BILL LOCKYER, Attorney General
of the State of California
JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-7376
Facsimile: (916) 327-8643

Attorneys for Complainant

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

In the Matter of the Accusation Against: **CHARLES ARTHUR SAWYER** 2320 N. Lodi Ave. Fresno, CA 93722 Pharmacist's License No. RPH 26997 Respondent.	Case No. 2943 **STIPULATED SETTLEMENT; ORDER AND DECISION**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jessica M. Amgwerd, Deputy Attorney General.

2. Charles Arthur Sawyer ("Respondent"), is represented by Donald Fischbach, of Baker, Manock & Jensen, located at Fig Garden Financial Center 5260 North Palm, Suite 421, Fresno, CA 93704.

3. On or about November 19, 1970, the Board issued Pharmacist License No. RPH 26997 to Respondent. The license will expire on September 30, 2006, unless renewed.

///

JURISDICTION

4. Accusation No. 2943 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 February 1, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2943 (also referred to as Case No. 2943) is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2943. Respondent also has carefully read, and understands the effects of this Stipulated Settlement of License and Order.

6. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

8. This settlement shall be for the purposes of this proceedings, any future proceedings before the parties and any other actions taken by or before any governmental agency responsible for licensing, and shall not be used for any civil or criminal proceedings.

CULPABILITY

9 Respondent admits he violated Business and Professions Code section 4301(f). More specifically, from August 26, 2004, through March 25, 2005, while working as a pharmacist at Longs Pharmacy, located in Madera, California, Respondent dishonestly and fraudulently appropriated tablets containing Phentermine.

Respondent agrees that cause exists for discipline of his Pharmacist License No. RPH 26997.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order disciplining his Pharmacist License No. RPH 26997.

CONTINGENCY

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

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

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

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 26997, issued to Respondent CHARLES ARTHUR SAWYER, is revoked. The revocation, however, is immediately stayed and Respondent is placed on a probation for five (5) years. Additionally, Respondent agrees to the following terms and conditions:

///

///

1. **Suspension.** Pharmacist License No. RPH 26997 issued to Respondent is suspended for a minimum of thirty (30) days. Additionally, prior to resuming practice, Respondent must show evidence that the PRP approves a return to practice as a pharmacist.

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

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

- An arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.
- A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- A conviction of any crime.
- Discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's pharmacist 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.

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

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

5. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's

///

compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

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

7. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case No. 2943 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in Case No. 2943. If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in Case No. 2943 in advance of the Respondent commencing work at each pharmacy.

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

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

9. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of Five Thousand Dollars ($5,000.00). Said costs shall be paid in quarterly installments over the first two years of probation, at the rate of $625.00 quarterly. The first installment shall be due within thirty days after the effective date of this settlement.

///

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

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

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

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

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

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

13. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer,

///

supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

14. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

15. **Supervised Practice.** As determined by the PRP, Respondent shall practice only under the supervision of a pharmacist not on probation with the Board. Respondent shall not practice until the supervisor is approved by the Board. The supervision shall be, as required by the Board and/or the PRP, either:

Continuous - 75% to 100% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the board in writing stating the supervisor has read the decision in Case No. 2943 and is familiar with the level of supervision as determined by the Board. If Respondent changes employment, respondent shall have his new supervisor, within 15 days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in Case No. 2943 and is familiar with the level of supervision as determined by the Board.

///

Within 10, days of leaving employment, respondent shall notify the board in writing.

16. **Tolling of Suspension.** If Respondent leaves California to reside or practice outside this state, for any period exceeding 10 days (including vacation), Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state - or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period.

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

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

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

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

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

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

20. **Random Drug Screening.** Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

///

///

ACCEPTANCE

I have carefully read the Stipulation, Decision and Order. I understand the stipulation and the effect it will have on my Pharmacist License Number RPH 26997, and have spoken to my attorney about the stipulation. I enter into this stipulation voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: July 28th, 2006

CHARLES ARTHUR SAWYER
Respondent

Dated: 7/28/06

BAKER, MANOCK & JENSEN

By: DONALD FISCHBACH, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulation is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: July 31, 2006.

BILL LOCKYER, Attorney General
of the State of California

JESSICA M. AMGWERD
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: **CHARLES ARTHUR SAWYER** 2320 N. Lodi Ave. Fresno, CA 93722 Pharmacist's License No. RPH 26997 Respondent.	Case No. 2943

DECISION AND ORDER

The attached Stipulated Settlement and 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 October 11, 2006.

It is so ORDERED September 11, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2943

BILL LOCKYER, Attorney General
of the State of California
JESSICA M. AMGWERD, State Bar No. 155757
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-7376
Facsimile: (916) 327-8643

Attorneys for Complainant

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

In the Matter of the Accusation Against: **CHARLES ARTHUR SAWYER** 2320 N. Lodi Ave. Fresno, CA 93722 Pharmacist's License No. RPH 26997 Respondent.	Case No. 2943 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about November 19, 1970, the Board issued Pharmacist's License Number RPH 26997 to Charles Arthur Sawyer ("Respondent"). Respondent's pharmacist's license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2006, unless renewed.

STATUTORY PROVISIONS

3. Business and Professions Code ("Bus. & Prof. Code") section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

4. Bus. & Prof. Code section 118, subdivision (b), states:

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

5. Bus. & Prof. Code section 4301 states, in pertinent part:

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

. . . .

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

. . . .

6. Bus. & Prof. Code section 4060 states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

7. Health and Saf. Code section 11350(a) states, the following:

§ 11350 Possession of designated controlled substances; punishment and fine

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

8. Bus. & Prof. Code section 125.3 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 AT ISSUE

9. "Phentermine" is a Schedule IV controlled substance as designated by Health & Saf. Code section 11057, subdivision (f)(4).

10. "Fastin" and "Adipex", are brand names for Phentermine, a Schedule IV controlled substance as designated by Health and Safety Code ("Health & Saf. Code") section 11057, subdivision (f)(4).

11. "Bontril", is a brand name for Phendimetrazine, a Schedule III controlled substance as designated by Health and Safety Code ("Health & Saf. Code") section 11056,

subdivision (b)(6).

STATUTORY VIOLATIONS

FIRST CAUSE FOR DISCIPLINE

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

12. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (f), for unprofessional conduct. The unprofessional conduct is based upon Respondent committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, from August 26, 2004 through March 25, 2005, by dishonestly and fraudulently appropriating at least 305 tablets containing Phentermine, from his employer, Longs Pharmacy, located in Madera, California.

SECOND CAUSE FOR DISCIPLINE

(Violations of State Laws Regulating Controlled Substances)

13. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct in that he violated a state law regulating controlled substances, namely Bus. & Prof. Code section 4060 and Health and Saf. Code section 11350(a). On multiple dates between August 26, 2004 and March 25, 2005, Respondent dishonestly or fraudulently appropriated, by direct stock theft, at least 305 tablets containing Phentermine, while on duty as a licensed pharmacist at Longs Pharmacies of Madera, California.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 26997, issued to Charles Arthur Sawyer;

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

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

DATED: 1/23/06

P. F. Harris

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