Random Drug Screening.** Respondent, at her own expense, shall
8 participate in random testing, including but not limited to biological fluid testing (urine,
9 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
10 Testing shall be required for the entire probation period and the frequency of testing will be
11 determined by the Board or its designee. At all times Respondent shall fully cooperate with
12 the Board or its designee, and shall, when directed, submit to such tests and samples for the
13 detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as
14 are directed. Failure to submit to testing as directed shall constitute a violation of probation.

15 Any confirmed positive drug test shall result in the immediate suspension of
16 practice by Respondent. Respondent may not resume the practice of pharmacy until notified
17 by the Board in writing.

18 During any period of suspension, Respondent shall not enter any pharmacy area
19 or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or
20 any other distributor of drugs which is licensed by the board, or any manufacturer, or any
21 place where dangerous drugs and devices or controlled substances are stored or maintained.
22 Respondent shall not practice pharmacy nor do any act involving drug selection, selection of
23 stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent
24 manage, administer, or be a consultant to any licensee of the board, or have access to or
25 control the ordering, manufacturing or dispensing of dangerous drugs and devices or
26 controlled substances.

27 ///

28 ///

1 During any period of suspension, Respondent shall not engage in any activity
2 that requires the professional judgment of a pharmacist. Respondent shall not direct or control
3 any aspect of the practice of pharmacy. Respondent shall not perform the duties of a
4 pharmacy technician or an exemptee or registrant for any entity licensed by the board. Subject
5 to the above restrictions, Respondent may continue to own or hold an interest in any pharmacy
6 in which she holds an interest at the time this decision becomes effective.

7 **13. Abstain from Drugs and Alcohol Use.** Respondent shall completely
8 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
9 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
10 practitioner as part of a documented medical treatment. Upon request of the Board,
11 Respondent shall provide documentation from the licensed practitioner that the prescription
12 was legitimately issued and is a necessary part of the treatment of the Respondent.

13 **14. Supervised Practice.** Respondent shall practice only under supervision
14 of a pharmacist not on probation with the Board. Respondent shall not practice until the
15 supervisor is approved by the Board. Supervision shall be, as required by the Board, either:

16 Continuous - 75% to 100% of a work week

17 Substantial - At least 50% of a work week

18 Partial - At least 25% of a work week

19 Daily Review - Supervisor review of daily activities within 24 hours

20 Within thirty (30) days of the effective date of this decision, Respondent shall
21 have her supervisor submit notification to the Board in writing stating the supervisor has read
22 the decision in Case Number 2874 and is familiar with the level of supervision required.

23 If Respondent changes employment, Respondent shall have her new supervisor,
24 within fifteen (15) days after employment commences, submit notification to the Board in
25 writing stating the direct supervisor and pharmacist-in-charge have read the decision in Case
26 Number and are familiar with the level of supervision as determined by the Board.

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1 15. **Notification of Employment/Mailing Address Change.** Respondent
2 shall notify the Board in writing within ten (10) days of any change of employment. Said
3 notification shall include the reasons for leaving and/or the address of the new employer,
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in
5 writing within ten (10) days of a change in name, mailing address or phone number. Failure to
6 timely provide either notification to the Board shall be considered a violation of probation.

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

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

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

20 Upon acceptance of the surrender, Respondent shall relinquish her
21 pocket license to the Board within ten (10) days of notification by the Board that the surrender
22 is accepted. Respondent may not reapply for any license from the Board for three (3) years
23 from the effective date of the surrender. Respondent shall meet all requirements applicable to
24 the license sought as of the date the application for that license is submitted to the Board.

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26 ///

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28 ///

1 18. **Tolling of Probation.** Respondent shall work at least forty (40) hours
2 as a pharmacist in each calendar month and at least an average of eighty (80) hours per month
3 in any six (6) consecutive months. Failure to do so will be considered a violation of
4 probation. If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of his or her good faith efforts to
6 comply with this condition, and if no other conditions have been violated, the Board, in its
7 discretion may grant an extension of Respondent's probation period of up to one year without
8 further hearing in order to comply with this condition.

9 Should Respondent, regardless of residency, for any reason cease practicing
10 pharmacy for a minimum of forty (40) hours per calendar month in California, Respondent
11 must notify the Board in writing within ten (10) days of cessation of the practice of pharmacy
12 or the resumption of the practice of pharmacy. Such periods of time shall not apply to the
13 reduction of the probation period. It is a violation of probation for Respondent's probation to
14 remain tolled pursuant to this term and condition for a period exceeding three (3) years.

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

17 19. **Tolling of Suspension.** If Respondent leaves California to reside or
18 practice outside this state, for any period exceeding ten (10) days (including vacation), she
19 must notify the Board in writing of the dates of departure and return. Periods of residency or
20 practice outside the state - or any absence exceeding a period of ten (10) days - shall not apply
21 to reduction of the suspension period. Respondent shall not practice pharmacy upon returning
22 to this state until notified by the Board that the period of suspension has been completed.

23 20. **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.

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/or to impose the penalty which was stayed.

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

8
9
10 ACCEPTANCE

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

16 DATED: 2/2/06.

17
18 Kathy O'Shaughnessy
19 KATHY O'SHAUGHNESSY
20 Respondent

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

24 DATED: 2-2-06.


25
26 Robert J. Sullivan
27 ROBERT J. SULLIVAN
28 Attorney for Respondent

ENDORSEMENT

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

DATED: 2/6/06.

BILL LOCKYER, Attorney General
of the State of California



JOSHUA A. ROOM
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2005200201
40077226.wpd

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

In the Matter of the Accusation Against:

KATHY O'SHAUGHNESSY
1972 Fingerpeak Way
Antioch, CA 94531

Pharmacist License No. 41532

Respondent.

Case No. 2874

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 April 12, 2006.

It is so ORDERED March 13, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

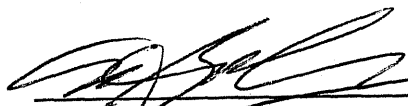

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2874

BILL LOCKYER, Attorney General
of the State of California
JOSHUA A. ROOM, State Bar No. 214663
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455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

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In the Matter of the Accusation Against:

KATHY O'SHAUGHNESSY
1972 Fingerpeak Way
Antioch, CA 94531

Pharmacist License No. 41532

Respondent.

Case No. 2874

OAH No.

ACCUSATION

Complainant alleges:

PARTIES

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

2. On or about April 23, 1988, the Board of Pharmacy issued Pharmacist License Number 41532 to Kathy O'Shaughnessy (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2005, unless renewed.

JURISDICTION

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

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

3 ...

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

8 ...

9 8. California Code of Regulations, title 16, section 1770, states:

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

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

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

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

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

1 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful
2 for any person to possess any controlled substance classified in Schedule III, IV, or V which is
3 not a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
4 veterinarian licensed to practice in this state.

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

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

11
12 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

13 16. Section 4021 of the Code states:

14 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing
15 with Section 11053) of Division 10 of the Health and Safety Code.”

16 17. Section 4022 of the Code states, in pertinent part:

17 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for
18 self-use, except veterinary drugs that are labeled as such, and includes the following:

19 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
20 without prescription,’ ‘Rx only,’ or words of similar import.

21 ...

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

24 18. **Fiorinal®** and **Fioricet®** are among the brand names for drug compounds
25 containing either aspirin or acetaminophen (APAP), caffeine, and **butalbital**, a Schedule III
26 controlled substance as designated by Health and Safety Code section 11056(e)(3) and a
27 dangerous drug as designated by Business and Professions Code section 4022. It is a non-
28 narcotic analgesic drug often prescribed as a treatment for migraines or tension headaches.

1 19. **AcipHex®** is a brand name for **rabeprazole sodium**, a dangerous drug as
2 designated by Business and Professions Code section 4022. It is a treatment for stomach acid.

3 20. **Lotensin®** and **Lotensin HCT®** are brand names for **benazepril**
4 **hydrochloride**, a dangerous drug as designated by Business and Professions Code section 4022.
5 It is a blood pressure medication.

6
7 FACTUAL BACKGROUND

8 21. Between on or about June 1, 2002 and on or about November 4, 2004,
9 Respondent was employed as a staff pharmacist at Raley's pharmacies in Antioch (PHY 20505),
10 Pittsburg (PHY 20489), Oakley (PHY 35425), and Brentwood (PHY 46070), California.

11 22. On numerous unknown dates between in or about September 2002 and on
12 or about November 4, 2004, when she was terminated by Raley's for this conduct, Respondent
13 stole and/or attempted to steal, from the Raley's pharmacy/pharmacies in which she worked as a
14 pharmacist, controlled substances or dangerous drugs including **Fiorinal**, **Fioricet** and/or their
15 generic equivalent(s), **AcipHex** and/or its generic equivalent(s), and **Lotensin**, **Lotensin HCT**
16 and/or their generic equivalent(s). The exact number of drugs misappropriated is unknown. An
17 internal audit conducted by Raley's for the relevant time period revealed total losses of **Fiorinal**,
18 **Fioricet** and/or their generic equivalent(s) of 16,900 tablets. The audit did not account for losses
19 of non-controlled substances/dangerous drugs such as **AcipHex** or **Lotensin/Lotensin HCT**.

20 23. On or about November 1, 2004, Respondent was confronted by security
21 and/or supervisors for Raley's, and was found to be in possession of one bottle of **Fiorinal** or its
22 generic, one bottle of **AcipHex** or its generic, and two bottles of **Lotensin HCT** or its generic.
23 Respondent admitted orally and in writing to Raley's supervisory staff that she had stolen and/or
24 attempted to steal, from Raley's, **Fiorinal**, **Fioricet** and/or their generic equivalent(s), **AcipHex**
25 and/or its generic equivalent(s), **Lotensin** and **Lotensin HCT** and/or their generic equivalent(s).
26 She admitted she had stolen/attempted to steal **Lotensin/Lotensin HCT** for her husband. She
27 admitted she had stolen/attempted to steal **Fiorinal/Fioricet** and **AcipHex** for her own use. She
28 agreed to pay restitution to Raley's in the amount of \$1,791.21 for the drugs that were stolen.

24. On or about December 7, 2004 and/or on or about December 29, 2004, Respondent admitted orally and in writing to Board Inspector Rick Iknoian that she had stolen and/or attempted to steal, from Raley's, **Fiorinal**, **Fioricet** and/or their generic equivalent(s), **AcipHex** and/or its generic equivalent(s), **Lotensin** and **Lotensin HCT** and/or their generic equivalent(s). She admitted that she self-administered **Fiorinal/Fioricet** and/or its generic, and **AcipHex** and/or its generic, on numerous occasions between in or about September 2002 and in or about November 2004. She admitted that she was worked as a pharmacist while under the influence of **Fiorinal/Fioricet** and/or its generic. She admitted that she provided/furnished the stolen **Lotensin/Lotensin HCT** and/or its generic, stolen from Raley's, to her husband, who had no valid prescription or drug order on file or available at Raley's.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

25. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 21-24 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Self-Administration of a Controlled Substance)

26. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 21-24 above, repeatedly furnished and/or administered to herself unknown quantities of **Fiorinal/Fioricet** and/or its generic, a controlled substance.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Furnishing of Dangerous Drug)

27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or section 4059 of the Code, in that Respondent, as described in paragraphs 21-24 above, furnished and/or conspired to furnish, and/or assisted in or abetted the furnishing of **Lotensin/Lotensin HCT** and/or its generic, a dangerous drug, without a valid prescription.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Unlawful Possession of Controlled Substances)

3 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the
4 Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 21-24
5 above, possessed, conspired to possess, and/or assisted in or abetted the possession of
6 **Fiorinal/Fioricet** and/or its generic, a controlled substance, without a valid prescription.

7 FIFTH CAUSE FOR DISCIPLINE

8 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

9 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the
10 Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in
11 paragraphs 21-24 above, obtained **Fiorinal/Fioricet** and/or its generic, a controlled substance, by
12 fraud, deceit, or subterfuge.

13 SIXTH CAUSE FOR DISCIPLINE

14 (Unlawful Possession of Non-Narcotic Controlled Substances)

15 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the
16 Code, and/or Health and Safety Code section 11377, in that, as described in paragraphs 21-24
17 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of
18 **Fiorinal/Fioricet** and/or its generic, a non-narcotic controlled substance, without a prescription.

19 SEVENTH CAUSE FOR DISCIPLINE

20 (Working as Pharmacist While Under the Influence)

21 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the
22 Code, and/or section 4327 of the Code, in that Respondent, as described in paragraphs 21-24
23 above, was under the influence of **Fiorinal/Fioricet** and/or its generic, a controlled substance and
24 dangerous drug, while she was on duty selling, dispensing, or compounding drugs.

25 EIGHTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 32. Respondent is subject to discipline under section 4301 of the Code in that
28 Respondent, as described in paragraphs 21-24 above, engaged in unprofessional conduct.

1 PRAYER


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

4 A. Revoking or suspending Pharmacist License Number 41532, issued to
5 Kathy O'Shaughnessy.

6 B. Ordering Kathy O'Shaughnessy to pay the Board of Pharmacy the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and

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

10 DATED: 7/29/05

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12 
13 PATRICIA F. HARRIS
14 Executive Officer
15 Board of Pharmacy
16 Department of Consumer Affairs
17 State of California
18 Complainant

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