

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

In the Matter of the Petition to Revoke  
Probation Against:<sup>1</sup>

**LAURA FUJISAWA**  
**aka LAURA KEIKO FUJISAWA**  
Reedley, CA 92654

Pharmacist License No. RPH 37589

Respondent.

Case No. 3095

OAH No. 2008020215

**DECISION AFTER NONADOPTION**

This matter was heard by Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 23 and 24, 2008, in Sacramento, California.

Kent D. Harris, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer of the Board of Pharmacy (Board).

Laura Fujisawa, aka Laura Keiko Fujisawa, (respondent) was present and was represented by Julie E. McComb, Attorney at Law, and Timothy J. Aspinwall, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted on July 24, 2008.

The proposed decision of the Administrative Law Judge was submitted to the Board on August 20, 2008. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on November 10, 2008 issued an Order of Non-

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<sup>1</sup> This matter was originally designated as an "Accusation and Petition to Revoke Probation." At hearing, complainant stipulated that this matter did not constitute an accusation and that she was not seeking costs under Business and Professions Code section 125.3.

adoption. Subsequently, on March 20, 2009, the Board issued an Order Fixing Date for Submission of Written Argument. In addition to any other arguments the parties wished to submit, the Board specifically requested written argument on the following issues:

- (1) argument regarding the legal standard for admitting scientific evidence in California and its applicability to administrative proceedings and this case; and,
- (2) whether the complainant must prove not only that a violation of a term or condition occurred but additionally whether respondent intended to violate the term or condition. In particular, whether complainant bears the burden of proving: 1) that respondent tested positive for alcohol consumption, and 2) that she intended to ingest the alcohol.

On March 25, 2009, the Board issued an Amended Order Fixing Date for Submission of Written Argument, extending the date by which written argument must be filed with the Board to April 24, 2009. Written argument having been received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board of Pharmacy pursuant to Section 11517 of the Government Code hereby makes the following decision and order:

### ISSUES

The issues for determination in this matter are:

1. Should respondent's probation be terminated because she tested positive on six occasions for ethyl glucuronide (EtG), a metabolite of alcohol?
2. Should respondent's probation be terminated because she failed to successfully complete the Pharmacists Recovery Program (PRP), a condition of her probation?

### FACTUAL FINDINGS

1. On March 29, 1983, the Board issued Pharmacist License RPH No. 37589 to respondent. Respondent's license was in effect at all times relevant, and will expire on December 31, 2008, unless renewed. Respondent's license is currently suspended.
2. On April 7, 2004, the Board filed Accusation No. 2726 (Accusation) against respondent. The Accusation alleged that, between 2002 and May 2003, respondent stole Tylenol with Codeine and Ambien from the Kaiser at which she worked, and that she administered to herself, including while at work as a pharmacist, Tylenol with Codeine, Ambien and Cocaine, without valid prescriptions.

3. On October 21, 2004, respondent signed a Stipulated Settlement and Disciplinary Order (Stipulation). On December 14, 2004, the Board adopted the Stipulation as its Decision and Order, effective January 17, 2005. In the Stipulation, respondent admitted the truth of all the allegations in the Accusation. Pursuant to the Stipulation, respondent's license was revoked, but the revocation was stayed and respondent's license was suspended subject to various terms and conditions. One of the terms and conditions was that respondent's license would remain suspended until such time as she successfully completed the PRP.

4. Respondent filed a petition with the Board seeking a reduction in the penalty set forth in the Stipulation so that she could work as a pharmacist in an access position. On March 21, 2006, the Board adopted a Decision and Order (Modification Decision), effective March 27, 2006, which modified the terms of the Stipulation. Pursuant to the Modification Decision, respondent was placed on probation for five years, subject to various terms and conditions, including the following:

***Pharmacists Recovery Program***

Petitioner is currently enrolled in the PRP, and 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. Petitioner shall successfully participate in and complete her current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until petitioner successfully completes her treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the board.

Petitioner 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.

***Random Drug Screening***

Petitioner, at her 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 petitioner 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 petitioner. Petitioner may not resume the practice of pharmacy until notified by the board in writing.

### ***Abstain from Drugs and Alcohol Use***

Petitioner 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, petitioner shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the petitioner. Petitioner shall ensure that she is not in the presence of or in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs.

### ***Violation of Probation***

If petitioner violates probation in any respect, the board, after giving petitioner 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 petitioner 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 petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, 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.

### ***Respondent's Urine Samples***

5. The Board contracts with Maximus, Inc. to administer the PRP. On March 4, 2005, respondent entered into an Informed Consent with Maximus.<sup>2</sup> Pursuant to the Informed Consent, respondent agreed that she met all criteria for admission to the diversion program and that she would cooperate with all elements of an individualized rehabilitation plan, including random body fluid screenings and monitoring by Maximus. The Informed Consent stated that respondent's participation in the program could be terminated for, among other things, "[f]ailure to comply with the rehabilitation program."

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<sup>2</sup> The Informed Consent that respondent signed states that she was enrolling in the diversion program for registered nurses. There was no explanation why respondent signed that form and not a form for pharmacists.

6. On March 4, 2005, respondent also signed a Pre-PRC Entry Agreement. Pursuant to this agreement, respondent agreed to: (1) attend 12-step meetings seven days a week with either Narcotics Anonymous (NA) or Alcoholics Anonymous (AA), and complete 90 meetings in 90 days; (2) find a 12-step sponsor with at least five years of sobriety; (3) attend a health support group twice a week with Jim Driscoll; (4) call on a daily basis when she was required to drug test; (5) attend an initial assessment; and (6) continue to attend any psychiatric or medical care or counseling she had in progress.

7. Maximus utilizes Compass Vision, Inc. to oversee the processing and review of the laboratory tests of the body fluid samples provided by PRP participants. Compass Vision uses an independent laboratory, National Medical Services (NMS), to test those samples. NMS determines at what minimum "cutoff" level a PRP participants' drug test results are reported as "positive" for EtG, dilute or "out-of-range". (RT July 23, 2008 95:8-22.) By letter dated May 24, 2005, Don Fensterman, LCSW, who was then a Clinical Case Manager for Maximus, notified respondent that respondent's urine sample tested on May 17, 2005, was returned by Compass Vision as a dilute test result because the creatinine level was less than 20 mg/dL and the specific gravity was less than 1.003. As set forth in Mr. Fensterman's letter, "dilute test results may suggest attempts to provide invalid urine samples." The letter informed respondent that her dilute test result raised a concern as to whether she was engaging in behavior that was not compliant with the PRP. Mr. Fensterman asked respondent to fax to him any documentation she might have to support that she was remaining compliant, and to contact him if she had any questions.

8. By letter dated August 22, 2005, Mr. Fensterman notified respondent that her urine sample tested on August 13, 2005, tested out-of-range, because the creatinine level was below 20 mg/dL. Mr. Fensterman noted that the August 13, 2005 out-of-range test was the second time that respondent tested out-of-range. According to Mr. Fensterman's letter, "out-of-range levels may suggest attempts to provide invalid urine samples." The letter informed respondent that her out-of-range test results raised a concern as to whether respondent was engaging in behavior that was not compliant with the PRP. Mr. Fensterman asked respondent to fax to him any documentation she might have to support that she was remaining compliant, and to contact him if she had any questions.

9. By letter dated August 29, 2005, Mr. Fensterman notified respondent that her urine samples tested on August 18 and 23, 2005, tested out-of-range, because the creatinine level was below 20 mg/dL. As a result of respondent's out-of-range test results, respondent was ordered to undergo kidney function testing by a nephrologist. According to Mr. Fensterman's letter, this medical evaluation would help rule out medical issues as the cause of respondent's out-of-range testing. Mr. Fensterman's letter also stated that respondent's "pattern of test results suggests that the problem of testing Out-Of-Range is within your behavioral control."

10. By letter dated September 8, 2005, Mr. Fensterman notified respondent that her urine sample tested on August 29, 2005, tested out-of-range, because the creatinine

level was below 20 mg/dL. Respondent was again ordered to undergo kidney function testing by a nephrologist.

11. On October 14, 2005, Robert A. Wageneck, D.O., with United Health Centers of the San Joaquin Valley, Inc., issued a letter that stated that: "I recently evaluated [respondent] for Diabetes Insipidus at the request of her treatment program. Her urine and blood testing indicate normal kidney function. She does not have Diabetes insipidus or any other abnormalities causing dilute urine."<sup>3</sup>

12. On July 7, 2006, respondent's urine sample test was returned as "invalid" because Compass Vision, for reasons not established by the evidence, was not able to test for alcohol metabolites in respondent's urine. As a result of respondent's invalid test, two additional screenings were added to respondent's testing schedule.

13. NMS and Compass Vision report any EtG results over 250 nanograms per milliliter (ng/mL) as positive. (RT July 23, 2008 95:8-25; 96:1.) On September 26, 2006, respondent's urine sample tested positive for EtG, with an EtG level of 1800 ng/mL. Respondent's Pharmacist Review Committee (PRC), consisting of Joan Coyne, a Supervising Inspector employed by the Board; Anne Sodergren, a Staff Manager employed by the Board; and Nancy Kessler, R.N., a Case Manager employed by Maximus, determined that this positive test result indicated that respondent had relapsed. As a result, respondent was required to enter into a Chemical Dependency Intensive Outpatient Program within two weeks, and to write an essay about the relapse incorporating Step 5 of the 12-step program.<sup>4</sup> The PRC prohibited respondent from returning to work in an access position, and set respondent's new sobriety date as October 5, 2006.

14. On October 11, 2006, respondent's urine sample tested positive for EtG, with an EtG level of 970 ng/mL.

15. On October 16, 2006, respondent's urine sample tested positive for EtG, with an EtG level of 550 ng/mL.

16. Martha E. Brown, M.D., was retained as a Medical Review Officer (MRO) through Compass Vision to conduct a medical review of respondent's positive EtG tests. Dr. Brown's review was "inconclusive."

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<sup>3</sup> Dr. Wageneck also submitted a September 26, 2005 Progress Note with his October 14, 2005 letter. In the Assessment section of his note, Dr. Wageneck wrote: "Normal kidney function signifying this is likely not her urine that was given for the specimen. It is likely not even urine." Dr. Wageneck's note was admitted as administrative hearsay under Government Code section 11513, subdivision (d). Dr. Wageneck did not testify to explain his note. The statement in his note was not sufficient in itself to support a finding against respondent.

<sup>4</sup> Step 5 requires a participant to admit the exact nature of his or her wrongs.

17. On October 26, 2006, respondent wrote to Maximus in response to her positive EtG tests and the requirement that she write an essay about her relapse. In her letter, respondent stated that she was "at a loss" to explain the results because she had not ingested any alcohol. Respondent had spoken to Dr. Brown and Dr. Brown "couldn't find any explanation either" and did not "know all the different substances that could produce false positives." Respondent stated that she was going to stop taking a dietary supplement containing glucosamine that she had started at the beginning of October. According to respondent, she has "wracked [her] brains trying to think what could have produced these test results and short of adopting a radical diet change [she didn't] know what [she] shouldn't be eating or drinking..."

18. On November 17, 2006, respondent's urine sample tested positive for EtG, with an EtG level of 650 ng/mL.

19. On January 18, 2007, respondent's urine sample tested positive for EtG, with an EtG level of 1000 ng/mL.

20. On February 27, 2007, respondent's urine sample tested positive for EtG, with an EtG level of 570 ng/mL.

21. On March 1, 2007, respondent signed a Diversion Program Recovery Contract (Recovery Contract), effective January 24, 2007. Pursuant to the Recovery Contract, respondent agreed to participate in the PRP administered by Maximus. The Recovery Contract provided that respondent was:

required to provide Urine Specimens that result in the effective monitoring of drug and alcohol usage. Urine Specimen test results must return within the acceptable ranges of Creatinine (20 mg/L or >) and Specific Gravity (1.003 or >) in order to allow for the effective monitoring of drug or alcohol usage. Urine Specimens which return below the acceptable ranges of Creatinine (20 mg/L or >) and Specific Gravity (1.003 or >) undermine the Random Fluid Testing process and compromise the Diversion Program's ability to offer any assurances of your continued sobriety. You are encouraged to increase protein consumption, eliminate caffeine, limit fluid intake, and to test early in the day and to avoid strenuous exercise on the days that you are required to provide Urine Specimens. These behavioral measures will help ensure that you provide Urine Specimens that return within the acceptable ranges of Creatinine (20 mg/L or >) and Specific Gravity (1.003 or >).

Any confirmed positive Random Body Fluid Test results shall result in the immediate suspension of practice by the participant.

The Recovery Contract also provided that respondent was to continue her Intensive Outpatient Treatment Program; attend and document seven 12-step meetings a week; and attend Health Support Group meetings twice a week.

22. Respondent was terminated from the PRP effective March 13, 2007, as a result of her positive random drug screens.

23. On March 14, 2007, respondent's urine sample tested positive for EtG, with an EtG level of 880 ng/mL. The Board's Relapse Occurrence Report dated March 23, 2007, stated:

Participant per PRC is terminated from the Diversion Program pending closure note review by Anne Sodergren/PRC. Participant has attributed her EtG positive results to soy sauce that she refuses not to consume in her body. Participant is aware the Diversion Program is a program of complete abstinence from all mind-altering substances. Maximus is unable to safely monitor Participant's alcohol intake as she continues to test positive for alcohol. Sobriety date at this time is unknown.

24. On March 30, 2007, Mr. Fensterman, who was then the Diversion Program Director, wrote to respondent, notifying her that her case had been closed. In his letter, Mr. Fensterman outlined respondent's history in the PRP program, including her one dilute test result (Finding 7), her five out-of-range test results (Findings 8, 9, and 10),<sup>5</sup> her one invalid result (Finding 12), and her seven positive EtG results (Findings 13, 14, 15, 18, 19, 20, and 23). In his letter, Mr. Fensterman noted that, after respondent's dilute and out-of-range test results were received, respondent was encouraged to increase her protein consumption, eliminate caffeine, limit fluid intake, and test early on the days that she was required to provide a urine specimen. Mr. Fensterman's letter also noted that respondent "continually denied using alcohol or drugs" and suggested that her positive test results might be because she ate a lot of soy sauce. He stated that respondent "repeatedly ignored both the advice of this Clinical Case Manager as well as the advice of her Health Support Group to make necessary changes in her diet and stop using soy sauce." Mr. Fensterman's letter concluded that respondent:

may represent a risk to the public in her role as a professional pharmacist should she elect to return to the practice of pharmacy as exhibited by her non-compliances, most notably her six positive drug screens confirming the presence of alcohol in her system, despite the program requiring sobriety.

25. On April 4, 2007, respondent's license was suspended as a result of her termination from the PRP.

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<sup>5</sup> According to Mr. Fensterman's letter, in addition to the four out-of-range test results described in Findings 8, 9 and 10, respondent's August 5, 2005 urine sample also tested as out-of-range.



## *Respondent's Defense and Rehabilitation*

26. Respondent was born on December 15, 1957. She obtained her Doctor of Pharmacy from the University of Southern California in 1982. From 1982 to 1997, she worked as a pharmacist for Kaiser Permanente in Hollywood, California. From 1997 to May 2003, she worked as an Oncology Pharmacist for Kaiser Permanente in Fresno, California. In February 2006, she became a Self Sufficiency Counselor for Tulare County Health and Human Services Agency, evaluating individuals for public assistance eligibility. She has recently been promoted to a Self Sufficiency Counselor III.

At the hearing, respondent admitted her past drug abuse. She stated that her drug of choice was cocaine. She asserted that her sobriety date was July 24, 2004, and that she had not ingested any illegal drugs or alcohol since that date. She admitted to drinking a lot of water before her drug test. (RT July 24, 2008 165:2-4.) However, she denied that she had intentionally consumed water or other liquids to mask drug or alcohol use before her dilute and out-of-range tests described in Findings 7, 8, 9 and 10.<sup>6</sup> She testified that after she received the guidance described in Finding 21, she began following it and did not have any more dilute or out-of-range tests.

She adamantly denied that her positive EtG tests were the result of intentional alcohol consumption. After each of her positive EtG tests, she testified that she complied with the additional PRP requirements imposed upon her. However, she did admit that she continued to use soy sauce after being instructed to "switch" from soy sauce brands that contained alcohol by a member of the PRC. (RT July 24, 2008 149:17-20, 150:8-25, 151:2-4.) Respondent further testified that while she was working full time, she attended four intensive outpatient meetings, five meetings with either NA or AA, and two health professional group meetings per week. After her fourth positive EtG test in November 2006, she was required to attend 90 NA/AA meetings in 90 days. She complied with this requirement.

After her second or third positive EtG test, respondent spoke to Dr. Brown. Dr. Brown asked her if she used hand sanitizers, mouthwashes, medications, or cough medicines. Respondent responded that she had not.

After respondent was terminated from the PRP, she testified that she did a "mini-study" to determine whether her urine would test positive for EtG if she ingested vanilla creamer or soy sauce. According to Respondent's expert, Dr. Skipper, in this "little study," Respondent was sent urine containers. Respondent then went to a sushi bar and collected samples before and after eating sushi and significant amounts of soy sauce. Dr. Skipper admitted that the "study" was "completely unsupervised, so not very scientific." (RT July 23, 2008 181:4-8.) The test results from the mini-study were negative for EtG. At

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<sup>6</sup> Drinking large quantities of water before a drug test causes a "dilute" of the urine specimen so that the test cannot accurately detect levels of a particular substance in the body. (RT July 23, 2008 58:4-9; 160:2-13, 18-19.)

the hearing, respondent could not explain why her urine samples may have tested positive for EtG on the seven occasions described in Findings 13, 14, 15, 18, 19, 20, and 23.

27. Respondent attended the Kings View Outpatient Drug and Alcohol Program between October 16, 2006, and March 6, 2007. The program noted that her progress throughout this period was "very good."

28. Respondent participated in a Health Support Group facilitated by Jim Driscoll. In a Support Group Report dated January 2007, Mr. Driscoll stated that, to the best of his knowledge, during the prior month, respondent had not consumed any alcohol. In the report, Mr. Driscoll described respondent's level of motivation in the recovery process and her participation in the group as "considerable." Mr. Driscoll also stated that respondent "has been continually advised by myself and the group to change her Asian Food diet."

29. The Participant History and Profile Post PRC (PRC Report) noted that Mr. Driscoll, in his November 2006 report, stated that neither he nor the group had "sense[d] any relapse behavior" in respondent. The PRC Report also noted that the December 2006 progress report from Kings View stated that respondent was "making very good progress. She continues to be a model client who maintains a positive attitude no matter how difficult things may get." According to the PRC Report, respondent had 11 negative random body fluid tests after her November 17, 2006 positive test.

30. Juanita Alvarado is a Self Sufficiency Counselor III with Tulare County Health and Human Services Agency. For the past two and one-half years, Ms. Alvarado has shared a desk at work with respondent. During this period, Ms. Alvarado observed no signs that respondent was under the influence of alcohol while at work. According to Ms. Alvarado, respondent is a very reliable and hard-working employee, who spends long hours at work.

31. Nancy Kadowaki is respondent's sister. She is two years younger than respondent. For the past seven years, Ms. Kadowaki has been a senior art director in Los Angeles. Ms. Kadowaki described her relationship with respondent as "close." She frequently speaks to respondent on the telephone and text messages respondent approximately every other day. She gets together with respondent on three-day weekends, holidays and family occasions. She was aware of respondent's prior drug and alcohol abuse. Ms. Kadowaki described respondent's conduct when she was addicted and how respondent has changed since she became sober. According to Ms. Kadowaki, respondent has been clean and sober since July 2004. Since respondent has been clean and sober, she is not so irritable or selfish, and she is more honest with herself and her family, particularly her two sons. Ms. Kadowaki has observed no evidence to suggest that respondent has used alcohol since July 2004.

Respondent participated in a celebration for her parents' anniversary the weekend before she first tested positive for EtG. According to Ms. Kadowaki, there was no alcohol at that celebration. Respondent told Ms. Kadowaki about her positive EtG test results.

Respondent was surprised and upset by those results. Ms. Kadowaki believes that respondent is committed to living a clean and sober life, likes the person she is now, and does not want to go back to where she was when she was addicted. Ms. Kadowaki also believes that respondent's sons would reach out to her if respondent began using drugs or alcohol again and they have not done so.

32. Respondent offered four letters of support, which were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d).<sup>7</sup>

From 1992 to 2007, Les C. Lucas, MA, LMFT, was a back-up facilitator for diversion program groups. Mr. Lucas substituted as the facilitator for respondent's Health Support Group about seven to ten times. To Mr. Lucas, respondent "displayed the attitude, behavior and group interaction skills consistent with someone committed to on-going recovery." She shared her positive EtG results with the group members. According to Mr. Lucas, "At no time throughout the period when she tested positive for EtG – from approximately September 2006 through February 2007 – did she show any indication that she had started to ingest drugs or alcohol again." It is Mr. Lucas's professional opinion that respondent "continued to be clean and sober and that the tests were very likely measuring something else in her sample." At no time did Mr. Lucas "have any sense that [respondent] had relapsed or slipped."

Patt Reeve has been respondent's sponsor in NA/AA for three years. According to Ms. Reeve, when respondent tested positive for EtG, both Ms. Reeve and respondent were "shocked." Ms. Reeve has been attending NA/AA for over 20 years and believes that she "can almost always tell when someone has relapsed." Ms. Reeve understood that, in the past, respondent used alcohol "to take the edge off" her cocaine addiction. To Ms. Reeve, after respondent tested positive for EtG, there was "nothing about [respondent's] behavior or lifestyle that indicated that she developed an independent addiction to alcohol. On the contrary, [respondent] was flourishing – she was confident in her sobriety and dedicated to finishing Diversion so she could return to the career she loved."

L. Adolpho Medrano, CAS, is a Counselor at the Kings View Outpatient Alcohol and Drug Treatment Program. In his May 29, 2008 letter, Mr. Medrano outlined respondent's participation in the program. As required by Maximus, respondent was enrolled in the program from October 10, 2006, to April 11, 2007. On July 31, 2007, she enrolled in the program again "to show her commitment to her recovery." During her enrollment in the program, respondent provided several drug screens, all of which were negative. According to Mr. Medrano, respondent "has demonstrated active and successful participation in [the] program."

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<sup>7</sup> Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Melissa Flores is a Self Sufficiency Counselor III for Tulare County Health and Human Services Agency. Ms. Flores has been respondent's lead worker since July 2006. Ms. Flores has "never seen any evidence to suggest that [respondent] has a substance abuse problem." Ms. Flores complimented respondent as a "great asset" to her unit.

33. Between January 4 and July 7, 2008, respondent provided 24 urine samples, which were tested by Western Slope Laboratory. All of the samples tested negative for EtG. The amount of EtG found in each of these samples was zero.

#### *Respondent's Positive EtG Results*

34. The Accusation and Petition to Revoke Probation (Petition) alleges that respondent's probation is subject to revocation because she failed to completely abstain from alcohol as demonstrated by her positive test results in the six random drug screenings described in Findings 13, 14, 15, 18, 19, and 20.

35. Respondent attempted to challenge complainant's allegations by proffering the following advisory. In September 2006, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services issued a Substance Abuse Treatment Advisory (Advisory) entitled "The Role of Biomarkers in the Treatment of Alcohol Use Disorders." In a grey box on the first page, the Advisory states:

Currently, the use of an EtG test in determining abstinence lacks sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a criminal justice or a regulatory compliance context, has truly been drinking. Legal or disciplinary action based solely on a positive EtG, or other test discussed in this Advisory, is inappropriate and scientifically unsupportable at this time. These tests should currently be considered as potential valuable clinical tools, but their use in forensic settings is premature.

36. In light of this Advisory, the parties disputed the significance that should be given to respondent's positive EtG results. Dr. Brown testified as complainant's expert witness. Gregory E. Skipper, M.D., testified as respondent's expert witness.

37. Dr. Brown is the Associate Dean for Faculty Development, the Director of the Division of Addiction Medicine and Professional Health Services, and an Associate Professor of Psychiatry at the University of Southern Florida College of Medicine (USF). She is the Medical Director of the Drug Abuse Comprehensive Coordinating Office in Tampa, Florida. She is a treating clinician with the NFL Program for Substances of Abuse; a consultant to the Florida Department of Health, Professional Resource Network, Intervention Project for Nurses, and Florida Lawyer's Assistance Program; and a consultant to Major League Baseball. Since 1987, Dr. Brown has focused her practice upon substance abuse, especially by professionals.

Dr. Brown is a certified MRO. For the last five years, she has been working as an MRO for Compass Vision. As an MRO, Dr. Brown reviews whether there may be alternative explanations for positive drug tests. Compass Vision pays USF \$25 for each MRO review Dr. Brown conducts. Compass Vision also pays USF when they retain Dr. Brown's services for any additional time. Dr. Brown is a salaried employee of USF. She receives no additional money beyond her salary from any amounts Compass Vision may pay USF for her services. Dr. Brown testified in a very knowledgeable and professional manner. There was no indication from her testimony that her work for Compass Vision impacted her ability to be objective.

38. Dr. Skipper is a Clinical Assistant Professor in the Department of Internal Medicine, University of Alabama Birmingham, School of Medicine. He is the Medical Director of the Alabama Physician Health Program and the Alabama Veterinary Professionals Wellness Program. He is a Special Government Employee for the Food and Drug Administration, Center for Drug Evaluation and Research, and the SAMHSA, Center for Substance Abuse Treatment, National Advisory Council. Dr. Skipper participates on numerous committees, councils and task forces regarding substance abuse, including the Research and Drug Testing Committees of the Federation of State Physician Health Programs, the National Advisory Council for the SAMHSA and the Center for Substance Abuse Treatment.

Dr. Skipper was instrumental in bringing EtG testing to the United States from Europe. Dr. Skipper testified in a very knowledgeable and professional manner. There was no indication from Dr. Skipper's testimony that his recent concerns about relying upon EtG test results arose from feelings of guilt over the instrumental role he played in initially promoting EtG testing.

39. EtG is a metabolite of consumed alcohol or alcohol products. It acts as a "marker" for an individual's alcohol use that stays positive for a number of days. Unlike regular alcohol tests, such as a breathalyzer test, EtG can be measured in an individual's urine for up to five days after an individual has ingested or used alcohol products. (RT July 23, 2008 40:14-20; 41:15-22.) The primary benefit of EtG testing is to demonstrate that an individual has remained abstinent. If an individual who is subjected to frequent, random EtG testing consistently tests negative, then a licensing board can be substantially assured that the individual has not relapsed into alcohol consumption.

40. Respondent raised concerns that the EtG tests cannot discriminate between individuals who intentionally drink alcohol and those who inadvertently consume alcohol. Individuals who inadvertently consume alcohol may test positive for EtG if they ingest or use products that contain alcohol. This use of products containing alcohol is called "incidental use" or "incidental exposure." There are many different products that an individual may ingest or use that contain alcohol and, consequently, may cause positive EtG test results, including mouthwash, hand sanitizers, cough medicine, and foods cooked in alcohol. If an individual uses more than one product containing alcohol, all of these products together may contribute to an individual's EtG level.

41. Most laboratories use 250 ng/mL as their cutoff for determining whether an individual tests positive for EtG. However, there are no definitive cutoff levels to determine whether an individual who has tested positive for EtG intentionally drank alcohol or had "incidental exposure" to alcohol through the use of a product that contained alcohol. (RT July 23, 2008 134:12-23.) In research that has been conducted on EtG, some test subjects who intentionally drank alcohol had lower EtG levels than subjects who gargled with mouthwash or used hand sanitizers that contained alcohol. Consequently, the level of EtG in an individual's urine does not conclusively establish whether an individual inadvertently absorbed alcohol through the use of alcohol-containing products or intentionally drank alcohol.

42. Like measures of blood alcohol content, there is great variability in EtG levels in individuals. How much EtG will be found in an individual's urine after that individual has ingested alcohol depends on a number of factors, including that individual's metabolism. There also may be variations in EtG levels depending on an individual's gender, age, weight, ethnicity, and medication use. Nevertheless, it is undisputed that: (1) the EtG test detects the presence of metabolites of alcohol in the body; (2) the EtG test is a reliable indicator of abstinence from alcohol; (3) the EtG test is a generally accepted and recognized test for the presence of alcohol in the body in monitoring programs throughout the country; and (4) most labs across the country use 250 ng/mL as their cutoff for detecting alcohol consumption. (RT July 23, 2008 40:14-25; 43:17-21; 117:23-25; 118:1; 124:13-19; 167:2-4, 14-18.)

43. Dr. Brown and Dr. Skipper generally agreed on the facts set forth in Findings 39 through 42.<sup>8</sup> Where their testimony differed was in their opinions as to what extent positive EtG test results could be relied upon to reach conclusions about whether an individual had completely abstained from alcohol use or was in non-compliance with their diversion program. (RT July 23, 2008 50:1-4, 7-11; 73:22; 75:4-20; 92:6-10; 162:1-9.)

44. With regard to respondent's dilute and out-of-range test results, Dr. Brown explained that some individuals who have consumed alcohol may intentionally try to avoid a positive drug screening by drinking lots of fluids, thereby diluting their urine and making it more likely that they will test negative for alcohol use. Dr. Brown recognized, however,

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<sup>8</sup> One of the areas in which Dr. Skipper and Dr. Brown disagreed was on whether respondent's levels of EtG should be adjusted based upon her levels of creatinine. Dr. Skipper testified in support of making these adjustments. He explained that, while individuals generally produce creatinine at a constant rate, the amount of creatinine in individuals' urine may vary depending on the amount of water in their urine. According to Dr. Skipper, if an individual's creatinine level is high, it indicates that her urine is too concentrated. Dr. Skipper recommended that respondent's creatinine in all her positive tests be standardized at 100, and that the levels of EtG be adjusted proportionately. Dr. Brown testified that doctors specializing in substance abuse do not generally adjust EtG levels by standardizing creatinine levels. According to Dr. Brown, there may have been factors that caused respondent's creatinine levels to fluctuate over time other than the concentration of liquid in her urine. Dr. Brown's testimony on this issue was more persuasive than Dr. Skipper's. Because there was no evidence to establish that the sole cause of the fluctuations in respondent's creatinine levels was urine concentration, it was not shown that it would be appropriate to change respondent's levels of EtG by standardizing her creatinine to 100.

that individuals may have good reasons for consuming lots of fluids unrelated to an intent to dilute a drug test. According to Dr. Brown, if an individual has multiple dilute or out-of-range screening tests, it does not definitively mean that the individual has intentionally consumed alcohol, but it is a warning sign that prevents a substance abuse program from providing assurances as to that individual's abstinence.

After respondent tested positive for EtG, Dr. Brown, acting as an MRO, talked to respondent about her positive tests. Dr. Brown reviewed with respondent the prescription medications, over-the-counter medications, and other substances that respondent was using or consuming that might trigger her positive EtG results.

Dr. Brown opined that, given the pattern of respondent's dilute, out-of-range and positive EtG results, it was "highly likely" that respondent had intentionally consumed alcohol. In reaching her opinion, Dr. Brown relied upon both the number of positive EtG tests and the level of EtG found (all of respondent's positive tests were over 500, and two were over 1,000). While Dr. Brown recognized that some soy sauces contain alcohol, she opined that it was "highly unlikely" and "highly unbelievable" that respondent could have consumed sufficient quantities of soy sauce to account for EtG levels as high as 970 and 1,800 ng/mL found in her urine. Dr. Brown also relied upon the significant period of time over which respondent's urine was tested, with a large number of negative tests followed by a number of positive results. According to Dr. Brown, respondent's long period of negative testing was significant: If incidental alcohol use caused respondent to test positive for EtG, respondent would not have had so long a period of negative test results. To Dr. Brown, a long period of negative test results followed by multiple positive results was "highly suspicious" of a relapse. Regardless, Dr. Brown opined that even if, hypothetically, a person did not intentionally drink alcohol, incidental use of alcohol-containing products would still mean that the person failed to abstain from alcohol use as required by the monitoring program. (RT July 23, 2008 92:1-10.)

45. Dr. Skipper believes that EtG testing is a useful clinical tool to assess whether an individual may be consuming alcohol and it can be an indicator of a relapse (RT July 23, 2008 170:19-20). Dr. Skipper agreed that, in general, 85 to 90 percent of individuals who test positive for EtG have intentionally consumed alcohol and that a substance abuse program should generally take the position that a positive EtG test is indicative of intentional alcohol use. Dr. Skipper also acknowledged that the PRP requires total abstinence. (RT July 23, 2008 170:6-8.)

However, due to the variability in individual EtG levels and the absence of clear cutoffs to distinguish incidental use from intentional drinking, Dr. Skipper believes that positive EtG tests cannot be used as the sole basis upon which to take administrative action to revoke a professional's license. However, because ingestion of substances other than alcohol can cause positive EtG results, including "quite possibly" sugar, it is Dr. Skipper's opinion that even recurrent positive EtG tests cannot be used as absolute proof of intentional alcohol consumption in the absence of corroborating evidence. He opined that six positive EtG tests over four months, amid many negative tests and a history of dilute and out-of-range tests, cannot be used as definitive proof of intentional alcohol

consumption without other corroborating evidence. According to Dr. Skipper, if individuals who test positive for EtG deny that they intentionally consumed alcohol, then the appropriate course of action is to monitor those individuals more closely and add additional methods of detection to substantiate whether they have relapsed before a final determination is made to revoke their professional licenses. Suggestions for monitoring included using worksite monitors (RT July 23, 2008 164:6-14.) Dr. Skipper also recommended using additional methods of detection as corroborating proof, including using a breathalyzer test. However, Dr. Skipper admits that the breath test and other routine alcohol tests done by law enforcement agencies are not "perfect." (RT July 23, 2008 168:15-24.) A person's age, sex, ethnicity, body weight and liver and kidney functions can also impact results with these tests (July 23, 2008 168:25;169:1-8.) As a result, Dr. Skipper admits that there really is no "foolproof" test for alcohol consumption. (RT July 23, 2008 169:9-11.) It is also not clear from Dr. Skipper's testimony when, aside from outright admissions or eye-witness testimony of drinking by program participants, other monitoring or detection devices would be sufficient "proof" that an individual intentionally drank alcohol.

46. Both Dr. Brown and Dr. Skipper were very knowledgeable expert witnesses in the field of substance abuse by licensed professionals. Both agreed that there are no definitive cutoff levels to determine whether an individual who tests positive for EtG intentionally drank alcohol or incidentally used a product that contained alcohol. The Administrative Law Judge (ALJ) in this matter found that while Dr. Brown persuasively testified that respondent's pattern of positive EtG testing was "highly suspicious" of a relapse, such suspicion was not sufficient to show that respondent intentionally consumed alcohol, in the absence of corroborating evidence.

However, the terms and conditions of respondent's probation required her to "completely abstain" from alcohol use. This included the use of any "products" that contained alcohol. According to the Board's monitoring program, the PRP, the minimum cutoff level at which a participant in the PRP would be reported as positive for alcohol use was set at over 250 ng/mL. (Finding 13.) On all six occasions in Findings 13, 14, 15, 18, 19, and 20, respondent's EtG test results clearly exceeded this minimum "cutoff" level approved by the PRP for demonstrated abstinence.

As a result, respondent's six positive EtG tests are sufficient to establish that respondent violated the terms of her probation by failing to completely abstain from alcohol use. Under the modified disciplinary order issued March 21, 2006, violations of probation are grounds for revocation of respondent's license.

#### *Respondent's Failure to Successfully Complete the PRP*

47. The Petition alleges that respondent's license is subject to revocation because, due to her positive drug screenings, she failed to successfully complete the PRP, a condition of her probation.



48. Because incidental use of products containing alcohol may cause positive EtG test results, Dr. Brown tells individuals who are required to remain abstinent to cease all use of products that contain alcohol while their urine is being monitored. Dr. Brown recognizes that this admonition is onerous, but she believes that it is the responsibility of individuals subject to monitoring programs to comply with the requirements of their programs. According to Dr. Brown, substance abuse monitoring programs have a duty to assure licensing boards that the licensed professionals subject to their programs are in compliance with their abstinence requirements and can practice safely. If a professional tests positive for EtG, a monitoring program cannot provide these assurances. To Dr. Brown, "a drug is a drug," and any positive test for alcohol is a violation of a program that requires total abstinence, whether that positive test is the result of incidental or intentional use. According to Dr. Brown, even if it were assumed that respondent's positive EtG results were caused by incidental alcohol use, respondent was still in violation of the PRP because she tested positive for alcohol when that program required complete abstinence. Dr. Brown opined that, even if respondent's positive EtG test results did not definitively establish that respondent had intentionally consumed alcohol, it was proper for respondent to be terminated from the PRP for her non-compliance with the program's requirement of total abstinence.

49. As set forth above, Dr. Skipper believes that positive EtG tests should not, standing alone, be used to establish alcohol consumption in violation of a substance abuse program. In some cases, individuals who have not intentionally consumed alcohol have not been able to figure out what they used or consumed that caused their positive EtG results. According to Dr. Skipper, when a participant in a substance abuse program tests positive for EtG but adamantly denies alcohol consumption, the program should take extra steps to monitor that participant before terminating him or her for failing to remain abstinent. Dr. Skipper listed a number of additional surveillance methods that can be used, including subjecting the participant to breathalyzer and blood alcohol tests, requiring that the participant wear transdermal alcohol sensors or take antabuse, and doing a thorough addiction assessment, to corroborate whether the participant's positive EtG tests were the result of intentional or incidental alcohol use.

50. Complainant argued that it was respondent's responsibility to ensure that she did not ingest or use any substances that could cause positive EtG results, and that respondent's failure to comply with this requirement made it impossible for Maximus to monitor her and assure the Board that she was complying with all the terms and conditions of her probation. While the ALJ agreed that Respondent's positive EtG results raise "serious doubts about respondent's continued sobriety," the ALJ appeared persuaded by respondent's argument that Maximus should have increased surveillance of her activities and used other monitoring methods to confirm that a relapse had occurred prior to terminating her from the program. However, the Board disagrees with this recommendation for the following reasons.

According to the terms of the agreement she signed with Maximus and the requirements of her disciplinary order, respondent bears full responsibility for complying with her probation, including successful participation in and completion of the PRP

administered by Maximus. Further, respondent voluntarily entered into an agreement with the Board to accept discipline of her license for violations of the Pharmacy Law involving the theft of dangerous drugs from her place of employment and self-administration of those drugs while at work without a valid prescription. (Findings 2 and 3.) As part of that agreement and pursuant to a modified decision and order, respondent was required to successfully participate in and complete the PRP. (Findings 3, 4.) Respondent signed an "Informed Consent" form to participate in the PRP and promised to cooperate with all elements of the Board's rehabilitation program, including monitoring by Maximus and the PRC, the Board's diversion committee. (Finding 5.) Despite repeated warnings to change her diet, she refused to follow instruction by the PRC (Findings 23, 26). She was fully informed that failure to comply with the rehabilitation program was grounds for termination from the program (Finding 5). Respondent knew and was informed on numerous occasions that the PRP required complete abstinence from the use of alcohol and that any confirmed positive test results would result in her immediate suspension. (Findings 4, 5, 21.)

The minimum cutoff level at which a participant in the PRP would be reported as positive for alcohol use was set at over 250 ng/mL. (Finding 13.) Respondent was informed of her EtG test results and was given numerous opportunities to come into compliance with the PRP's requirements. (Findings 7-13, 16, 17, 21, 24.) However, respondent continued to test positive for alcohol use over a six-month period at levels that clearly exceeded the minimum "cutoff" level approved by the PRP for demonstrated abstinence. (Findings 13, 14, 15, 18, 19, 20, 23 and 24.) As a result, Maximus could not confirm her sobriety and respondent was properly terminated from the PRP on March 13, 2007 (Findings 22, 23).

Respondent's positive EtG results clearly established that respondent failed to successfully participate in and complete her treatment contract with the PRP, a requirement of her probation. Under the modified disciplinary order issued March 21, 2006, violations of probation are grounds for revocation of respondent's license.

## LEGAL CONCLUSIONS

1. Section 118(b) of the Business and Professions Code states, in pertinent part:

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 ... 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.

2. Pursuant to Business and Professions Code section 4300, subdivision (d), the Board "may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation."

3. By order of the Board dated March 21, 2006, the Board retains continuing jurisdiction over this matter. If respondent fails to comply with any term or condition of her probation, the Board has authority to treat the failure as a violation of probation, to terminate probation and to impose the penalty of revocation, which was originally stayed pending respondent's completion of probation. (See Factual Finding 4, "Violation of Probation" term and Legal Conclusions 1-2.)

4. Respondent's six positive EtG results constitute clear and convincing evidence to revoke her probation pursuant to Business and Professions Code section 4300, subdivision (d). This conclusion is based upon Factual Findings 4, 5, 7-15, 17-24, 26, 34, 37-39, 42, 44, 46 and Legal Conclusions 1-4.

The terms and conditions of respondent's probation required her to "completely abstain" from alcohol use. This included the use of any other "products" that contained alcohol. According to the Board's monitoring program, the PRP, the minimum cutoff level at which a participant in the PRP would be reported as positive for alcohol use was set at over 250 ng/mL. (Factual Finding 13.) On all six occasions in Factual Findings 13, 14, 15, 18, 19, and 20, respondent's EtG test results established that respondent clearly exceeded this minimum "cutoff" level approved by the PRP for demonstrated abstinence. As a result, the Board has determined that respondent violated the terms of her probation by failing to completely abstain from alcohol use. (Factual Finding 46.)

5. Respondent's failure to successfully complete the PRP due to her positive EtG test results constitutes clear and convincing evidence to revoke respondent's probation pursuant to Business and Professions Code section 4300, subdivision (d). This conclusion is based upon Factual Findings 3-25, 26, 46-48, 50 and Legal Conclusions 1-3, 5.

Under the terms and conditions of her probation, respondent was required to successfully participate in and complete the PRP. (Factual Findings 3, 4.) Respondent signed an "Informed Consent" form to participate in the PRP and promised to cooperate with all elements of the Board's rehabilitation program, including monitoring by Maximus and the PRC, the Board's diversion committee. (Factual Finding 5.) She was fully informed that failure to comply with the rehabilitation program was grounds for termination from the program (Factual Finding 5). Respondent knew and was informed on numerous occasions that the PRP required complete abstinence from the use of alcohol and that any confirmed positive test results would result in her immediate suspension. (Factual Findings 4, 5, 21.)

The minimum cutoff level at which a participant in the PRP would be reported as positive for alcohol use was set at over 250 ng/mL. (Factual Finding 13.) Respondent was informed of her EtG test results and was given numerous opportunities to come into

compliance with the PRP's requirements. (Factual Findings 7-13, 16, 17, 21, 24.) However, respondent continued to test positive for alcohol use over a six-month period at levels that clearly exceeded the minimum "cutoff" level approved by the PRP for demonstrated abstinence. (Factual Findings 13, 14, 15, 18, 19, 20, 23 and 24.) As a result, Maximus could not confirm her sobriety and respondent was properly terminated from the PRP on March 13, 2007 (Factual Findings 22, 23). As a result, the Board has determined that respondent violated the terms of her probation by failing to successfully complete the PRP. (Factual Finding 50.)

6. The PRP was created to identify and rehabilitate pharmacists whose competency may be impaired due to the abuse of alcohol or other drugs so that pharmacists and interns may be treated and returned to the practice of pharmacy in a manner that will not endanger the public health and safety. To that end, Respondent's probation and her participation in the PRP were strictly controlled and monitored. However, based on the facts of this case, the Board cannot provide assurances to the public that respondent is unimpaired and that she can practice safely.

Complainant has established by clear and convincing evidence that respondent has violated the terms and conditions of her probation as described in Factual Findings 46 and 50 and Legal Conclusions 4 and 5. As a result, outright termination of her probation and revocation of her license is appropriate and necessary to protect the public.

**ORDER**

The Petition to Revoke the Probation of respondent Laura Fujisawa, aka Laura Keiko Fujisawa, is granted. The stay of revocation set forth in the Modification Decision is vacated, Respondent's probation is revoked and the prior order of revocation is reinstated. Pharmacist License No. RPH 37589 issued to respondent is revoked.

This Decision shall become effective on July 16, 2009.

IT IS SO ORDERED this 16th day of June, 2009.



Kenneth H. Schell  
Kenneth H. Schell  
President, Board of Pharmacy  
Department of Consumer Affairs

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2 ARTHUR D. TAGGART  
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6 Telephone: (916) 324-7859  
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation and Petition to  
12 Revoke Probation Against:

Case No. 3095

13 **LAURA FUJISAWA**  
**AKA LAURA KEIKO FUJISAWA**  
14 991 Kings Drive Circle  
Reedley, CA 93654

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

15 Pharmacist License No. RPH 37589

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") brings this Accusation and Petition to  
21 Revoke Probation solely in her official capacity as the Executive Officer of the Board of  
22 Pharmacy ("Board"), Department of Consumer Affairs.

23 **Pharmacist License**

24 2. On or about March 29, 1983, the Board issued Pharmacist License No.  
25 RPH 37589 to Laura Fujisawa, also known as Laura Keiko Fujisawa ("Respondent"). The  
26 license was in effect at all times relevant to the charges brought herein, and will expire on  
27 December 31, 2008, unless renewed.

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(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.

7. 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:

(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 or by any other state or federal regulatory agency.

8. Title 16, California Code of Regulations, section 1773(c) states:

When the circumstances of the case so require, the Board may impose conditions of probation in addition to those enumerated herein by the terms of its decision in an administrative case or by stipulation of the parties.

**COST RECOVERY**

7. Code section 125.3 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.

**ACCUSATION**

**CAUSE FOR DISCIPLINE**

9. Respondent is subject to disciplinary action under Code section 4301(o), in that Respondent failed to comply with Title 16, California Code of Regulations, section 1773(c) by violating the provisions of the Order dated March 21, 2006, as more fully set forth in the Petition to Revoke Probation that follows.

**PETITION TO REVOKE PROBATION**

10. Grounds exist for revoking the probation and reimposing revocation of Respondent's Pharmacist License No. RPH 37589. The Order, dated March 21, 2006, on page 6, states, in pertinent part:

1 **Violation of Probation**

2 If petitioner violates probation in any respect, the board, after giving  
3 petitioner notice and an opportunity to be heard, may revoke probation and carry  
4 out the disciplinary order which was stayed. If a petition to revoke probation or  
5 an accusation is filed against petitioner during probation, the board shall have  
6 continuing jurisdiction and the board shall have continuing jurisdiction and the  
7 period of probation shall be extended, until the petition to revoke probation or  
8 accusation is heard and decided.

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

15 **FIRST CAUSE TO REVOKE PROBATION**

16 (Failure to Abstain from Alcohol Use)

17 11. At all times after the effective date of Respondent's probation, the Order,  
18 dated March 21, 2006, on page 6, states:

19 **Abstain from Drugs and Alcohol Use**

20 Petitioner shall completely abstain from the possession or use of alcohol,  
21 controlled substances, dangerous drugs and their associated paraphernalia except  
22 when the drugs are lawfully prescribed by a licensed practitioner as part of a  
23 documented medical treatment. Upon request of the board, petitioner shall provide  
24 documentation from the licensed practitioner that the prescription was legitimately  
25 issued and is a necessary part of the treatment of the petitioner. Petitioner shall  
26 ensure that she is not in the presence of or in the same physical location as  
27 individuals who are using illicit substances even if petitioner is not personally  
28 ingesting the drugs.

29 12. Respondent's probation is subject to revocation because she failed to  
30 completely abstain from alcohol, a condition of the Order, dated March 21, 2006. The  
31 circumstances are that Respondent tested positive for alcohol in random drug screenings on  
32 September 26, 2006; October 11, 2006; October 16, 2006; November 17, 2006; January 18,  
33 2007; and February 27, 2007.

34 **SECOND CAUSE TO REVOKE PROBATION**

35 (Failure to Successfully Complete Pharmacy Recovery Program ["PRP"])

36 13. At all times after the effective date of Respondent's probation, the Order,  
37 dated March 21, 2006, on page 5, states:

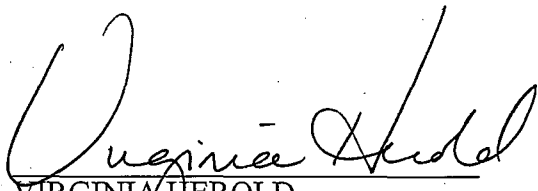




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4. Taking such other and further action as deemed necessary and proper.

DATED: 10/8/07



VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

03583110-SA2007302102  
Fujisawa accusation 2.wpd  
bfc [7/6/07]

**Exhibit A**

**Decision and Order, Effective January 17, 2005**

**Board of Pharmacy Case No. 2726**

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

In the Matter of the Accusation Against:

LAURA KEIKO FUJISAWA  
991 Kings Drive Circle  
Reedley, CA 93654

Pharmacist License No. RPH 37589

Respondent.

Case No. 2726

OAH No. N2004060265

DECISION AND ORDER

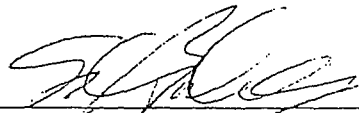
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on January 17, 2005.

It is so ORDERED December 17, 2004.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
STANLEY W. GOLDENBERG  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
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6  
7 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:  
11  
12 LAURA KEIKO FUJISAWA  
991 Kings Drive Circle  
13 Reedley, CA 93654  
14 Pharmacist License No. RPH 37589  
15 Respondent.

Case No. 2726  
OAH No. N2004060265  
**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
18 above-entitled proceedings that the following matters are true:

19  
20 PARTIES

- 21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
23 by Bill Lockyer, Attorney General of the State of California, by Kent D. Harris, Deputy Attorney  
24 General.  
25 2. Respondent Laura Keiko Fujisawa (Respondent) is represented in this  
26 proceeding by Yolanda Gonzalez, Professional Representative, whose address is Benninghoff &  
27 Ramirez, 31897 Del Obispo, Suite 220, San Juan Capistrano, CA 92675.  
28





1 If Respondent fails to successfully complete the Pharmacist Recovery Program within five (5)  
2 years of the effective date of this stipulation, her license will be automatically revoked.

3 **2. REHABILITATION PROGRAM**

4 Within ten (10) days of the effective date of this decision, respondent shall contact  
5 the Pharmacist Recovery Program for evaluation and shall successfully participate in and  
6 complete the treatment contract and any subsequent addendums as recommended and provided  
7 by the Pharmacist Recovery Program and as approved by the Board. The costs for the  
8 Pharmacist Recovery Program participation shall be borne by the respondent.

9 **3. PETITION FOR TERMINATION OF SUSPENSION**

10 Upon successful completion of the Pharmacist Recovery Program respondent shall  
11 file a Petition for Termination of Suspension before the Board of Pharmacy. Respondent shall  
12 agree to all and any terms and conditions of probation pursuant to the Board's regulatory  
13 disciplinary guidelines the Board may impose at the time of her reinstatement.

14 **4. OBEY ALL LAWS**

15 Respondent shall obey all federal and state laws and regulations substantially related  
16 or governing the practice of pharmacy.

17 **5. REPORTING TO THE BOARD**

18 Respondent shall report to the Board or its designee quarterly. The report shall be  
19 made either in person or in writing, as directed. If the final report is not made as directed, the  
20 suspension shall be extended automatically until such time as the final report is made.

21 **6. INTERVIEW WITH THE BOARD**

22 Upon receipt of reasonable notice, respondent shall appear in person for interviews  
23 with the Board or its designee upon request at various intervals at a location to be determined  
24 by the Board or its designee. Failure to appear for a scheduled interview without prior  
25 notification to Board staff shall be considered a violation of this stipulated settlement.

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1                   **7. COOPERATION WITH BOARD STAFF**

2                   Respondent shall cooperate with the Board's inspection program and in the Board's  
3 monitoring and investigation of the respondent's compliance with the terms and conditions of this  
4 stipulated settlement. Failure to cooperate shall be considered a violation of this stipulated  
5 settlement.

6                   **8. PEER REVIEW**

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

8                   **9. CONTINUING EDUCATION**

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

11                   **10. REIMBURSEMENT OF BOARD COSTS**

12                   Respondent shall pay to the Board its costs of investigation and prosecution in  
13 the amount of \$ 4,760.25. Respondent shall make payments as determined by her Board  
14 monitor.

15                   If respondent fails to pay the costs as specified by the Board and on or before the  
16 date(s) determined by the Board, the Board shall, without affording the respondent notice and  
17 the opportunity to be heard, revoke this stipulated settlement and carry out the disciplinary order  
18 that was stayed.

19                   **11. STIPULATION MONITORING COSTS**

20                   Respondent shall pay the costs associated with the Board's monitoring of  
21 respondent's compliance with this stipulated settlement in an amount to be determined by the  
22 Board each and every year of the stipulated settlement. Such costs shall be payable to the Board  
23 at the end of each year of the stipulated settlement. Failure to pay such costs shall be considered  
24 a violation of this stipulated settlement.

25                   **12. STATUS OF LICENSE**

26                   Respondent shall, at all times while suspended, maintain a current license with the  
27 Board, including any period during which suspension is tolled.

28                   If respondent's license expires by operation of law or otherwise, upon renewal or

1 reapplication, respondent's license shall be subject to all of the terms of this stipulated settlement  
2 not previously satisfied.

3 **13. NOTIFICATION OF MAILING/ADDRESS CHANGE**

4 Within ten (10) days of a change of mailing address, respondent shall notify the  
5 Board in writing.

6 **14. TOLLING OF STIPULATED SETTLEMENT**

7 If respondent leaves California to reside or practice outside this state, respondent  
8 must notify the Board in writing of the dates of departure and return within ten (10) days of  
9 departure or return. Periods of residency, or practice outside California shall not apply to  
10 reduction of the stipulated settlement period.

11 It is a violation of this stipulated settlement for respondent's settlement terms to  
12 remain tolled pursuant to the provisions of this condition for a period exceeding a consecutive  
13 period of three years.

14 **15. TOLLING**

15 If respondent leaves California to reside or practice outside this state, or for any  
16 period exceeding ten (10) days (including vacation), respondent must notify the Board in writing  
17 of the dates of departure and return. Periods of residency or practice outside the state - or any  
18 absence exceeding a period of ten (10) days shall not apply to the reduction of the terms of this  
19 stipulated settlement.

20 Respondent shall not practice pharmacy upon returning to this state until  
21 notification by the Board the period of suspension has been completed, respondent has  
22 successfully completed the Pharmacist Recovery Program and has successfully petitioned for  
23 reinstatement of her license.

24 **16. VIOLATION OF THE TERMS OF THIS STIPULATED**  
25 **SETTLEMENT**

26 If respondent violates the terms of this stipulated settlement in any respect, the  
27 Board, after giving respondent notice and an opportunity to be heard, may revoke this stipulated  
28 settlement and carry out the disciplinary order which was stayed. If a petition to revoke this

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DEPARTMENT OF JUSTICE

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1 stipulated settlement or an accusation is filed against respondent during her suspension, the  
 2 Board shall have continuing jurisdiction, and the period of suspension shall be extended, until the  
 3 petition to revoke, or the accusation is heard and decided. If respondent has not complied with  
 4 any term or condition of this stipulated settlement, the Board shall have continuing jurisdiction  
 5 over respondent, and respondent's suspension shall automatically be extended until all terms and  
 6 conditions have been met or the Board has taken other action as deemed appropriate to treat the  
 7 failure to comply as a violation of the stipulated settlement, or to terminate the stipulated  
 8 settlement, and to impose the penalty which was stayed.

9           17. COMPLETION OF THE TERMS OF THIS STIPULATED  
 10 SETTLEMENT

11           Upon successful completion of the terms of this stipulated settlement, respondent's  
 12 license will be fully restored.

ACCEPTANCE

13  
 14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
 15 discussed it with my representative, Yolanda Gonzalez. I understand the stipulation and the  
 16 effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and  
 17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
 18 Decision and Order of the Board of Pharmacy.

19 DATED: 10/21/04  
 20 Laura Keiko Fujisawa  
 21 LAURA KEIKO FUJISAWA  
 Respondent

22 I have read and fully discussed with Respondent Laura Keiko Fujisawa the terms and conditions  
 23 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
 24 its form and content.

25 DATED: 10/21/2004  
 26 Yolanda Gonzalez  
 27 YOLANDA GONZALEZ  
 Professional Representative for Respondent

28



1 stipulated settlement or an accusation is filed against respondent during her suspension, the  
2 Board shall have continuing jurisdiction, and the period of suspension shall be extended, until the  
3 petition to revoke, or the accusation is heard and decided. If respondent has not complied with  
4 any term or condition of this stipulated settlement, the Board shall have continuing jurisdiction  
5 over respondent, and respondent's suspension shall automatically be extended until all terms and  
6 conditions have been met or the Board has taken other action as deemed appropriate to treat the  
7 failure to comply as a violation of the stipulated settlement, or to terminate the stipulated  
8 settlement, and to impose the penalty which was stayed.

9 **17. COMPLETION OF THE TERMS OF THIS STIPULATED**  
10 **SETTLEMENT**

11 Upon successful completion of the terms of this stipulated settlement, respondent's  
12 license will be fully restored.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
15 discussed it with my representative, Yolanda Gonzalez. I understand the stipulation and the  
16 effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and  
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
18 Decision and Order of the Board of Pharmacy.

19 DATED: \_\_\_\_\_

20 \_\_\_\_\_  
21 LAURA KEIKO FUJISAWA  
22 Respondent

23 I have read and fully discussed with Respondent Laura Keiko Fujisawa the terms and conditions  
24 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
25 its form and content.

26 DATED: \_\_\_\_\_

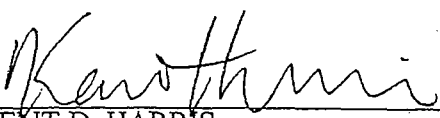
27 \_\_\_\_\_  
28 YOLANDA GONZALEZ  
Professional Representative for Respondent

ENDORSEMENT

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

DATED: 11/8/04

BILL LOCKYER, Attorney General  
of the State of California



KENT D. HARRIS  
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03583110-SA2003104808  
Fujisawa stipulation.wpd

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Exhibit A  
Accusation No. 2726

1 BILL LOCKYER, Attorney General  
of the State of California  
2 KENT D. HARRIS, State Bar No. 144804  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 324-7859  
Facsimile: (916) 327-8643  
6  
Attorneys for Complainant  
7

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

11 In the Matter of the Accusation Against:

Case No. 2726

12 LAURA KEIKO FUJISAWA  
991 Kings Drive Circle  
13 Reedley, CA 93654

**A C C U S A T I O N**

14 Pharmacist License No. RPH 37589

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 2. On or about March 29, 1983, the Board of Pharmacy issued Pharmacist  
23 License Number RPH 37589 to Laura Keiko Fujisawa (Respondent). The Pharmacist License  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 December 31, 2004, unless renewed.  
26  
27  
28



JURISDICTION

1  
2           3.     This Accusation is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5           4.     Section 4301 of the Code states in pertinent part:

6           "The board shall take action against any holder of a license who is guilty of  
7 unprofessional conduct.... Unprofessional conduct shall include, but is not limited to, any of the  
8 following:...

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

12 ....

13           "(h) The administering to oneself, of any controlled substance, or the use of any  
14 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
15 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
16 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
17 the public the practice authorized by the license.

18 ...

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

21 ...

22           "(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
23 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
24 applicable federal and state laws and regulations governing pharmacy, including regulations  
25 established by the board.

26           5.     Section 4060 of the Code states in pertinent part:

27           "No person shall possess any controlled substance, except that furnished to a  
28 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished

1 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse  
2 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1..."

3 6. Section 4022 of the Code states in pertinent part:

4 "Dangerous drug"... means any drug ... unsafe for self-use, except veterinary drugs  
5 that are labeled as such, and includes the following:

6 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
7 without prescription," "Rx only," or words of similar import...."

8 ...

9 "(c) Any other drug or device that by federal or state law can be lawfully  
10 dispensed only on prescription or furnished pursuant to Section 4006."

11

12 7. Section 4327 of the Code states in pertinent part:

13 "Any person who, while on duty, sells, dispenses or compounds any drug while  
14 under the influence of any dangerous drug or alcoholic beverages shall be guilty of a  
15 misdemeanor."

16 8. Health and Safety Code section 11170 states in pertinent part that no  
17 person shall prescribe, administer, or furnish a controlled substance for himself.

18 9. Health and Safety Code section 11350(a) provides in pertinent part that it  
19 is unlawful to possess a controlled substance without a valid prescription.

20 10. Section 125.3 of the Code states, in pertinent part, that the Board may  
21 request the administrative law judge to direct a licentiate found to have committed a violation or  
22 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
23 and enforcement of the case.

24

DRUGS

25 11. "Cocaine" is a Schedule II controlled substance as designated by Health  
26 and Safety Code section 11055(b)(6).

27

28



1 THIRD CAUSE FOR DISCIPLINE

2 ( Self-Administration of Controlled Substances--Tylenol with Codeine, Ambien, Cocaine)

3 17. Respondent is subject to disciplinary action under section 4301(h) in that  
4 between the dates of 2002 and May 2003, on multiple occasions, by her own admission,  
5 respondent administered to herself controlled substances, to wit: Tylenol with Codeine, Ambien,  
6 and Cocaine, without a valid prescription therefor.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Working as a Pharmacist While Under the Influence)

9 18. Respondent is subject to disciplinary action under sections 4301(o), 4022,  
10 and 4327 in that between the dates of 2002 and May 2003, on multiple occasions, the exact dates  
11 of which are unknown, and by her own admission, respondent while on duty as a pharmacist at  
12 Kaiser Medical Center, dispensed or compounded drugs while under the influence of controlled  
13 substances and dangerous drugs without a valid prescription, to wit: Cocaine, Tylenol with  
14 Codeine and Ambien.

15 PRAYER

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

18 A. Revoking or suspending Pharmacist License Number RPH 37589, issued  
19 to Laura Keiko Fujisawa;

20 B. Ordering Laura Keiko Fujisawa to pay the Board of Pharmacy the  
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
22 Professions Code section 125.3;

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

24 DATED: 4/7/04

25 P. J. Harris  
26 PATRICIA F. HARRIS  
27 Executive Officer  
28 Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

kdh:2/26/04

**Exhibit B**

**Decision and Order, Effective March 27, 2006**

**Board of Pharmacy Case No. 2726**

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

In the Matter of the Petition for Reduction of  
Penalty by:

Case No. L2006011034

LAURA KEIKO FUJISAWA  
991 Kings Dr. Circle  
Reedley, CA 93654

Pharmacist License No. RPH 37589

Petitioner.

DECISION AND ORDER

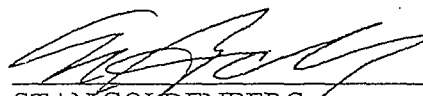
The attached Decision is hereby adopted by the Board of Pharmacy, Department of  
Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 27, 2006

It is so ORDERED March 21, 2006

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



STAN GOLDENBERG

Board President

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

In the Matter of the Petition for Reduction of  
Penalty by:

LAURA KEIKO FUJISAWA  
991 Kings Dr. Circle  
Redley, CA 93654

Pharmacist License No. RPH 37589

Petitioner.

OAH No. L2006011034

DECISION

On February 2, 2006, in Los Angeles, California, this matter was heard before a quorum of the State of California Board of Pharmacy, Stan Goldenberg, President. Administrative Law Judge M. Amanda Behe, Office of Administrative Hearings, presided.

Joshua Room, Deputy Attorney General, represented the Department of Justice.

Petitioner Laura Fujisawa appeared on her own behalf.

This matter was submitted on February 2, 2006.

FACTUAL FINDINGS

1. On March 29, 1983, the Board of Pharmacy issued license No. RPH 37589 to petitioner Laura Fujisawa. The license will expire, unless renewed, on December 31, 2006. On January 17, 2005, her license was placed on suspended status.

2. On January 17, 2005, pursuant to a stipulation and settlement in Case No. AC 2726, petitioner's license was revoked, with revocation stayed and the license suspended until such time as she successfully completed the Pharmacist Recovery Program as determined by the board. Petitioner's probation included additional terms and conditions including reimbursement of \$4,760.25 in costs.

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FEBRUARY 2 2006  
OFFICE OF THE ATTORNEY GENERAL  
STATE OF CALIFORNIA

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF CALIFORNIA

The circumstances of Case No. AC 2726 were that petitioner stole large quantities of Tylenol with Codeine and Ambien from Kaiser Permanente, her employer, and was in possession of, and self-administered, Ambien, Cocaine, and Tylenol with Codeine without valid prescriptions.

3. Petitioner is 48 years old. She presented evidence of completion of 51.25 hours of continuing education taken in 2004, before her suspension. Petitioner has paid \$680 of the ordered costs of investigation and prosecution, and owes \$4,080.25. Petitioner is in compliance with the conditions of her suspension and has been submitting quarterly reports as requested by board staff. She has cooperated with the monitoring program.

4. As a result of the unusual language of the stipulation and settlement petitioner is in the unusual "Catch 22" position of being indefinitely suspended until she completes the Pharmacist Recovery Program, but the program requires her to work as a pharmacist under monitoring. She is barred from the latter work because of her suspension, and therefore cannot complete the program.

Petitioner acknowledges that she is new in recovery, and should be monitored in the work environment as determined by the Pharmacist Recovery Program and the board's enforcement staff. She testified that she has a strong foundation for recovery, the support of her family, and is working the steps with her sponsor. On the Monday following the subject hearing she was scheduled to start employment with Tulare County as an Eligibility Worker, but would prefer to return to the field of pharmacy.

Petitioner's testimony established that she acknowledges abuse of cocaine dating back to 1997, and use of other drugs to address the effects of cocaine. She elected to participate in a residential recovery program, and had actively participated in the Pharmacist Recovery Program since February 2005 despite a difficult start related to payment for participation.

#### LEGAL CONCLUSIONS

The problem presented by the language of the stipulation and settlement can be resolved by the language of the Order set forth below, which was apparently the original intent of the parties.

#### ORDER

Original Pharmacist License No. RPH 37589, issued to Laura Fujisawa is revoked; however, the revocation is stayed and petitioner is placed on probation for five years dating from January 17, 2005, upon the following terms and conditions:



*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:

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 petitioner's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

*Reporting to the Board*

Petitioner shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Petitioner 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.

*Interview with the Board*

Upon receipt of reasonable notice, petitioner 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.

*Cooperation with Board Staff*

Petitioner shall cooperate with the board's inspectional program and in the board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

*Continuing Education*

Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

*Notice to Employers*

Petitioner shall notify all present and prospective employers of this decision and the terms, conditions and restrictions imposed on petitioner by this decision. Within 30

days of the effective date of this decision, and within 15 days of petitioner undertaking new employment, petitioner shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to the board in writing acknowledging the employer has read this decision.

If petitioner works for or is employed by or through a pharmacy employment service, she must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of this decision in advance of 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 petitioner is considered an employee or independent contractor.

*No Preceptorships, Supervision of Interns, Being 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 petitioner be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

*Reimbursement of Board Costs*

Petitioner shall pay to the board its costs of investigation and prosecution in the total amount since January 17, 2005, of \$4,460.25 on a payment schedule to be determined by board staff. The filing of bankruptcy by petitioner shall not relieve petitioner of her responsibility to reimburse the board its costs of investigation and prosecution.

*Probation Monitoring Costs*

Petitioner 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.

*Status of License*

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

*License Surrender while on Probation/Suspension*

Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner 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, petitioner will no longer be subject to the terms and conditions of probation.

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

*Notification of Employment/Mailing Address Change*

Petitioner shall notify the board in writing within ten 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. Petitioner shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

*Tolling of Probation*

Should petitioner, regardless of residency, for any reason cease practicing pharmacy for a minimum of eighty hours per calendar month in California, petitioner 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 petitioner'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 petitioner is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code.

*Pharmacists Recovery Program*

Petitioner is currently enrolled in the PRP, and 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. Petitioner shall successfully participate in and complete her current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until petitioner successfully completes her treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the board.

Petitioner 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.

### *Random Drug Screening*

Petitioner, at her 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 petitioner 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 petitioner. Petitioner may not resume the practice of pharmacy until notified by the board in writing.

### *Abstain from Drugs and Alcohol Use*

Petitioner 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, petitioner shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the petitioner. Petitioner shall ensure that she is not in the presence of or in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs.

### *Report of Controlled Substances*

Petitioner shall submit quarterly reports to the board the total acquisition and disposition of such controlled substances as the board may direct. Petitioner shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Petitioner shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than 10 days following the end of the reporting period.

### *Violation of Probation*

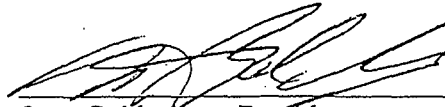
If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against petitioner during probation, the board 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 a petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, 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.

*Completion of Probation*

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

DATED: March 21, 2006



Stan Goldenberg, President  
Board of Pharmacy  
State of California