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Attorneys for Complainant

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

In the Matter of the Accusation Against: **RESIDENTIAL CARE HOME FOR YOU, INC. d.b.a. HOME CARE PHARMACY**, Luis Gaurano, President and Valerie Gaurano, Vice President and Owners 11711 Sterling Avenue, Suite E Riverside, CA 92503 Original Pharmacy Permit No. PHY 45192 **VALERIE GAURANO, Pharmacist-in Charge at HOME CARE PHARMACY** 2051 Kristi Ct. Fallbrook, CA 92028 Original Pharmacist License No. RPH 38852 **ANNE R. CABRERA, Pharmacist-in-Charge at HOME CARE PHARMACY** 31921 Old Hickory Road Trabuco Canyon, CA 92679 Original Pharmacist License No. RPH 40776 Respondents.	Case No. 2959 OAH No. L 2006070547 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER FOR ANNE CABRERA**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy (Board) the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation solely with respect to Anne R. Cabrera. It does not apply to Valerie Reyes Gaurano.

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 James M. Ledakis, Deputy Attorney General.

2. ANNE R. CABRERA (Respondent) is represented in this proceeding by attorney Donald Brown, whose address is 3848 Carson Street, Suite 206, Torrance, CA 90503.

3. On or about March 17, 1986, the Board issued Pharmacy Permit No. RPH 40776 to ANNE R. CABRERA. The Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 2959 and will expire on July 31, 2006, unless renewed.

JURISDICTION

4. Accusation No. 2959 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 15, 2006. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2959 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. 2959. 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.

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 2959, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacist License No. 40776.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest those charges.

10. Respondent agrees that her Pharmacy License is subject to discipline and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy License No. RPH 40776 issued to ANNE R. CABRERA is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **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 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.

2. **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.

3. **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.

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

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

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2959 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 their direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2959.

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 number 2959 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.

7. **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.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $2,000.00. Respondent shall complete all payments six months prior to completion of probation.

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

9. **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.

10. **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 canceled by operation of law or otherwise, upon renewal or re-application, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. **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 their 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 their 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.

12. **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.

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 40 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.

14. Respondent shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will be a violation of probation. <u>If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of their good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition.</u>

15. **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.

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

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Donald Brown. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 12/5/06

ANNE R. CABRERA (Respondent)

I have read and fully discussed with ANNE R. CABRERA the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: DEC - 5 2006

DONALD BROWN, Attorney for Respondent

12/05/2006 14:35 3107920691 BROWN & BROWN PAGE 03/03

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.

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DATED: DEC - 5 2006

DONALD BROWN, Attorney for Respondent

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DATED: _____; _____
ANNE R. CABRERA (Respondent)

I have read and fully discussed with ANNE R. CABRERA the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

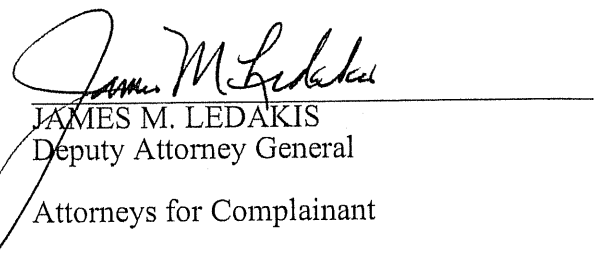
DATED: _____; _____
DONALD BROWN, Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: December 12, 2006

BILL LOCKYER, Attorney General
of the State of California



JAMES M. LEDAKIS
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005800399
Stipulation Anne C.wpd

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

In the Matter of the Accusation Against: **ANNE R. CABRERA, Pharmacist-in-Charge at HOME CARE PHARMACY** 31921 Old Hickory Road Trabuco Canyon, CA 92679 Original Pharmacist License No. RPH 40776 Respondent.	Case No. 2959 OAH No. L2006070547

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on February 21, 2007.

It is so ORDERED January 22, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2959

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **RESIDENTIAL CARE HOME FOR YOU, INC. d.b.a. HOME CARE PHARMACY**, Luis Gaurano, President and Valerie Gaurano, Vice President and Owners 11711 Sterling Avenue, Suite E Riverside, CA 92503 Original Pharmacy Permit No. PHY 45192 **VALERIE GAURANO, Pharmacist-in Charge at HOME CARE PHARMACY** 2051 Kristi Ct. FallBrook, CA 92028 Original Pharmacist License No. RPH 38852 **ANNE R. CABRERA, Pharmacist-in-Charge at HOME CARE PHARMACY** 31921 Old Hickory Road Trabuco Canyon, CA 92679 Original Pharmacist License No. RPH 40776 Respondents.	Case No. 2959 OAH No. **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about April 25, 2001, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 45192 to Residential Care Home For You, Inc., d.b.a. Home Care Pharmacy. The license will expire on April 1, 2006, unless renewed.

3. On or about August 23, 1984, the Board of Pharmacy issued Original Pharmacist license no. 38852 to Valerie Reyes Gaurano aka Valerie Anne Abanil Reyes. She was the pharmacist in charge at HOME CARE PHARMACY from March 26, 2004 through August 23, 2004. Her license will expire on April 1, 2006, unless renewed.

4. On or about March 17, 1986, the Board of Pharmacy issued Original Pharmacist license no. 40776 to Anne Roberto Cabrera. She was the pharmacist in charge at HOME CARE PHARMACY from August 23, 2004 to the present. Her license will expire on July 31, 2006, unless renewed.

JURISDICTION

5. This Accusation is brought before the California State 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.

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

7. Section 4070 (a) of the Code entitled, Oral or electronic data transmission prescription; reduction to writing states: Except as provided in Section 4019 and subdivision (b), an oral or an electronic data transmission prescription as defined in subdivision (c) of Section 4040 shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by,

or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber or the address of the patient or patients if the information is readily retrievable in the pharmacy.

8. Section 4081 of the Code states:

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

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

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

9. Section 4105 of the Code states:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written request, grant to a licensee a waiver of the requirements that the records described in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

10. 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:

. . . .

(c) Gross negligence.

. . . .

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

. . . .

(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.

. . . .

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

11. Section 4333 of the Code states, in pertinent part, that all prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

12. Section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

. . . .

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

. . . .

13. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation 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.

14. California Code of Regulations, title 16, section 1717, states:

. . . .

(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription is then dispensed by another pharmacist, the dispensing

pharmacist shall also initial the prescription to identify him or herself.

All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing.

Chart orders as defined in Section 4019 of the Business and Professions Code are not subject to the provisions of this subsection.

. . . .

15. California Code of Regulations section 1715, entitled, Self-Assessment of a Pharmacy by the Pharmacist-in-Charge states:

(a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or section 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

(b) In addition to the self-assessment required in subdivision (a) of this section, the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

(1) A new pharmacy permit has been issued, or

(2) There is a change in the pharmacist-in-charge, and he or she becomes the new pharmacist-in-charge of a pharmacy.

(c) The components of this assessment shall be on Form 17M-13 (Rev. 1/05) entitled "Community Pharmacy & Hospital Outpatient Pharmacy Self-Assessment" or Form 17M-14 (Rev. 1/05) entitled "Hospital Pharmacy Self-Assessment" which are hereby incorporated by reference to evaluate compliance with federal and state laws and regulations.

(d) Each self-assessment shall be kept on file in the pharmacy for three years after it is performed.

16. California Code of Regulations section 1793.1 states:.

Only a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist, may:

(a) Receive a new prescription order orally from a prescriber or other person authorized by law.

17. Title 21, Code of Federal Regulations section 1304.11, (a) and c), states in part as follows:

(a) General requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be ``on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may

be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

. . . .

(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

FACTS:

18. On July 23, 2004, the Board filed an accusation against pharmacist Cesar Cabrera resulting from his conviction for possession of dangerous drugs. Following Cesar Cabrera's conviction and subsequent stipulated settlement, the Board placed Cabrera on five years probation, ordered him to serve 90 days suspension and to enter the Pharmacist's Recovery Program. Cabrera's suspension was to be served from March 5, 2005 through June 4, 2005.

19. On March 8, 2005, Cabrera met with the Inspector Knight as part of a probation conference to go over the conditions of his probation. Cabrera acknowledged that he was suspended for 90 days, that he could not be employed where a relative was employed and that he had to complete the paper work to get prior approval for a work site monitor in order to work at a pharmacy. Cabrera was employed at Home Care Pharmacy where his wife, Anne R. Cabrera, was the pharmacist in charge. Cabrera signed a declaration that he understood the terms of his probation and suspension.

20. On May 25, 2005, Maximus representative, Don Fensterman, the manager for the Pharmacists Recovery Program (PRP), met with Cabrera and discussed the terms of the pharmacists recovery program treatment contract with him. Thereafter, on June 10, 2005, Cabrera signed the contract and agreed to be bound by the terms and conditions.

21. The following are some of the pertinent conditions of PRP recovery program that Cabrera contractually agreed to:

A. Not work in a pharmacy where a family member is employed or where a family member has a beneficial interest;
B. Be supervised 75% of each work week by another pharmacist;
C. Not supervise others, act as a pharmacist in charge, pharmacy manager, or as a preceptor to interns or new employees;
D. Understand that he could be terminated from the program for failure to comply with the contract;
E. Agree to abstain from the use of alcohol and all other mind altering

drugs, except as prescribed by a physician;

F. Agree to report all relapses to Maximus immediately and to cease practice upon relapse.

22. On July 6, 2005, Maximus notified the Board that Cabrera has relapsed and verbally suspended Cabrera from practicing pharmacy and told him to leave Home Care Pharmacy, where he was working. Maximus advised Cabrera that he had not completed the work site monitor paper work, that he did not have a work site monitor in place, and that he was working at Home Care Pharmacy where his wife, Anne R. Cabrera, was the pharmacist in charge, and hence, he violated the terms of his recovery program. Maximus notified Cabrera of the aforementioned violations in writing on July 6, 2005. Maximus ordered Cabrera to cease practice and to enter into a residential inpatient chemical dependency treatment program on or before July 13, 2005, and to complete a 30 day treatment.

23. On July 12, 2005, the Board conducted an inspection of the Home Care Pharmacy and discovered that Cabrera was the only pharmacist on duty. There were two pharmacy technicians, a clerk, and a manager, Ms. Marian Rano, who was in her office next to the pharmacy.

24. The Board inspector noted violations at Home Care Pharmacy, that were the direct responsibility of the pharmacist in charge, in this case, Anne R. Cabrera. Home Care Pharmacy pharmacist in charge, Anne R. Cabrera, failed to maintain a DEA inventory which required all schedules to be faxed to the Board. The pharmacist in charge allowed a suspended pharmacist to possess a key to the pharmacy. The Pharmacy/pharmacist in charge failed to provide a current self assessment and fax it to the Board. The pharmacy/pharmacist in charge allowed Mr. Cabrera to work at Home Care Pharmacy and failed to include the initials of the receiving pharmacist on all orally transmitted prescriptions. The Pharmacy/pharmacist in charge failed to fax the required corrections to the Board as requested.

25. On July 12, 2005, the pharmacy inspector confronted Mr. Cabrera who admitted that he knew that he was not supposed to be working because of the Maximus suspension. Additional inspection of the prescriptions verified that Mr. Cabrera had been filling and dispensing prescriptions from at least July 8, 2005 through July 12, 2005, as evidenced by

his initials "CC" on the prescriptions. Mr. Cabrera admitted to having a key to the pharmacy. The inspector told Mr. Cabrera and the manager, Marian Rano, and a man representing himself as the pending owner of the pharmacy, Richard Lacson, that Mr. Cabrera could not have a key to the pharmacy and that he could not work as a pharmacist at Home Care Pharmacy while on suspension. The inspector admonished Mr. Cabrera to stop working at the pharmacy.

26. On July 13, 2005, Maximus, notified the Board that Mr. Cabrera had been terminated from the PRP for the following reasons:

A. Tested positive for alcohol on 6-27-05 and again on 7-05-05;
B. Returned to work without a work site monitor agreement in place;
C. Returned to work where a relative (wife, Anne) also works;
D. Failed to enter inpatient chemical dependency treatment;
E. Returned to work after relapse;
F. Returned to work after suspension by Maximus;
G. Non compliance with his PRP contact.

27. On July 13, 2005, Maximus notified Mr. Cabrera in writing that he was terminated from the pharmacist recovery program. On July 14, 2005, the Board sent Mr. Cabrera a certified letter informing him that his license was suspended due to his termination from the PRP, as per his stipulated settlement and the decision of the Board. The letter admonished Mr. Cabrera that he was not allowed to enter or work at any pharmacy or have access to or control of controlled substances. On July 20, 2005, Mr. Cabrera signed for receipt of the Board's certified letter placing him on disciplinary suspension.

28. On October 6, 2005, the Board conducted a follow up inspection at Home Care Pharmacy. Again, Mr. Cabrera was the only pharmacist on duty. There was one technician and a biller in the front office. Again, Mr. Cabrera admitted to working but had no excuse for violating his suspension imposed by the both the Board and Maximus. Mr. Cabrera again had a key to the pharmacy which he admitted to taking. He also admitted to continuing working at Home Care Pharmacy after the Board's July 12, 2005, inspection in defiance of his suspension.

29. On October 6, 2005, the Board's inspection confirmed that none of the prior July 12, 2005 corrections had been completed. For example, there was no completed DEA inventory, no quality assurance and no current pharmacy self assessment on the premises.

30. The inspector asked Mr. Cabrera to get his wife (pharmacist in charge) on the telephone for the inspector to speak with. Mrs. Cabrera denied receiving a copy of the Board's prior July 12, 2005 correction notice. She admitted to knowing that her husband's license was suspended. The inspector admonished Mrs. Cabrera that her husband was suspended and could not work and that he should not have a key to the pharmacy where she is the pharmacist in charge. The inspector reminded Mrs. Cabrera that as the pharmacist in charge, she was responsible for compliance with all the rules and regulations pertaining to pharmacy at Home Care Pharmacy. The inspector requested that Anne R. Cabrera fax a completed copy of the corrections to her as soon as possible. As of November 4, 2005, Mrs. Cabrera has not faxed the corrections as requested.

31. Following the telephone call to Mrs. Cabrera, the inspector continued to look through prescription evidence. The inspector found and documented prescriptions filled by Mr. Cabrera during the time of the Board imposed suspension on his license, that is, March 5, 2005 through June 4, 2005. Mr. Cabrera initially denied working during the 90 suspension but later admitted to the inspector that he had worked during the suspension period. The prescription dates filled by Mr. Cabrera, "CC", were from January 28, 2005 through October 6, 2005 which confirm that he worked as a pharmacist after suspension from the PRP. Mr. Cabrera admitted to the inspector that he allowed technicians to receive and transcribe prescriptions which is against the Board regulations. Mr. Cabrera told the inspector that he was unaware of that regulation.

32. The inspector asked Mr. Cabrera for Home Care Pharmacy's recent drug purchases. Mr. Cabrera stated that none of the invoices for the purchases were at the pharmacy as required by regulations but were at the house of a purported new owner, Richard Lacson. The inspector reminded Mr. Cabrera that all acquisition and disposition records had to be kept in the pharmacy, accessible to the Board.

33. On October 25, 2005, written letters were sent by the Board to the owners and the pharmacist in charge notifying them of the violations found during the October inspection.

I. Violations by Residential Home Care For You, Inc., d.b.a. Home Care Pharmacy, its owners, Luis Gaurano, and Valerie Gaurano license no. RPH 38852 and Pharmacist in Charge, hereinafter Home Care Pharmacy.

FIRST CAUSE FOR DISCIPLINE

(No DEA Inventory)

34. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (j), (o), and Title 21, Code of Federal Regulations section 1304.11, (a) and c) for failing to have a Biannual DEA Inventory at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

SECOND CAUSE FOR DISCIPLINE

(No Pharmacy Self Assessment)

35. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (j), (o) and California Code of Regulations section 1715 for failing to have a current pharmacy self assessment on the premises at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

THIRD CAUSE FOR DISCIPLINE

(Pharmacists Initials Readily Retrievable)

36. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (j), (o) and California Code of Regulations section 1717 (c) for failing to have the initials of the pharmacist filling the prescriptions readily available at Home Care Pharmacy upon request by the Board as set forth in paragraphs 18 through 33 above.

FOURTH CAUSE FOR DISCIPLINE

(Failure to have Records on Licensed Premises)

37. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (j), (o), 4081 (a), 4105 and 4333 for failing to have all records of acquisition and disposition of dangerous drugs on the premises of Home Care Pharmacy upon request by the Board as set forth in paragraphs 18 through 33 above.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Have Quality Assurance Program Records)

38. Respondent Home Care Pharmacy is subject to disciplinary action under section 4125 and California Code of Regulations section 1715 for failing to have the quality assurance records at Home Care Pharmacy available upon request by the Board as set forth in paragraphs 18 through 33 above.

SIXTH CAUSE FOR DISCIPLINE

(Non-Pharmacists Received and Transcribed Prescriptions)

39. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (j), (o), 4070 and California Code of Regulations section 1793.1 (a) and 1717 (c) for allowing non-pharmacists to receive and transcribe orally transmitted prescriptions at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

SEVENTH CAUSE FOR DISCIPLINE

(Allowing Suspended Pharmacist to Work as Pharmacist)

40. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (c), (f), (o), and (q) for allowing pharmacist Cesar Cabrera to work at Home Care Pharmacy while on suspension, without regard to public health or safety as set forth in paragraphs 18 through 33 above.

EIGHTH CAUSE FOR DISCIPLINE

(Allowing Non-Pharmacist to Receive Drug Orders)

41. Respondent Home Care Pharmacy is subject to disciplinary action under section 4301 (j), (o), and 4059.5 (a) for allowing non-pharmacists, specifically pharmacy technicians to receive drug wholesale orders at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

II. Violations by Pharmacist-in-Charge, Anne R. Cabrera

NINTH CAUSE FOR DISCIPLINE

(No DEA Inventory)

42. Respondent Pharmacist-in-Charge (PIC), Anne R. Cabrera, is subject to

disciplinary action under section 4301 (j), (o), and Title 21, Code of Federal Regulations section 1304.11, (a) and c) for failing to have a Biannual DEA Inventory at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

TENTH CAUSE FOR DISCIPLINE

(No Pharmacy Self Assessment)

43. Respondent, (PIC) Anne R. Cabrera, is subject to disciplinary action under section 4301 (j), (o) and California Code of Regulations section 1715 for failing to have a current pharmacy self assessment on the premises at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

ELEVENTH CAUSE FOR DISCIPLINE

(Pharmacists Initials Readily Retrievable)

44. Respondent, PIC Anne R. Cabrera, is subject to disciplinary action under section 4301 (j), (o) and California Code of Regulations section 1717 (c) for failing to have the initials of the pharmacist filling the prescriptions readily available at Home Care Pharmacy upon request by the Board as set forth in paragraphs 18 through 33 above.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to have Records on Licensed Premises)

45. Respondent, PIC, Anne R. Cabrera, is subject to disciplinary action under section 4301 (j), (o), 4081 (a), 4105 and 4333 for failing to have all records of acquisition and disposition of dangerous drugs on the premises of Home Care Pharmacy upon request by the Board as set forth in paragraphs 18 through 33 above.

THIRTEENTH CAUSE FOR DISCIPLINE

(Failure to Have Quality Assurance Program Records)

46. Respondent, PIC, Anne R. Cabrera, is subject to disciplinary action under section 4125 and California Code of Regulations section 1715 for failing to have the quality assurance records at Home Care Pharmacy available upon request by the Board as set forth in paragraphs 18 through 33 above.

FOURTEENTH CAUSE FOR DISCIPLINE

(Allowing Non-Pharmacist to Receive Drug Orders)

47. Respondent, PIC, Anne R. Cabrera is subject to disciplinary action under section 4301 (j), (o), and 4059.5 (a) for allowing non-pharmacists, specifically pharmacy technicians to receive drug wholesale orders at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

FIFTEENTH CAUSE FOR DISCIPLINE

(Non-Pharmacists Received and Transcribed Prescriptions)

48. Respondent, PIC, Anne R. Cabrera is subject to disciplinary action under section 4301 (j), (o), 4059.5, 4070 (a) and California Code of Regulations section 1793.1 (a) and 1717 (c) for allowing non-pharmacists to receive and transcribe orally transmitted prescriptions at Home Care Pharmacy as set forth in paragraphs 18 through 33 above.

SIXTEENTH CAUSE FOR DISCIPLINE

(Allowing Suspended Pharmacist to Work as Pharmacist)

49. Respondent, PIC, Anne R. Cabrera is subject to disciplinary action under section 4301 (c), (f), (o), and (q) for allowing pharmacist Cesar Cabrera to work at Home Care Pharmacy while on suspension, without regard to public health or safety as set forth in paragraphs 18 through 33 above.

PRAYER

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

1. Revoking or suspending Original Pharmacist License Number RPH 38852 issued to VALERIE REYES GAURANO aka VALERIE ANNE ABANIL REYE, owner and vice president of Residential Care Home For You, Inc., d.b.a. Home Care Pharmacy.

2. Revoking or suspending Original Pharmacy Permit Number PHY 45192, issued to Residential Care Home For You, Inc., d.b.a. Home Care Pharmacy;

3. Revoking or suspending Original Pharmacist License Number RPH 40776 issued to Anne Roberto Cabrera;

4. Ordering Anne Roberto Cabrera and or VALERIE GAURANO 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;

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

DATED: 4/3/06

P. F. Harris

Patricia F. Harris,
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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ACCUSATION 4.wpd