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

In the Matter of the Accusation Against: PATRICE MARLENE DELAPLANE Pharmacist License Number 26424, Respondent.	Case No. 2911 OAH No. N2005100050

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 29 and 30, 2005.

Char Sachson, Deputy Attorney General, represented Complainant Patricia F. Harris, Executive Officer of the Board of Pharmacy.

Robert W. Stewart, Attorney at Law, represented Respondent Patrice Marlene Delaplane, who was present.

The record closed on November 30, 2005.

FACTUAL FINDINGS

1. Complainant Patricia F. Harris filed the Accusation in her official capacity as Executive Officer of the California Board of Pharmacy (Board).

2. On July 15, 1969, the Board issued Pharmacist License Number 26424 to Patrice Marlene Delaplane (Respondent). The license is currently scheduled to expire on November 30, 2006.

Prior Decision and Order

3. In a prior disciplinary action entitled "In the Matter of the Accusation Against Patrice Marlene Delaplane," Case No. 1781, the Board issued a decision and order, effective

September 3, 1996.[1] The basis for the decision was Respondent's possession of 36 controlled substances without a prescription. The drugs included Xanax, Hydrocodone and Ritalin.[2] The Board suspended Respondent's pharmacist license for 120 days, but stayed the suspension for a two-year term of probation. Probation Condition No. 1 required Respondent to obey all laws and regulations substantially related to the practice of pharmacy. Probation Condition No. 2 required Respondent to participate in the Board's Impaired Pharmacists Program (IPP):

> Within 30 days of the effective date of this decision, respondent shall contact the Impaired Pharmacists Program for evaluation and shall successfully participate in and complete the treatment contract as recommended by the IPP. Should respondent fail to complete the treatment contract as recommended by IPP within the probationary period, probation shall be extended until completion of said contract. The costs for IPP participation shall be born by the respondent.

4. The Board subsequently replaced the IPP with the Pharmacists' Recovery Program (PRP), which is administered by Maximus. Don Fensterman, LCSW, an employee of Maximus, is a clinical case manager for the PRP. On October 18, 2004, Fensterman interviewed Respondent by telephone and performed an intake assessment. In addition, Brietta Marken, a licensed clinician, met with Respondent and prepared an evaluation report. Next, a recovery contract was prepared and sent to Respondent for her signature. During the following two months, Respondent did not sign the contract, although she did attend some group meetings and submit to random drug and alcohol testing several times. The urine sample she supplied on March 18, 2005, returned positive for alcohol.

On March 14, 2005, however, Maximus received a note from Respondent that states "I am not participating in your program at this time." Fensterman therefore terminated Respondent from the PRP for noncompliance.

5. Fensterman testified that the Maximus program is based upon a client's individual needs. If it is determined that a client does not have a substance abuse problem, the Board is informed. Further, Maximus does not require clients to specifically admit that they have an addiction problem, and this was not required of Respondent.

Fensterman did not make a determination of whether Respondent is an addict, however, Respondent's explanations regarding why she was in possession of the 36 substances raised serious concerns for him. These explanations included her assertion that

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[1] The Decision and Order, attached hereto as Exhibit A, is incorporated in full herein by this reference.

[2] Respondent was not convicted of a crime. She completed a court-sponsored drug diversion program and the criminal case was dismissed.

some pharmacies allow old stock to be taken for personal use (she did not identify which pharmacies); she had some of the drugs since 1969; people would bring medications to her when she was out in the community and ask her what they were; and that she was keeping them for personal use in case of emergency. Based upon the reasons she gave, Fensterman did not believe that Respondent had accepted responsibility for her behavior.

6. Respondent has not fulfilled the requirements of Condition No. 2. Therefore, despite the passage of more than two years, her license is still on probation. Respondent violated Probation Order No. 2 by failing to complete the PRP.

Dispensing errors

7. While employed as a pharmacist at Kaiser Santa Rosa, Respondent incorrectly dispensed medications, as follows:

a. On July 4, 2004, Respondent incorrectly filled a prescription calling for Digoxin 0.125 mg with Digoxin 0.25 mg, which doubled the prescribed dose;

b. On September 8, 2004, Respondent incorrectly filled a prescription calling for Donepezil with Lisinopril;

c. On October 4, 2004, Respondent incorrectly filled a prescription calling for Lamivudine 300 mg with Lamivudine 150 mg, which reduced the prescribed dose by one-half;

d. On October 8, 2004, Respondent incorrectly filled a prescription calling for Hydrocodone/APAP 10/325 with Hydrocodone/APAP 5/500;

e. On December 1, 2004, Respondent incorrectly filled a prescription calling for Lisinopril with Lovastatin;

f. On December 26, 2004, Respondent incorrectly filled a prescription calling for Atenolol 25 mg with Atenolol 50 mg, which doubled the prescribed dose;

g. On January 17, 2005, Respondent incorrectly filled a prescription calling for Cephalexin 500 mg, one capsule four times a day for ten days, providing only 28 capsules, rather than the prescribed number of 40;

h. On January 18, 2005, Respondent incorrectly filled a prescription calling for Warfarin 5 mg with Warfarin 2 mg, which was one-half of the prescribed dose;

i. On January 24, 2005, Respondent incorrectly filled a prescription calling for Lamivudine 300 mg with Lamivudine 150 mg, which was one-half of the prescribed dose;

j. On January 27, 2005, Respondent incorrectly filled a prescription calling for Lamictal with Lamisil;

k. On March 17, 2005, Respondent incorrectly filled a prescription calling for Spironolactone 50 mg with Spironolactone 25 mg, which was one-half of the prescribed dose.

8. Respondent committed the following dispensing errors subsequent to March 17, 2005:

- On March 24 Respondent dispensed the incorrect strength of Atenolol;
- On April 19 Respondent dispensed the incorrect medication;
- On May 6 Respondent dispensed the wrong strength of Insulin; and
- On May 17 Respondent dispensed the incorrect amount of Digoxin.

9. Gregory Smith has been licensed as a pharmacist since 1992 and is a pharmacy services manager at Kaiser Santa Clara. From August, 2004, until July, 2005, he held the same position at the Kaiser Santa Rosa One West outpatient facility where Respondent was employed. Respondent's supervisor reported to Smith.

One West is a very busy pharmacy that uses a line system. The clerks are at the front of the pharmacy area inputting prescriptions and dealing with patients. Standing side-by-side in front of a counter are one or two pharmacy technicians, followed by one or two pharmacists. No matter who actually places the medication in the bottle, it is the pharmacist who is ultimately responsible for accuracy. Smith described the working conditions at One West as stressful and challenging.

10. Smith acknowledged that pharmacists make dispensing errors. He considers the benchmark to be more than one each month. If a pharmacist has more than one error per month, he discusses the errors with him or her.

Smith met twice with Respondent and her union representative; once in February and once in April. He issued a verbal warning following the first meeting and a written warning following the second. Smith described Respondent's attitude as "take it or leave it" and uncaring. She was ambivalent in terms of taking responsibility and had little to say.

11. Smith described Respondent's errors in 2004 and 2005 as significant. Although there was no evidence of patient harm, the potential for harm was great. Risks varied depending upon the medication and the error, but included: dangerous reduction in blood pressure; resistance to medications; increased viral load/increase in T-cells; risk of seizures; and allergic reactions. Smith opined that, based upon the number and severity of the errors, Respondent's dispensing errors as set forth in Finding 7 constituted gross negligence.

Respondent's evidence

12. Respondent testified that she attended Oregon State University and was first licensed as a pharmacist in 1969. She worked and lived in Maui for a few years in the late 1990's, and at one point lived on Maui and commuted to the Bay Area to work as a pharmacist. It was during this latter period that she was arrested for possession of controlled substances. She was tired due to her commuting schedule, and pulled her car over to take a nap. A highway patrol officer contacted her and found the controlled substances in her vehicle.

Respondent testified that she was not under the influence when arrested and was not addicted to any of the medications she possessed. To her, addicted means having the physical necessity to consume the drug. When she was asked why she had them, Respondent replied "Because I didn't throw them away." She does not regularly collect things, but has trouble throwing things away that she might need. Respondent has taken expired medications and physician samples from pharmacies because they were going to be thrown out. There were pharmacies where she worked some time ago where this was allowed. According to Respondent, one could take drugs for one's own use either at cost or at no charge.

At the time, Respondent did not see anything wrong with having the drugs, but now believes "I do, my license is on the line."

13. Respondent agreed at one point to participate in the PRP. This was on December 4, 2004, when her then-attorney told her to comply for 30 days. This was in response to a prior petition to revoke probation. She does not know what happened to that matter – she thinks it went away somehow because she signed the papers to participate.

Respondent's participation included submitting to urine testing about ten times. She was not aware of two alcohol-positive test results. Respondent attended a recovery group twice a week for a period of time. She was also required to attend five meetings a week of NA or AA. Respondent stated that she stopped going to the meetings because they were really depressing. She found it a horrible experience to listen to the sad stories and feel like an imposter because she did not have a problem.

14. On December 1, 2003, Respondent contacted psychiatrist Gary S. Nye, M.D., for psychiatric evaluation and determination of whether she is chemically dependent. He spent three hours with her, read pertinent documents including the Board's previous decision and order, conducted testing, and issued a report on January 19, 2004. The report includes his statement that he does "not believe there is any conclusive evidence of chemical dependency. There may be occasional overuse of alcohol but not an abuse disorder or similar condition requiring treatment." Respondent testified that Dr. Nye's opinion "told me that I did not need to participate." Dr. Nye did suggest that Respondent submit to random urine tests. She did this twice, and the results were negative.

15. Respondent testified extensively about the working conditions at the Kaiser Santa Rosa One West outpatient pharmacy. In Respondent's opinion, the fact that the clerks were allowed to interrupt the pharmacists continuously with questions was a major problem. They were allowed to ask what the processing time was and they did so at least three times per hour. They would also interrupt her if they were having problems with a patient out front, if the patient wanted a consultation before the prescription was sold, if they needed change for the cash register, if they could not locate a particular prescription and with telephone calls.

Another problem for Respondent was the assembly-line method used in that facility to fill prescriptions. The physical space is so small that workers sometimes bump elbows. This made Respondent uncomfortable. In addition, the work environment is very noisy. People call out to one another and loud music is often playing on the radio or CD player. The two telephones had long cords that "stretch all over the pharmacy" so that people would be trying to walk, work and talk on the telephone at the same time, adding to the chaotic atmosphere.

Short staffing was a chronic problem. Many people called in sick and there were not enough other workers to cover. For one period of time, overtime was not allowed. This led to customer anger for long waits, which increased the tension, stress and potential for errors. Respondent feels that management's expectations regarding errors were not realistic.

16. Respondent's frustration with the working conditions and dislike of "assembly-line pharmacy" led her to apply for a different position. She still works at Kaiser Santa Rosa, but by herself on the night shift of the hospital pharmacy. In this position, she attests she has committed no errors, despite filling all of the discharge prescriptions for the hospital at one point in time. Respondent has been working independently, except on one day shift every two weeks, since mid-August 2005.

17. Respondent came to the hearing on both days directly from working the night shift and stated that she was very tired, scared and nervous. Respondent did appear physically tired, but showed no sign of an inability to answer questions or to express herself clearly.

Costs

18. The Board incurred costs of $2,746.25 for investigation and $3,175.50 for prosecution of the case, a total of $5,921.75. These costs are found to be reasonable.

Standard of proof

19. The standard of proof applied in this matter is clear and convincing evidence.

LEGAL CONCLUSIONS

1. Cause exists to revoke the probationary order issued in Case No. 1781 (Condition 2) by reason of the matters set forth in Findings 3 through 6.

2. Cause exists to revoke the probationary order issued in Case No. 1781 (Condition 1) by reason of the matters set forth in Finding 7.

3. Cause for disciplinary action exists pursuant to Business and Professions Code section 4301, subdivisions (b) (incompetence), (c) (gross negligence), (j) (violation of statutes regulating controlled substances and dangerous drugs) and (o) (violation of statutes or regulations governing pharmacy), and title 16, California Code of Regulations section 1716 (deviation from prescription) by reason of the matters set forth in Finding 7.

4. The matters set forth in Finding 8, which were not alleged in the Accusation, are considered only in aggravation.

5. Cause exists pursuant to Business and Professions Code section 125.3 to order Respondent to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. As set forth in Finding 18, the evidence established that those costs totaled $5,921.75.

Discussion

6. Almost ten years ago, Respondent possessed numerous controlled substances without a prescription. The Board placed her license on probation and required her to complete a drug program. Respondent chose not to do so. Respondent's counsel now contends that Respondent has never had a drug or alcohol problem; however, no explanation was given for Respondent's failure to challenge the condition in a timely manner. The appearance is left that Respondent ignored the order until pressed to do something about it. Then, instead of participating in the PRP, albeit belatedly, she opted out. The evidence was clear that the PRP would have been adapted to Respondent and her needs if she had participated in good faith. Dr. Nye's report notwithstanding, it remains unclear today whether Respondent has a substance abuse problem.

In addition to her probation violations, Respondent has a serious record of errors in the practice of pharmacy. It is also unclear whether they are due to substance abuse, incompetence, inattention or something else. Respondent blames the system for her errors, and it is acknowledged that she was working in a stressful environment when the errors were committed. It appears that she may now have a position that, at least in the opinion of her employer, fits her capacity. But her licensure allows her to work in any pharmacy.

Accuracy is essential for a pharmacist and Respondent was seriously inaccurate in dispensing prescriptions for an extended period of time. The reason for the errors may be the

working environment – it is not entirely clear. If she remains licensed, there is nothing to prevent her from practicing in an environment where she may again be prone to commit significant errors. In addition, Respondent chose to violate the terms of the previous probationary order, evidencing an inability or unwillingness to comply with a probationary order. It is therefore concluded that Respondent's continued licensure as a pharmacist, even on a restricted basis, presents an unacceptable risk to the public at this time. Public protection requires revocation of her license. As the license will be revoked, there is no reason to impose the stayed suspension order. Therefore, probation will be revoked and terminated.

ORDER

1. Pharmacist License Number 26464, issued to Patrice Marlene Delaplane, is revoked.

2. The probation ordered in Case No. 1781 is revoked and probation is terminated.

3. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $5,921.75.

DATED: December 19, 2005

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: PATRICE MARLENE DELAPLANE Pharmacist License Number RPH 26424 Respondent.	Case No. 2911 OAH No. N2005100050

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on February 22, 2006.

It is so ORDERED on January 23, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

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STATE'S EXHIBIT
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BILL LOCKYER, Attorney General
of the State of California
CHAR SACHSON, State Bar No. 161032
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5558
Facsimile: (415) 703-5480

Attorneys for Complainant

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

In the Matter of the Accusation Against: PATRICE MARLENE DELAPLANE 3318 Canyonlands Avenue Santa Rosa, CA 95407 P.O. Box 904 Santa Rosa, CA 95402 Pharmacist License Number 26424 Respondent.	Case No. 2911 **ACCUSATION AND PETITION TO REVOKE PROBATION**

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 15, 1969, the Board of Pharmacy issued Pharmacist License Number 26424 to Patrice Marlene Delaplane (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2006, unless renewed.

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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 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:

"(a) Gross immorality.

"(b) Incompetence.

"(c) Gross negligence.

. . .

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

. . .

"(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."

. . .

5. Title 16 of the California Code of Regulations, 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. Nothing in this regulation is intended to prohibit a pharmacist from exercising commonly-accepted pharmaceutical practice in the compounding or dispensing of a prescription."

6. Title 16 of the California Code of Regulations, 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."

7. Section 118, subdivision (b), of the Code provides that the expiration 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.

8. Section 125.3 of the Code states, in pertinent part, that 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.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

9. **Alprazolam** is the generic name for the brand name **Xanax**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is an antianxiety drug.

10. **Atenolol** is a dangerous drug as designated by Business and Professions Code section 4022. It is an antihypertensive drug.

11. **Cephalexin** is a dangerous drug as designated by Business and Professions Code section 4022. It is an antibiotic in a class of drugs called cephalosporins.

12. **Digoxin** is a dangerous drug as designated by Business and Professions Code section 4022. It is a cardiovascular drug.

13. **Donepezil** is the generic name for the brand name **Aricept,** a dangerous drug as designated by Business and Professions Code section 4022. It is a drug used to treat Alzheimer's disease.

14. **Hydrocodone Bitrartrate/AC** is the generic name for the brand name **Vicodin**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic analgesic.

15. **Lamivudine** is a dangerous drug as designated by Business and Professions Code section 4022. It is an antiviral drug.

16. **Lamotrigine** is a dangerous drug as designated by Business and Professions Code section 4022. It is an anticonvulsant.

17. **Lisinopril** is a dangerous drug as designated by Business and Professions Code section 4022. It is an antihypertensive drug.

18. **Mirtazapine** is a dangerous drug as designated by Business and Professions Code section 4022. It is an antidepressant.

19. **Morphine Sulphate** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic analgesic.

20. **Spironolactone** is a dangerous drug as designated by Business and Professions Code section 4022. It is a diuretic.

21. **Sumatriptan** is a dangerous drug as designated by Business and Professions Code section 4022. It is a migraine medication.

22. **Venlafaxine** is the generic name for the brand name **Effexor**, a dangerous drug as designated by Business and Professions Code section 4022. It is an antidepressant.

23. **Wafarin** is the generic name for the brand name **Coumadin**, a dangerous drug as designated by Business and Professions Code section 4022. It is an anticoagulant.

CAUSE FOR DISCIPLINE

(Dispensing Errors)

24. Respondent is subject to discipline under section 4301(b), (c), (j) and/or (o) of the Code, and Title 16 of the California Code of Regulations, sections 1716 and/or 1761, in that, while employed as a pharmacist at Kaiser Santa Rosa, Respondent incorrectly dispensed

medications as follows:

a. On July 4, 2004, Respondent incorrectly filled a prescription calling for Digoxin 0.125 mg with Digoxin 0.25 mg, providing the patient with double the prescribed dose.

b. On September 8, 2004, Respondent incorrectly filled a prescription calling for Donepezil with Lisinopril;

c. On October 4, 2004, Respondent incorrectly filled a prescription calling for Lamivudine 300 mg with Lamivudine 150 mg, providing the patient with half the prescribed dose;

d. On October 8, 2004, Respondent incorrectly filled a prescription calling for Hydrocodone/APAP 10/325 with Hydrocodone/APAP 5/500;

e. On December 1, 2004, Respondent incorrectly filled a prescription calling for Lisinopril with Lovastatin;

f. On December 26, 2004, Respondent incorrectly filled a prescription calling for Atenolol 25 mg with Atenolol 50 mg, providing the patient with double the prescribed dose;

g. On January 17, 2005, Respondent incorrectly filled a prescription calling for Cephalexin 500mg, one capsule four times a day for ten days. Respondent provided the patient with 28 capsules, rather than the 40 that were prescribed;

h. On January 18, 2005, Respondent incorrectly filled a prescription calling for ~~Wafarin 5~~ Warfarin mg with ~~Wafarin 2~~ Warfarin mg, providing the patient with less than half of the prescribed dose;

i. On January 24, 2005, Respondent incorrectly filled a prescription calling for Lamivudine 300mg with Lamivudine 150 mg, providing the patient with only half of the prescribed dose;

j. On January 27, 2005, Respondent incorrectly filled a prescription calling for ~~Lamotrigine~~ Lamictal with ~~Lamictal~~ Lamisil;

k. On March 17, 2005, Respondent incorrectly filled a prescription

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calling for Spironolactone 50 mg with Spironolactone 25 mg, providing the patient with half the prescribed dose.

CAUSE TO REVOKE PROBATION

(Failure to Attend Impaired Pharmacists' Program [now Pharmacists' Recovery Program])

25. In a disciplinary action entitled "In the Matter of the Accusation Against Patrice Marlene Delaplane," Case No. 1781, the Board of Pharmacy issued a decision, effective September 3, 1996, in which Respondent's Pharmacist License was suspended for 120 days. However, the suspension was stayed and Respondent's license was placed on probation for a period of two (2) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

26. At all times after the effective date of Respondent's probation, Condition 2 stated:

> Within 30 days of the effective date of this decision, respondent shall contact the Impaired Pharmacists Program for evaluation and shall successfully participate in and complete the treatment contract as recommended by the IPP. Should respondent fail to complete the treatment contract as recommended by IPP within the probationary period, probation shall be extended until completion of said contract. The costs for IPP participation shall be borne by the respondent.

27. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 2, referenced above. The facts and circumstances regarding this violation are as follows:

a. Respondent has failed to successfully participate in and complete the IPP (now Pharmacists' Recovery Program, "PRP"). Respondent's period of probation has been, and continues to be tolled due to Respondent's non-compliance with Probation Condition 2.

DISCIPLINE CONSIDERATIONS

28. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about September 3, 1996, in a prior disciplinary action entitled In the Matter of the Accusation Against Patrice Marlene Delaplane before the

Board of Pharmacy, in Case Number 1781. Respondent's license was suspended for 120 days, the suspension was stayed, and the license was placed on probation for two years, for possession of controlled substances without a valid prescription. That decision is now final and is incorporated by reference as if fully set forth.

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 26424, issued to Patrice Marlene Delaplane.

2. Revoking the probation that was granted by the Board of Pharmacy in Case No. 1781 and imposing the disciplinary order that was stayed thereby suspending Pharmacist License No. RPH 26424 issued to Patrice Marlene Delaplane for 120 days;

3. Ordering Patrice Marlene Delaplane 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;

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

DATED: 9/19/05

P. F. Harris

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

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EXHIBIT A

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

In the Matter of the Accusation Against: PATRICE MARLENE DELALPLANE P. O. Box 484 Kahului, Hawaii 92110 Respondent.	)))))))))	No. 1632 OAH No. N 9508177

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the Board's decision which will become effective September 3, 1996, NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied.

IT IS SO ORDERED THIS 5th day of August, 1996.

Board of Pharmacy
Department of Consumer Affairs
State of California

by

DARLENE F. FUJIMOTO, Board President

STATE OF CALIFORNIA

ATRICIA F. HARRIS, OFFICIAL CUSTODIAN
THE RECORDS, DO HEREBY CERTIFY THAT
IS/THESE DOCUMENTS IS/ARE TRUE AND
RRECT COPY/COPIES OF THE ORIGINAL(S)
FILE IN THIS OFFICE.

ED: 8/9/05

Virginia Herold

GINIA K. HEROLD
stant Executive Officer/for
RICIA F. HARRIS
cutive Officer
fornia State Board of Pharmacy

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

In the Matter of the Accusation Against: PATRICE MARLENE DELAPLANE P.O. BOX 484 Kahului, Hawaii 92110 RPH 26424 Respondent.	)	CASE NO. 1781 OAH No. N 9508177

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on September 3, 1996.

IT IS SO ORDERED on August 5, 1996.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY: Darlene F. Fujimoto
DARLENE F. FUJIMOTO
Board President

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

In the Matter of the Accusation Against: PATRICE MARLENE DELAPLANE P.O. Box 484 Kahului, Hawaii 92110 Licentiate No. RPH 26424, Respondent.	Case No. 1781 OAH No. N 9508177

PROPOSED DECISION

This matter was heard before Cheryl R. Tompkin, Administrative Law Judge, State of California, Office of Administrative Hearings on May 13, 1996, in Oakland, California.

Complainant was represented by Richard Arnold, Deputy Attorney General.

Respondent Patrice Marlene Delaplane was present and represented herself.

FINDINGS OF FACT

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

2. On July 15, 1969, the Board issued licentiate number RPH 26424 to Patrice Marlene Delaplane (respondent). The license was in full force and effect at all times pertinent herein and has been renewed through November 30, 1996. No prior disciplinary action has been taken against respondent's license.

3. At hearing the parties stipulated that the following allegations of the Accusation are true and correct:

"6. The following drugs are controlled substances and dangerous drugs as defined in the California Con-

trolled Substances Act and Business and Professions Code section 4211(a) respectively:

a. Dexedrine, a brand of dextroamphetamine, is a Schedule II controlled substance as defined in Section 11055(d)(1) of the Health and Safety Code and is a dangerous drug.

b. Fiorinal, a brand of butalbital, aspirin, and caffeine, is a Schedule III controlled substance as defined in Section 11056(c)(3) of the Health and Safety Code and is a dangerous drug.

c. Halcion, a brand of triazolam, is a Schedule IV controlled substance as defined in Section 11057(d)(24) of the Health and Safety Code and is a dangerous drug.

d. Hydrocodone with acetaminophen is a Schedule III controlled substance as defined in Section 11056(e)(4) of the Health and Safety Code and is a dangerous drug.

e. Methylphenidate is a Schedule II controlled substance as defined in Section 11055(d)(6) of the Health and Safety Code and is a dangerous drug.

f. Phentermine is a Schedule IV controlled substance as defined in section 11057(f)(2) of the Health and Safety Code and is a dangerous drug.

g. Tylenol with Codeine, a brand of acetaminophen with codeine, is a Schedule III controlled substance as defined in Section 11056(e)(2) of the Health and Safety Code and is a dangerous drug.

h. Xanax, a brand of alprazolam, is a Schedule IV controlled substance as defined in Section 11057(d)(1) of the Health and Safety Code and is a dangerous drug."

"8. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5, and 4359 for the violation of section 4230 as follows:

On or about July 5, 1993, respondent unlawfully possessed the following controlled substances:

DRUG	QUANTITY
Dexedrine 5mg.	1
Fiorinal	12
Halcion .25mg.	1
Hydrocodone 5 mg. with acetaminophen 500 mg.	2
Methylphenidate 10 mg	1
Phentermine 30mg.	1
Tylenol w/codeine 30mg.	1
Xanax .25mg.	4
Xanax .5mg.	1
Xanax 1mg.	12"

"9. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5 and 4363 in conjunction with Health and Safety Code section 11350(a) as follows:

Pursuant to the matters alleged in paragraph 8 above, respondent unlawfully possessed the drugs Tylenol with codeine 30 mg. and Hydrocodone with acetaminophen 500 mg."

"10. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5 and 4363 in conjunction with Health and Safety Code section 11377(a) as follows:

Pursuant to the matters alleged in paragraph 8 above, respondent unlawfully possessed the drugs Dexedrine, Fiorinal, Halcion and Methylphenidate."

4. On or about July 5, 1993, respondent parked her car on the shoulder of Highway 101 near Novato, California to take a nap. Respondent was subsequently awakened by a California Highway Patrol Officer, who questioned her, and then searched her vehicle. The officer found numerous drugs, which are set forth in paragraph 8 of the Accusation and Finding of Fact 3 above. Criminal charges were filed against respondent. Respondent was diverted into an 18 month drug program in lieu of criminal prosecution. Respondent successfully completed the drug program.

5. Respondent admits having the drugs in her possession. She testified the drugs were an "emergency stash" and represented an accumulation of various drugs given to her by other people. Respondent admits the drugs were for her own use "in case of emergency," but denies actually using the drugs or

having a drug problem. Respondent claims she does not take any drugs except hormones. She also states she no longer accumulates drugs or has an emergency stash.

With respect to why she stopped on the highway shoulder, respondent explained that she lives in Hawaii, but does "relief pharmacy work" in California.[1] She is often tired because she travels so much. Respondent claims that on July 5, 1993, she stopped along the side of the road to take a nap because she was tired, it was affecting her driving, and it seemed like the responsible thing to do.

6. Respondent still does relief pharmacy work in California, although she resides in Hawaii. She states she is tired of shuttling back and forth between Hawaii and California but feels she cannot get a regular job until she knows whether her license will be revoked. She feels that she has paid for her offense and asks that if probation is imposed, it be made retroactive to the date of her arrest.

7. Pursuant to Business and Professions Code section 125.3, the Board may request that "a licentiate found to have committed a violation or violations of the licensing act [be required] to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

The Board certifies that the following costs were incurred in connection with the investigation and prosecution of this Accusation prior to the date of hearing:

Inspector Costs: 30.5 hours at $65/hour	$1,982.50
Attorney General's costs: 18 hours at $95/hour	1,710.00
Further Attorney General's costs: 6.5 hours at $98/hour (after filing of accusation)	637.00
TOTAL COSTS INCURRED:	$4,329.50

Respondent does not contest these costs.

DETERMINATION OF ISSUES

1. Cause for disciplinary action against respondent exists under Business and Professions Code sections 4350, 4350.5 and 4359 in that respondent violated Business and Professions

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[1] A pharmacist does "relief work" when s/he serves as temporary pharmacist, filling in when a pharmacy needs someone on a temporary or short term basis.

Code section 4230. Specifically, as set forth in Findings 3 through 5, respondent was in possession of a controlled substance without having a valid prescription.

2. Cause for disciplinary action against respondent exists under Business and Professions Code sections 4350, 4350.5 and 4363 as those sections interact with Health and Safety Code section 11350, subdivision (a). Specifically, as set forth in Findings 3 through 5, respondent unlawfully possessed a controlled substance without having a valid prescription.

3. Cause for disciplinary action against respondent exists under Business and Professions Code sections 4350, 4350.5 and 4363 as those sections interact with Health and Safety Code section 11377, subdivision (a). Specifically, as set forth in Findings 3 through 5, respondent unlawfully possessed a controlled substance without having a valid prescription.

4. Although respondent unlawfully possessed controlled substances without having a valid prescription, it is nevertheless determined that it would not be against the public interest to permit respondent to retain her pharmacist license upon appropriate terms and conditions. In this regard, it is noted that although respondent has been licensed as a pharmacist since 1969, she has no prior history of disciplinary action against her license; it has been nearly three years since respondent was arrested on the charges which form the basis for this Accusation; and it has been over a year since respondent successfully completed a drug diversion program. It is somewhat troubling, however, that respondent denies ever having a drug problem despite her past arrest for unlawful possession of controlled substances and her subsequent participation in a drug treatment program. In addition, there is no evidence respondent has a support network in place to help prevent future problems. It is therefore determined respondent should be required to participate in the Impaired Pharmacists Program as a condition of retaining her license.

Respondent's request that any probation imposed be made retroactive to the date of her arrest is denied. The purpose of license probation is to allow the Board to monitor the licensee and the licensee's practice to assure that the public is protected from future violations of the type which caused the disciplinary action. Even though respondent has not engaged in any known illegal conduct since her arrest and diversion into a drug program, a period of probation to permit the Board to monitor her practice seems appropriate.

5. The reasonable costs of investigating and enforcing this matter under Business and Professions Code section 125.3 are $4,329.50, by reason of the matters set forth in Finding 7.

ORDER

Licentiate No. RPH 26424, issued to respondent Patrice Marlene Delaplane, is suspended for a period of one hundred and twenty (120) days. However, the suspension, is stayed and respondent is placed on probation for a period of two (2) years upon the following terms and conditions:

1. Respondent shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

2. Within 30 days of the effective date of this decision, respondent shall contact the Impaired Pharmacists Program for evaluation and shall successfully participate in and complete the treatment contract as recommended by the IPP. Should respondent fail to complete the treatment contract as recommended by IPP within the probationary period, probation shall be extended until completion of said contact. The costs for IPP participation shall be borne by the respondent.

3. Respondent shall submit to peer review as deemed necessary by the Board.

4. Respondent shall report to the Board or its designee quarterly. Said report shall be either in person or in writing, as directed. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

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

6. Respondent shall notify all present and prospective employers of the decision in Case No. 1781 and the terms, conditions and restriction imposed on respondent by said decision.

   Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause respondent's employer to report to the Board in writing acknowledging the employer has read the decision in Case No. 1781.

   Should respondent work for or be employed by or through a pharmacy employment service, it shall be the obligation of the respondent to ensure the pharmacy at which respondent is to be employed or

used is aware of the fact and terms of this disciplinary order in advance of the respondent commencing work at the pharmacy.

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

7. Respondent shall not supervise any registered intern and shall not perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any pharmacy licensed by the Board.

8. Should respondent leave California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

9. Should respondent leave California to reside or practice outside this state, or for any period exceeding 30 days, 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 30 days, shall not apply to the reduction of the suspension period.

   Respondent shall not practice pharmacy upon returning to this state until notification by the Board the period of suspension has been completed.

10. Should respondent violate 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 is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $4,329.50. Respondent shall pay said amount as follows: 11 monthly payments of $360.79 and one monthly payment of $360.81, due on or before the fifth day of each month, commencing with the first month after the effective date of this decision.

Should any part of the cost recovery not be paid, probation shall be extended until said amount is paid.

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

DATED: 6/4/96

CHERYL R. TOMPKIN
Administrative Law Judge

DANIEL E. LUNGREN, Attorney General
of the State of California
RICHARD ARNOLD, State Bar No. 55418
Deputy Attorney General
50 Fremont Street, Suite 300
San Francisco, CA 94105-2239
Telephone: (415) 356-6283

Attorneys for Complainant

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

In the Matter of the Accusation Against: PATRICE MARLENE DELAPLANE P.O. BOX 484 Kahului, Hawaii 96732 Licentiate No. RPH 26424 Respondent.	NO. 1781 ACCUSATION

Complainant, Patricia F. Harris, alleges that:

1. She is the Executive Officer of the Board of Pharmacy (hereafter "Board") of the State of California and makes and files this Accusation in her official capacity.

2. On or about July 15, 1969, the Board issued Licentiate No. RPH 26424 to Patrice Marlene Delaplane (hereafter "respondent"). At all times mentioned herein, said license has been in full force and effect.

3. Business and Professions Code section 118(b) provides that 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 or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

4. Business and Professions Code sections 4350, 4350.5 and 4359 provide, *inter alia*, that the Board may take disciplinary action against holders of licenses, permits and certificates.

5. Business and Professions Code section 4350.5 of the code provides, *inter alia*, that the Board shall take action against any holder of a certificate, license, or permit who is guilty of unprofessional conduct. Unprofessional conduct is defined therein to include the violation, directly or indirectly, or assisting or abetting in the violation of any provision or term of the California Pharmacy Law (Business and Professions Code § 4000, et seq.), or regulation established by the Board.

6. The following drugs are controlled substances and dangerous drugs as defined in the California Controlled Substances Act and Business and Professions Code section 4211(a) respectively:

a. Dexedrine, a brand of dextroamphetamine, is a Schedule II controlled substance as defined in Section 11055(d)(1) of the Health and Safety Code and is a dangerous drug.

b. Fiorinal, a brand of butalbital, aspirin, and caffeine, is a Schedule III controlled substance as defined in Section 11056(c)(3) of the Health and Safety Code and is a dangerous drug.

c. Halcion, a brand of triazolam, is a Schedule IV controlled substance as defined in Section 11057(d)(24) of the Health and Safety Code and is a dangerous drug.

d. Hydrocodone with acetaminophen is a Schedule III controlled substance as defined in Section 11056(e)(4) of the Health and Safety Code and is a dangerous drug.

e. Methylphenidate is a Schedule II controlled substance as defined in Section 11055(d)(6) of the Health and Safety Code and is a dangerous drug.

f. Phentermine is a Schedule IV controlled substance as defined in Section 11057(f)(2) of the Health and Safety Code and is a dangerous drug.

g. Tylenol with Codeine, a brand of acetaminophen with codeine, is a Schedule III controlled substance as defined in Section 11056(e)(2) of the Health and Safety Code and is a dangerous drug.

h. Xanax, a brand of alprazolam, is a Schedule IV controlled substance as defined in Section 11057(d)(1) of the Health and Safety Code and is a dangerous drug.

7. Business and Professions Code section 4230 provides, *inter alia*, that no person shall have in possession any controlled substance, except that furnished to such person upon the prescription of a physician, dentist, podiatrist, or veterinarian.

8. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5, and 4359 for the violation of section 4230 as follows:

On or about July 5, 1993, respondent unlawfully possessed the following controlled substances:

DRUG	QUANTITY
Dexedrine 5mg.	1
Fiorinal	12
Halcion .25mg.	1
Hydrocodone 5 mg. with acetaminophen 500mg.	2
Methylphenidate 10mg.	1
Phentermine 30mg.	1
Tylenol w/codeine 30mg.	1
Xanax .25mg	4
Xanax .5mg	1
Xanax 1mg.	12

9. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5 and 4363 in conjunction with Health and Safety Code section 11350(a) as follows:

Pursuant to the matters alleged in paragraph 8 above, respondent unlawfully possessed the drugs Tylenol with condeine 30mg. and Hydrocodone with acetaminophen 500 mg.

10. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 4350, 4350.5 and 4363 in conjunction with Health and Safety Code section 11377(a) as follows:

Pursuant to the matters alleged in paragraph 8 above, respondent unlawfully possessed the drugs Dexedrine, Fiorinal, Halcion and Methylphenidate.

11. Pursuant to Business and Professions Code section 125.3, the Board requests the administrative law judge to direct the respondent to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, complainant prays that the Board hold a

hearing on the matters alleged herein and thereafter issue a decision suspending or revoking the pharmacist license of respondent, recovering its costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 and taking such other and further action as the Board deems proper.

DATED: 8/3/95

P. F. Harris

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

Complainant

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