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

In the Matter of the Petition for Reinstatement of Revoked License of: LEON FREIS, Petitioner.	Case No. 2538 OAH No. N2006100571

DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, presided at this matter in Burlingame, California, on October 26, 2006. A quorum of the Pharmacy Board was present. The members present were William Powers, Board President, Ken Schell, Vice President, Stan Goldenberg, Tim Doze, Ruth Conroy, Treasurer, Susan Ravnan, Henry Hough, Robert Swart and Clarence Hiura.

Joshua Room, Deputy Attorney General, represented the Office of the Attorney General, State of California.

Petitioner Leon Freis was present and represented himself.

The matter was submitted on October 26, 2006.

FACTUAL FINDINGS

1. On July 14, 1972, the Board of Pharmacy issued original pharmacist license number RPH 28118 to Leon Freis (petitioner). Petitioner has also been licensed in Oregon since March 14, 1973. His Oregon license was suspended on October 27, 1997, and revoked by Consent Order effective June 30, 1999, based on admitted misconduct of 41 instances of distributing controlled substances to his son, daughter, and a close family friend without proper prescriber authorizations. On April 3, 2003, petitioner's California license was revoked by the Board based on the Oregon decision. Petitioner's Oregon license was reinstated on July 22, 2005, on two years' probation on terms and conditions that include compliance with pharmacy laws, prohibit registering as a preceptor or working as a Pharmacist in Charge, and requiring notice of the Oregon action to all employers. His Oregon probation is due to terminate July 22, 2007.

2. On October 3, 2006, petitioner submitted a Petition for Reinstatement. He also submitted a three page counseling report dated April 20, 2005, six pages documenting volunteer work from 2002 to 2005, certification of 112 hours of CE taken from 2001 to 2006, three letters of recommendation from Board licensees, and nine letters of recommendation from private citizens including six medical doctors.

3. Petitioner testified at the petition hearing. He loves being a pharmacist. He demonstrated sincere remorse for his past actions and a complete understanding of why he failed to comply with the law in the past. Petitioner is extremely unlikely to repeat his unlawful conduct in the future.

4. Petitioner has not paid cost recovery to the Board. He owes $3,525.75 in cost recovery. That amount is waived by the Board.

5. Petitioner has demonstrated sufficient rehabilitation to grant reinstatement of his pharmacist license on probation. The probation shall run concurrently with the Oregon probation and have the same terms and condition as the Oregon probation. The California probation will terminate on July 22, 2007, provided the Oregon probation terminates on that date.

LEGAL CONCLUSIONS

1. Cause exits pursuant to Government Code section 11522 (Reinstatement of license or reduction of penalty) to grant the petition for reinstatement pursuant to the Findings above upon terms and conditions as set forth in the Order, below.

ORDER

The petition of Leon Freis, RPH 28118, for reinstatement of revoked license is hereby granted upon the following terms and conditions. Petitioner's license shall be issued and immediately revoked, the order or revocation being stayed and respondent is placed on probation until July 22, 2007, upon the following terms and conditions:

1. Obey All Laws – Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy. Petitioner shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

   a. 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

   b. a plea of guilty or nolo contendere in any state of federal criminal proceeding to any criminal complaint, information or indictment

c. a conviction of any crime

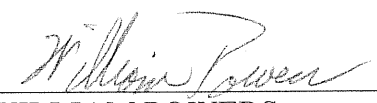
d. discipline, citation, or other administrative action filed by any state and federal agency which involves petitioner's license or which is related to the practice of pharmacy or manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

2. No Preceptorships, Supervision of Interns, Being a Pharmacist-in-Charge (PIC), or Serving as a Consultant – Petitioner 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 other wise specified in this order. The licensee may not register with the Board to be a preceptor.

3. Notice to Employers - All present and prospective pharmacy related employer and any pharmacists-in-charge must be furnished with a copy of the Order revoking petitioner's California license in Case number 2538 within 30 days of the effective date of this decision and have the PIC and management acknowledge to the Board, - in writing, that the PIC and management have received a copy of the Board's order.

4. Upon successful completion of probation, petitioner's license will be fully restored.

DATED: December 11, 2006



WILLIAM POWERS
Board President

BILL LOCKYER, Attorney General
of the State of California
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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: LEON FREIS 38215 Rita Street Palmdale, CA 93550 Original Pharmacist License No. RPH 28118 Respondent.	Case No. 2538 OAH No. L2002100218 **STIPULATED SURRENDER OF LICENSE AND ORDER**

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 Julie A. Cabos, Deputy Attorney General.

2. Leon Freis (Respondent) is represented in this proceeding by attorney Donald B. Brown, Esq., whose address is Law Offices of Donald B. Brown, 3848 Carson Street, Ste. 206, Torrance, CA 90503.

3. On or about July 14, 1972, the Board of Pharmacy issued Original Pharmacist License No. RPH 28118 to Leon Freis. The license is due to expire June 30, 2003.

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JURISDICTION

4. Accusation No. 2538 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 22, 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2538 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. 2538. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender 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.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2538, except paragraphs 10b through 10e, and agrees that cause exists for discipline and hereby surrenders his Original Pharmacist License No. RPH 28118 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Original Pharmacist License without further process.

CONTINGENCY

10. 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 or his counsel. 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.

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

12. 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 Original Pharmacist License No. RPH 28118, issued to Respondent Leon Freis is surrendered and accepted by the Board of Pharmacy.

13. The surrender of Respondent's Original Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

14. Respondent shall lose all rights and privileges as a pharmacist in California as of the effective date of the Board's Decision and Order.

15. Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order.

16. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2538, except paragraphs 10b through 10e, shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

17. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $3,525.75 prior to issuance of a new or reinstated license.

ACCEPTANCE

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

DATED: _____.

_____
LEON FREIS
Respondent

I have read and fully discussed with Respondent Leon Freis the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____.

_____
DONALD B. BROWN, ESQ.
Attorney for Respondent

16. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2538, except paragraphs 10b through 10e, shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

17. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $3,525.75 prior to issuance of a new or reinstated license.

ACCEPTANCE

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

DATED: APR 3 2003

LEON FREIS
Respondent

I have read and fully discussed with Respondent Leon Freis the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: APR 3 2003

DONALD B. BROWN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: April 7, 2003

BILL LOCKYER, Attorney General
of the State of California

JULIE A. CABOS
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03583110-LA2002AD0999
version 4/3/03 3:20 p.m.

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

In the Matter of the Accusation Against: LEON FREIS 38215 Rita Street Palmdale, CA 93550 Original Pharmacist License No. RPH 28118 Respondent.	Case No. 2538 OAH No. L2002100218

DECISION AND ORDER

The attached Stipulated Surrender of License 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 June 4, 2003.

It is so ORDERED May 5, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
JOHN D. JONES
Board President

Exhibit A

Accusation No. 2538

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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: LEON FREIS 38215 Rita Street Palmdale, CA 93550 Original Pharmacist License No. RPH 28118 Respondent.	Case No. 2538 **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, Department of Consumer Affairs.

2. On or about July 14, 1972, the Board of Pharmacy issued Original Pharmacist License Number RPH 28118 to Leon Freis (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2003, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. 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:

. . . .

"(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.

. . . .

"(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter."

6. Section 141(a) of the Code provides, in pertinent part, that for any licensee holding a license issued by a board under jurisdiction of the department, a disciplinary action taken by another state for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state shall be conclusive evidence of the events related therein.

7. Section 125.3 of the Code provides, 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.

8. 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.

9. California Code of Regulations, title 16, section 1770, provides that for the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

FIRST CAUSE OF DISCIPLINE

(Unprofessional Conduct - Disciplinary Action by Another State)

10. Respondent has subjected his license to discipline pursuant to section 4300 of the Business and Professions Code (Code), for unprofessional conduct as defined in sections 4301(n) and 141(a) of the Code, in that Respondent's pharmacist's license was disciplined by the Board of Pharmacy of the State of Oregon ("Oregon Board of Pharmacy"). On October 27, 1997, in a case entitled, "In the Matter of the Pharmacist License of Leon Freis, R.Ph.," Case No. 97-0070 ("the Oregon case"), the Oregon Board of Pharmacy issued an Order of Immediate License Suspension and Notice of Rights, as well as a Notice of Proposed License Revocation, immediately suspending Respondent's pharmacist license pending further order of the Oregon Board of Pharmacy. On June 15, 1999, a Consent Order was issued in the Oregon case. Pursuant to the Consent Order: (1) Respondent admitted there was sufficient evidence to support the Oregon Board of Pharmacy's finding for disciplinary action regarding the allegation that, on forty-one occasions, he distributed prescription drugs (including controlled substances) without authorization; (2) Respondent agreed not to apply for renewal of his pharmacist license, which expired on June 30, 1999, for a period of five years (not prior to July 1, 2004); and (3) Respondent agreed that when he applies for license renewal, the request shall be considered a request for reinstatement, with Respondent bearing the burden of proof that his license should be

renewed. (Certified copies of the Oregon Board of Pharmacy's Order of Immediate License Suspension and Notice of Rights, Notice of Proposed License Revocation, and Consent Order are attached to this Accusation as exhibit A, and are incorporated herein by reference.) The circumstances surrounding the disciplinary action are as follows:

a. Between November 1994 and July 1997, while practicing as a pharmacist at the Lebanon Community Hospital, Respondent on forty-one occasions without authorization from a practitioner distributed prescription drugs, including controlled substances, to his son, to his daughter, and to a family friend.

b. Between November 1994 and July 1997, while practicing as a pharmacist at the Lebanon Community Hospital, Respondent on forty-one occasions stole quantities of prescription drugs, including controlled substances, from his employer and delivered them to his son, to his daughter and to a family friend.

c. Between November 1994 and July 1997, while practicing as a pharmacist at the Lebanon Community Hospital, Respondent on forty-one occasions falsified pharmacy records when he stole quantities of prescription drugs, including controlled substances, from his employer and delivered them to his son, to his daughter, and to a family friend.

d. Between November 1994 and July 1997, while practicing as a pharmacist at the Lebanon Community Hospital, Respondent stole approximately $300 in cash and some computer equipment from his employer, Lebanon Community Hospital.

e. In July or August of 1997, Respondent destroyed computer records of his employer Lebanon Community Hospital in an attempt to cover up his illegal conduct.

SECOND CAUSE OF DISCIPLINE

(Unprofessional Conduct - Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)

11. Respondent has subjected his license to discipline pursuant to section 4300 of the Code for unprofessional conduct as defined in section 4301(f) of the Code, and

California Code of Regulations, title 16, section 1770, in that Respondent stole and improperly distributed prescription drugs (including controlled substances), stole computer equipment and approximately $300 in cash from his employer, Lebanon Community Hospital, and destroyed computer records of his employer in an attempt to cover up his illegal conduct, as described in detail above in paragraphs 10(a) through 10(e).

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:

A. Revoking or suspending Original Pharmacist License Number RPH 28118, issued to Leon Freis;

B. Ordering Leon Freis 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;

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

DATE: July 31, 2002

P. F. Harris

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

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prepared by cak