



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
 Phone: (916) 574-7900
 Fax: (916) 574-8618
 www.pharmacy.ca.gov

RECEIVED BY CALIFORNIA BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 BOARD OF PHARMACY

DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

2015 NOV -2 PM 3: 02

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Glesener Pharmacy, Inc.</u>	Case No. <u>4614</u>
Address of Record: <u>321 NORTH CITRUS AVENUE</u> <u>COVINA, CA 91723</u>	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. 4614, I hereby request to surrender my premises license, License No. PHY45665. The Board or its designee 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, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

[Signature] Secretary
 Applicant's Signature
 Date 10/29/15

[Signature] Executive Officer's Approval
 Date 10/29/15

[Signature] Virginia Deard
 Date 11/4/15

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

Case No. 4614

GLESENER PHARMACY
321 n. Citrus Street
Covina, CA 91723
Pharmacy License No. PHY 45665

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
GLESENER PHARMACY ONLY**

JOSEPH L. D'ANGELO
321 N. Citrus Street
Covina, CA 91723
Pharmacist License No. RPH 22883

ANTONY M. BRADLEY
321 N. Citrus street
Covina, CA 91723
Pharmacist License No. RPH 36740

and

DOUGLAS JAY AUSTIN
22702 Eaglespur Road
Diamond Bar, CA 91765
Pharmacist License No. RPH 40244

Respondents.

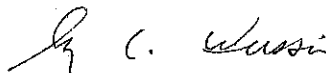
DECISION AND ORDER

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

This decision shall become effective on December 9, 2014.

It is so ORDERED on December 3, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804
E-mail: Cristina.Felix@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4614

12 **GLESENER PHARMACY**
13 **321 N. Citrus Street**
Covina, CA 91723
14 **Pharmacy License No. PHY 45665**

OAH No. 2013110777

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
GLESENER PHARMACY ONLY**

15 **JOSEPH L. D'ANGELO**
16 **321 N. Citrus Street**
Covina, CA 91723
17 **Pharmacist License No. 22883**

18 **ANTONY M. BRADLEY**
19 **321 N. Citrus Street**
Covina, CA 91723
20 **Pharmacist License No. 36740**

21 and

22 **DOUGLAS JAY AUSTIN**
23 **22702 Eaglespur Road**
Diamond Bar, CA 91765
24 **Pharmacist License No. 40244**

Respondents.

26 ///

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

3 PARTIES

4 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
5 She brought this action solely in her official capacity and is represented in this matter by Kamala
6 D. Harris, Attorney General of the State of California, by Cristina Felix, Deputy Attorney
7 General.

8 2. Respondent Glesener Pharmacy ("Respondent") is represented in this proceeding by
9 attorney Richard A. Moss, Esq. whose address is: Law Offices of Richard A. Moss
10 255 South Marengo Avenue, Pasadena, CA 91101.

11 3. On or about July 9, 2003, the Board of Pharmacy issued Pharmacy License Number
12 PHY 45665 to Glesener Pharmacy. The Pharmacy License was in full force and effect at all
13 times relevant to the charges brought herein and will expire on July 1, 2014, unless renewed

14 JURISDICTION

15 4. Accusation No. 4614 was filed before the Board of Pharmacy (Board), Department
16 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
17 statutorily required documents were properly served on Respondent on September 18, 2013.
18 Respondent timely filed its Notice of Defense contesting the Accusation.

19 5. A copy of Accusation No. 4614 is attached as exhibit A and incorporated herein by
20 reference.

21 ADVISEMENT AND WAIVERS

22 6. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in Accusation No. 4614. Respondent has also carefully read, fully
24 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
25 Order.

26 7. Respondent is fully aware of its legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
28 its own expense; the right to confront and cross-examine the witnesses against them; the right to

1 present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel
2 the attendance of witnesses and the production of documents; the right to reconsideration and
3 court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

5 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
6 every right set forth above.

7 CULPABILITY

8 9. Respondent admits that at hearing Complainant could establish a factual basis for the
9 charges and allegations in Accusation No. 4614, and that those charges and allegations are cause
10 for discipline. Respondent hereby give up his right to contest those charges and allegations.

11 10. Respondent agrees that its Pharmacy License is subject to discipline and they agree to
12 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

13 CONTINGENCY

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

23 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
24 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
25 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

26 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Pharmacy License No. PHY 45665 issued to Respondent
9 Glesener Pharmacy (Respondent) is revoked. However, the revocation is stayed and Respondent
10 is placed on probation for five (5) years on the following terms and conditions.

11 **1. Obey All Laws**

12 Respondent owner shall obey all state and federal laws and regulations.

13 Respondent owner shall report any of the following occurrences to the board, in writing,
14 within seventy-two (72) hours of such occurrence:

- 15 an arrest or issuance of a criminal complaint for violation of any provision of the
16 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
17 substances laws
- 18 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
19 criminal complaint, information or indictment
- 20 a conviction of any crime
- 21 discipline, citation, or other administrative action filed by any state or federal agency
22 which involves respondent's pharmacy license or which is related to the practice of
23 pharmacy or the manufacturing, obtaining, handling or distributing, billing, or
24 charging for any drug, device or controlled substance.

25 Failure to timely report any such occurrence shall be considered a violation of probation.

26 **2. Report to the Board**

27 Respondent owner shall report to the board quarterly, on a schedule as directed by the board
28 or its designee. The report shall be made either in person or in writing, as directed. Among other

1 requirements, respondent owner shall state in each report under penalty of perjury whether there
2 has been compliance with all the terms and conditions of probation. Failure to submit timely
3 reports in a form as directed shall be considered a violation of probation. Any period(s) of
4 delinquency in submission of reports as directed may be added to the total period of probation.
5 Moreover, if the final probation report is not made as directed, probation shall be automatically
6 extended until such time as the final report is made and accepted by the board.

7 **3. Interview with the Board**

8 Upon receipt of reasonable prior notice, respondent owner shall appear in person for
9 interviews with the board or its designee, at such intervals and locations as are determined by the
10 board or its designee. Failure to appear for any scheduled interview without prior notification to
11 board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
12 designee during the period of probation, shall be considered a violation of probation.

13 **4. Cooperate with Board Staff**

14 Respondent owner shall cooperate with the board's inspection program and with the board's
15 monitoring and investigation of respondent's compliance with the terms and conditions of their
16 probation. Failure to cooperate shall be considered a violation of probation.

17 **5. Reimbursement of Board Costs**

18 As a condition precedent to successful completion of probation, respondent shall pay to the
19 board its costs of investigation and prosecution in the amount of \$5,000.00 within one year of the
20 effective date of this order. Respondent shall make payment by cashier check or money order
21 payable to "Board of Pharmacy." Payment shall be mailed to Board of Pharmacy, 1625 North
22 Market Boulevard, Suite N219, Sacramento, CA 95834-1924 and indicate the citation number for
23 which payment is being made.

24 Respondent further agrees that he will be individually, and jointly and severally, liable with
25 Respondents Joseph L. D' Angelo and Antony M. Bradley for payment in full of the board's costs
26 of investigation and prosecution totaling \$15,000.00, with regard to Accusation No. 4614, within
27 one year of the effective date of this order.

28

1 There shall be no deviation from this schedule absent prior written approval by the board or
2 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
3 probation.

4 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
5 reimburse the board its costs of investigation and prosecution.

6 **6. Probation Monitoring Costs**

7 Respondent owner shall pay any costs associated with probation monitoring as determined
8 by the board each and every year of probation. Such costs shall be payable to the board on a
9 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as
10 directed shall be considered a violation of probation.

11 **7. Status of License**

12 Respondent owner shall, at all times while on probation, maintain current licensure with the
13 board. If respondent owner submits an application to the board, and the application is approved,
14 for a change of location, change of permit or change of ownership, the board shall retain
15 continuing jurisdiction over the license, and the respondent shall remain on probation as
16 determined by the board. Failure to maintain current licensure shall be considered a violation of
17 probation.

18 If respondent owner's license expires or is cancelled by operation of law or otherwise at any
19 time during the period of probation, including any extensions thereof or otherwise, upon renewal
20 or reapplication respondent owner's license shall be subject to all terms and conditions of this
21 probation not previously satisfied.

22 **8. License Surrender While on Probation/Suspension**

23 Following the effective date of this decision, should respondent owner discontinue
24 business, respondent owner may tender the premises license to the board for surrender. The
25 board or its designee shall have the discretion whether to grant the request for surrender or take
26 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
27 the license, respondent will no longer be subject to the terms and conditions of probation.

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1 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
2 renewal license to the board within ten (10) days of notification by the board that the surrender is
3 accepted. Respondent owner shall further submit a completed Discontinuance of Business form
4 according to board guidelines and shall notify the board of the records inventory transfer.

5 Respondent owner shall also, by the effective date of this decision, arrange for the
6 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
7 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
8 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
9 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
10 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
11 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
12 those patients for whom the pharmacy has on file a prescription with one or more refills
13 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
14 days.

15 Respondent owner may not apply for any new licensure from the board for three (3) years
16 from the effective date of the surrender. Respondent owner shall meet all requirements applicable
17 to the license sought as of the date the application for that license is submitted to the board.

18 Respondent owner further stipulates that he or she shall reimburse the board for its costs of
19 investigation and prosecution prior to the acceptance of the surrender.

20 **9. Notice to Employees**

21 Respondent owner shall, upon or before the effective date of this decision, ensure that all
22 employees involved in permit operations are made aware of all the terms and conditions of
23 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
24 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
25 remain posted throughout the probation period. Respondent owner shall ensure that any
26 employees hired or used after the effective date of this decision are made aware of the terms and
27 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
28 respondent owner shall submit written notification to the board, within fifteen (15) days of the

1 effective date of this decision, that this term has been satisfied. Failure to submit such
2 notification to the board shall be considered a violation of probation.

3 "Employees" as used in this provision includes all full-time, part-time,
4 volunteer, temporary and relief employees and independent contractors employed or
5 hired at any time during probation.

6 **10. Owners and Officers: Knowledge of the Law**

7 Respondent shall provide, within thirty (30) days after the effective date of this decision,
8 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
9 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty
10 of perjury that said individuals have read and are familiar with state and federal laws and
11 regulations governing the practice of pharmacy. The failure to timely provide said statements
12 under penalty of perjury shall be considered a violation of probation.

13 **11. Posted Notice of Probation**

14 Respondent owner shall prominently post a probation notice provided by the board in a
15 place conspicuous and readable to the public. The probation notice shall remain posted during
16 the entire period of probation.

17 Respondent owner shall not, directly or indirectly, engage in any conduct or make any
18 statement which is intended to mislead or is likely to have the effect of misleading any patient,
19 customer, member of the public, or other person(s) as to the nature of and reason for the probation
20 of the licensed entity.

21 Failure to post such notice shall be considered a violation of probation.

22 **12. Violation of Probation**

23 If a respondent owner has not complied with any term or condition of probation, the board
24 shall have continuing jurisdiction over respondent license, and probation shall be automatically
25 extended until all terms and conditions have been satisfied or the board has taken other action as
26 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
27 probation, and to impose the penalty that was stayed.

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1 If respondent owner violates probation in any respect, the board, after giving respondent
2 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
3 order that was stayed. Notice and opportunity to be heard are not required for those provisions
4 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
5 the license. If a petition to revoke probation or an accusation is filed against respondent during
6 probation, the board shall have continuing jurisdiction and the period of probation shall be
7 automatically extended until the petition to revoke probation or accusation is heard and decided.

8 **13. Completion of Probation**

9 Upon written notice by the board or its designee indicating successful completion of
10 probation, respondent license will be fully restored.

11 **14. Separate File of Records**

12 Respondent owner shall maintain and make available for inspection a separate file of all
13 records pertaining to the acquisition or disposition of all controlled substances. Failure to
14 maintain such file or make it available for inspection shall be considered a violation of probation.

15 **ACCEPTANCE**

16 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
17 discussed it with my attorney, Richard Moss, Esq. I understand the stipulation and the effect it
18 will have on my Pharmacy License. I enter into this Stipulated Settlement and Disciplinary Order
19 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
20 Board of Pharmacy.

21
22 DATED: 05-03-14 

23 JOSEPH L. D'ANGELO
24 For GLESENER PHARMACY
25 Respondent

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

DATED:

6/4/14



Richard Moss, Esq.
Attorney for Respondent

ENDORSEMENT

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

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

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1 I have read and fully discussed with Respondent Glesener Pharmacy the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4 DATED: _____

5 Richard Moss, Esq.
6 Attorney for Respondent

7 ENDORSEMENT

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

10 Dated: 06/05/2014

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 GREGORY J. SALUTE
14 Supervising Deputy Attorney General

15 
16 CRISTINA FELIX
17 Deputy Attorney General
18 *Attorneys for Complainant*

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20 51495443_2.doc

Exhibit A

Accusation No. 4614

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804
7 *Attorneys for Complainant*

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

10
11 In the Matter of the Accusation Against:

Case No. 4614

12 **GLESENER PHARMACY**
321 N. Citrus Street
13 Covina, CA 91723
14 Pharmacy License No. PHY 45665

A C C U S A T I O N

15 **JOSEPH D'ANGELO**
321 N. Citrus Street
16 Covina, CA 91723
17 Pharmacist No. 22883

18 **ANTONY M. BRADLEY**
321 N. Citrus Street
19 Covina, CA 91723
20 Pharmacist No. 36740

21 and

22 **DOUGLAS JAY AUSTIN**
22702 Eaglespur Road
23 Diamond Bar, CA 91765
24 Pharmacist No. 40244

25 Respondents.

26 ///

27 ///

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1 Complainant alleges:

2 PARTIES

3 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
4 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

5 2. On or about July 9, 2003, the Board of Pharmacy issued Pharmacy License Number
6 PHY 45665 to Glesener Pharmacy. The Pharmacy License was in full force and effect at all
7 times relevant to the charges brought herein and will expire on July 1, 2014, unless renewed.

8 3. On or about April 8, 1963, the Board of Pharmacy issued Pharmacist Number 22883
9 to Joseph D'Angelo (Respondent D'Angelo). The Pharmacist License was in full force and effect
10 at all times relevant to the charges brought herein and will expire on July 31, 2014, unless
11 renewed.

12 4. On or about October 19, 1981, the Board of Pharmacy issued Pharmacist Number
13 36740 to Anthony M. Bradley (Respondent Bradley). The Pharmacist License was in full force
14 and effect at all times relevant to the charges brought herein and will expire on May 31, 2015,
15 unless renewed.

16 5. On or about August 21, 1986, the Board of Pharmacy issued Pharmacist Number
17 40244 to Douglas Jay Austin (Respondent Austin). The Pharmacist License was in full force and
18 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless
19 renewed.

20 JURISDICTION

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

24 7. Section 118, subdivision (b), of the Code provides that the
25 suspension/expiration/surrender/cancellation of a license shall not deprive the
26 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
27 within which the license may be renewed, restored, reissued or reinstated.

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8. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

...
(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

9. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY AUTHORITY

10. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

1 (d) The clearly excessive furnishing of controlled substances in violation of
subdivision (a) of Section 11153 of the Health and Safety Code.

2 (e) The clearly excessive furnishing of controlled substances in violation of
3 subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be
4 considered in determining whether the furnishing of controlled substances is clearly
5 excessive shall include, but not be limited to, the amount of controlled substances
6 furnished, the previous ordering pattern of the customer (including size and frequency
7 of orders), the type and size of the customer, and where and to whom the customer
8 distributes its product.

9 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
10 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 (g) Knowingly making or signing any certificate or other document that falsely
13 represents the existence or nonexistence of a state of facts.

14 ...
15 (j) The violation of any of the statutes of this state, or any other state, or of the
16 United States regulating controlled substances and dangerous drugs.

17 ...
18 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
19 the violation of or conspiring to violate any provision or term of this chapter or of the
20 applicable federal and state laws and regulations governing pharmacy, including
21 regulations established by the board or by any other state or federal regulatory
22 agency.

23 (p) Actions or conduct that would have warranted denial of a license.

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

26 ...
27 11. Section 4022 of the Code states

28 Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use
in humans or animals, and includes the following:

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

(b) Any device that bears the statement: "Caution: federal law restricts this device to
sale by or on the order of a _____," "Rx only," or words of similar import, the
blank to be filled in with the designation of the practitioner licensed to use or order
use of the device.

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

///

1 12. Section 4051 of the Code states:

2 (a) Except as otherwise provided in this chapter, it is unlawful for any person to
3 manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous
4 device, or to dispense or compound any prescription pursuant to Section 4040 of a
prescriber unless he or she is a pharmacist under this chapter.

5 (b) Notwithstanding any other law, a pharmacist may authorize the initiation of a
6 prescription, pursuant to Section 4052, and otherwise provide clinical advice or
information or patient consultation if all of the following conditions are met:

7 (1) The clinical advice or information or patient consultation is provided to a
health care professional or to a patient.

8 (2) The pharmacist has access to prescription, patient profile, or other
9 relevant medical information for purposes of patient and clinical consultation and
advice.

10 (3) Access to the information described in paragraph (2) is secure from
11 unauthorized access and use."

12 13. Section 4077 of the Code states, in pertinent part, that except as provided in
13 subdivisions (b) and (c), of this section, no person shall dispense any dangerous drug upon
14 prescription except in a container correctly labeled with the information required by Section
15 4076.

16 14. Section 4081 of the Code states:

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

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

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

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15. Code section 4126.5, subdivision (a), provides:

(a) A pharmacy may furnish dangerous drugs only to the following:

...

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

...

(7) To another pharmacy under common control.

16. Section 4328 of the Code states:

Except as otherwise provided in this chapter, any person who permits the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs in his or her pharmacy, except by a pharmacist, is guilty of a misdemeanor.

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

18. Section 4105 of the Code states:

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

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

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

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed

1 premises are open for business, be able to produce a hard copy and electronic copy of
2 all records of acquisition or disposition or other drug or dispensing-related records
maintained electronically.

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

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

7 **STATE REGULATORY AUTHORITY**

8 19. California Code of Regulations, title 16, section 1714, states:

9 (a) All pharmacies (except hospital inpatient pharmacies as defined by Business
10 and Professions Code section 4029 which solely or predominantly furnish drugs to
inpatients of the hospital) shall contain an area which is suitable for confidential
patient counseling.

11 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
12 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
secured and distributed. The pharmacy shall be of sufficient size and unobstructed
13 area to accommodate the safe practice of pharmacy.

14 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and
15 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
insects, and properly lighted. The pharmacy shall be equipped with a sink with hot
and cold running water for pharmaceutical purposes.

16 (d) Each pharmacist while on duty shall be responsible for the security of the
17 prescription department, including provisions for effective control against theft or
diversion of dangerous drugs and devices, and records for such drugs and devices.
18 Possession of a key to the pharmacy where dangerous drugs and controlled
substances are stored shall be restricted to a pharmacist.

19 (e) The pharmacy owner, the building owner or manager, or a family member of
20 a pharmacist owner (but not more than one of the aforementioned) may possess a key
to the pharmacy that is maintained in a tamper evident container for the purpose of 1)
21 delivering the key to a pharmacist or 2) providing access in case of emergency. An
emergency would include fire, flood or earthquake. The signature of the pharmacist-
22 in-charge shall be present in such a way that the pharmacist may readily determine
whether the key has been removed from the container.

23 (f) The board shall require an applicant for a licensed premise or for renewal of
24 that license to certify that it meets the requirements of this section at the time of
licensure or renewal.

25 (g) A pharmacy shall maintain a readily accessible restroom. The restroom shall
26 contain a toilet and washbasin supplied with running water.

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1 20. California Code of Regulations, title 16, section 1718, states:

2 'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
3 Code shall be considered to include complete accountability for all dangerous drugs
4 handled by every licensee enumerated in Sections 4081 and 4332.

5 The controlled substances inventories required by Title 21, CFR, Section 1304 shall
6 be available for inspection upon request for at least 3 years after the date of the
7 inventory.

8 **FEDERAL REGULATORY AUTHORITY**

9 21. Code of Federal Regulations 1311.30, subdivision (c),

10 (a) Only the certificate holder may access or use his or her digital certificate and
11 private key.

12 (b) The certificate holder must provide FIPS-approved secure storage for the
13 private key, as discussed by FIPS 140-2, 180-2, 186-2, and accompanying change
14 notices and annexes, as incorporated by reference in § 1311.08.

15 (c) A certificate holder must ensure that no one else uses the private key. While
16 the private key is activated, the certificate holder must prevent unauthorized use of
17 that private key.

18 (d) A certificate holder must not make back-up copies of the private key.

19 (e) The certificate holder must report the loss, theft, or compromise of the
20 private key or the password, via a revocation request, to the Certification Authority
21 within 24 hours of substantiation of the loss, theft, or compromise. Upon receipt and
22 verification of a signed revocation request, the Certification Authority will revoke the
23 certificate. The certificate holder must apply for a new certificate under the
24 requirements of § 1311.25.

25 22. Code of Federal Regulations 1311.60, subdivision (a),

26 (a) A supplier and purchaser must maintain records of CSOS electronic orders
27 and any linked records for two years. Records may be maintained electronically.
28 Records regarding controlled substances that are maintained electronically must be
readily retrievable from all other records.

(b) Electronic records must be easily readable or easily rendered into a format
that a person can read. They must be made available to the Administration upon
request.

(c) CSOS certificate holders must maintain a copy of the subscriber agreement
that the Certification Authority provides for the life of the certificate.

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1 COSTS

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

6 DRUGS

7 24. Oxycontin, a brand name formation of oxycodone hydrochloride, is an opioid agonist
8 and a Schedule II controlled substance with an abuse liability similar to morphine. OxyContin is
9 for use in opioid tolerant patients only. It is a Schedule II controlled substance pursuant to Health
10 and Safety Code section 11055, subdivision (b)(1), and a dangerous drug pursuant to Business
11 and Professions Code section 4022.

12 FACTS

13 Respondent Glesener Pharmacy, Respondent Bradley, and Respondent D'Angelo.

14 25. Respondent Glesner Pharmacy fills approximately 2200 prescriptions per week. In
15 addition to filling outpatient prescriptions, the pharmacy contracts with approximately 45 board
16 and care homes, dialysis centers and the Los Angeles County Department of Mental Health.
17 Medications filled for the board and care homes are delivered by employees of Glesener
18 Pharmacy.

19 26. Respondent Bradley and Respondent D'Angelo are each 50% owners of Respondent
20 Glesener Pharmacy. Usually four pharmacists work Monday through Friday and one on
21 Saturday. Each pharmacist is assigned a designated area and task within the pharmacy.

22 27. Respondent Bradley oversaw the sales of durable medical equipment in the front end
23 of the pharmacy and oversaw the overall operations of the pharmacy.

24 28. Respondent D'Angelo oversaw the paperwork, including drug purchase and delivery,
25 and human resources.

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1 **Pharmacy Technicians JH, CR and XC**

2 29. Pharmacist Technician JH¹ worked at Glesener Pharmacy from 2008 until she
3 resigned on November 10, 2011. She worked in the dispensing area of the pharmacy where the
4 Schedule II controlled drugs were kept.

5 30. Pharmacist Technician CR began working at Glesener Pharmacy in 2001 and assisted
6 with durable equipment. CR became a licensed technician in 2010. In or about March of 2011,
7 she began working in the dispensing area of the pharmacy where the Schedule II controlled drugs
8 were kept.

9 31. Pharmacist Technician XC worked for Glesener Pharmacy for approximately 14
10 years and was assigned to data entry. Pharmacy Technician TH also worked for Glesener
11 Pharmacy in 2011.

12 **Operational Standards and Security**

13 **Respondent Austin and the CSOS System Password**

14 32. Respondent Austin worked as a pharmacist at Glesener Pharmacy from 2005 until
15 November 14, 2011, when he was terminated as a result of missing medication from the
16 pharmacy. Respondent Austin was responsible for ordering Schedule II controlled drugs. He
17 ordered drugs under the Drug Enforcement Administration's (DEA) Controlled Substance
18 Ordering System (CSOS) program² through the use of his CSOS password, also known as a
19 private key. Respondent Austin also checked in and signed the delivery of the Schedule II
20 controlled drugs. Respondent Austin was assigned to fill and dispense outpatient prescriptions
21

22 ¹ Initials are used to protect the identity of individuals. Identities will be disclosed during
23 discovery.

24 ² This system allows for secure electronic ordering of controlled substances through a
25 protected CSOS password. A CSOS Certificate is a digital identity issued by the DEA's CSOS
26 Certification Authority that allows for electronic ordering for Schedule I and II (as well as III-V)
27 controlled substances. Each CSOS certificate is issued to only one individual person. This
28 person, called a CSOS Subscriber, is an individual who enrolled in the CSOS program with the
DEA and whose name appears in the digital certificate. A digital signature using a CSOS
certificate is required when submitting an electronic order for controlled substances. Only the
individual subscriber whose name appears in the certificate is authorized to perform this digital
signature. While the paper DEA Form-222 ordering process is still allowed, CSOS is the only
method for ordering Schedule I and II controlled substances electronically.

1 Monday through Friday, 40 hours per week, with one hour lunch break. Respondent Austin
2 maintained a personal monthly log that documented what Schedule II controlled drugs were
3 dispensed. He maintained this record at home but it was not maintained accurately each month.
4 However, he was aware that the pharmacy dispensed an average of 300 pills per month of
5 Oxycontin 80 mg.

6 33. Respondent Austin's CSOS password was not secure and was located in a folder,
7 with instructions how to order drugs, accessible to others in the pharmacy. Anyone could log into
8 his account and electronically order Schedule II controlled drugs for the pharmacy. From May 1,
9 2011 to November 14, 2011, Respondent Glesener Pharmacy, Respondent Bradley and
10 Respondent Austin failed to maintain records for the CSOS electronic orders.

11 34. From May 1, 2011 to November 14, 2011, Respondent Glesener Pharmacy,
12 Respondent Bradley and Respondent Austin knowingly allowed pharmacy staff to use a CSOS
13 password registered to Respondent Austin to order Schedule II controlled drugs, including
14 Pharmacist Technicians XC and TH. From September 7, 2011 through September 23, 2011,
15 Respondent Austin was on vacation and not at the pharmacy. Respondent Austin's password
16 was used on September 15, 2011 and September 22, 2011 by staff other than Respondent Austin
17 to order Schedule II controlled drugs. Pharmacist Technician XC placed drug orders in
18 Respondent Austin's absence.

19 **Acquisition, Disposition and Storage of Drugs**

20 35. From May 1, 2011 to November 14, 2011, typically each morning, drugs were
21 delivered to the pharmacy by AmerisourceBergen's delivery driver into the back room of the
22 pharmacy. Respondent D'Angelo, Respondent Bradley or Respondent Austin would sign for the
23 drug delivery and then the drugs were "stickered." Schedule II controlled drugs were placed in a
24 locked cabinet located in the dispensing area or left on the dispensing counter. There was no log
25 book or any record keeping of any Schedule II narcotics for receipt or dispensing. Employees
26 worked in the backroom bubble packing 30 day dispensing cards for board and care homes. The
27 employees would come to the dispensing counter and, without telling a pharmacist or showing
28

1 them prescription labels, would take whatever Schedule II controlled drugs they needed to bubble
2 pack.

3 36. A pharmacist had a key to the locked drawer which contained Schedule II controlled
4 drugs were kept in the locked drawer, except Percocet. However, the drawer was unlocked at the
5 start of the day and left open until a pharmacist locked it at the end of the day. The drawer was
6 not secure and was accessible to others in the pharmacy.

7 Loss of Controlled Substances

8 37. In early October of 2011, Respondent D'Angelo was considering changing the
9 wholesaler from whom they purchased drugs and, therefore, examined the recent Schedule II
10 controlled drug purchases. He noticed an escalation in purchases of Schedule II controlled drugs
11 and advised Respondent Bradley of same.

12 38. Respondent Bradley then noticed a larger amount of Oxycodone was ordered by the
13 pharmacy. He held a staff meeting and reminded staff that they should not accept any
14 prescriptions for Oxycodone and Oxycontin from customers outside the immediate area. He also
15 instructed staff to check to see if the prescribing physician had any disciplinary actions prior to
16 accepting the prescription.

17 39. On November 7, 2011, Respondent Austin approached Respondent Bradley and
18 stated that he ordered three bottles of Oxycontin 80 mg on November 4, 2011 and two bottles
19 were missing. There were no prescriptions for Oxycontin 80 mg dispensed. Respondent Bradley
20 reviewed the Schedule II controlled drug delivery receipt and noticed Respondent Austin had
21 failed to mention he had also ordered 4 bottles of Oxycodone 10 mg and 4 bottles of Oxycodone
22 30 mg.

23 40. A review of 8 months of purchase, usage and inventory showed a loss of Schedule II
24 controlled drugs for a six month period beginning in May 1, 2011 to November 2011. An
25 analysis of the Schedule II controlled drug invoices revealed the pharmacy was missing tablets of
26 Oxycodone and Oxycontin.

1 41. From May 1, 2011 through November 14, 2011, Respondent Austin, while working at
2 Glesener Pharmacy, was aware that the pharmacy was ordering excessive amounts of Oxycontin
3 80 mg tablets without reason. Further, while he was responsible for ordering the Schedule II
4 controlled substances, 7, 200 tablets of Oxycontin 80 mg, 3,450 tablets of Oxycontin 60 mg and
5 7, 520 tablets of Oxycodone 30 mg were unaccounted for and he could not provide disposition
6 records for that medication.

7 42. On November 14, 2011, Respondent Austin was terminated from his employment
8 with Respondent Glesener Pharmacy.

9 43. On or about the November 15, 2011, Respondent D'Angelo, as partner of Respondent
10 Glesener Pharmacy, filed a U.S. Department of Justice Drug Enforcement Administration (DEA)
11 Report of Theft or Loss of Controlled Substances. The report stated that Respondent Austin,
12 using his CSOS password, purchased "all" Schedule II controlled drugs. The report stated that
13 Respondent Austin, when confronted by Respondent D'Angelo, admitted to purchasing several
14 times more Oxycodone than was going to be dispensed. The report also stated that Respondent
15 Austin's purchases included the following, for example, for Oxycontin 80 mg:

16

<u>Month</u>	<u>Usage</u>	<u>Purchased</u>
June 2011	300	800
July 2011	300	1300
August 2011	300	1600
September 2011	300	1900
November 2011	300	1600

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1 44. The report further stated that a loss of Schedule II controlled drugs occurred between
2 May 2011 and November 7, 2011 as follows:

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<u>Type of Drugs Missing</u>	<u>Amount of Drug</u>
Oxycodone 30 mg tablets	2806 tablets
Oxycontin 60 mg tablets	2950 tablets
Oxycontin 80 mg tablets	5766 tablets

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8 45. The report also stated that a theft report had been made with the Covina Police
9 Department.

10 46. A further review of the purchase records of AmerisourceBergen, the dispensing
11 records, and Respondent Glesener Pharmacy's annual inventory, indicates that the actual loss of
12 controlled substance is as follows:

13

<u>Type of Drugs Missing</u>	<u>Amount of Drug</u>
Oxycodone 30 mg tablets	7520 tablets
Oxycontin 60 mg tablets	3450 tablets
Oxycontin 80 mg tablets	7200 tablets

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18 47. Respondent Glesener Pharmacy, Respondent Bradley, Respondent D'Angelo, from
19 May 1, 2011 through November 14, 2011, did not maintain disposition records for and could not
20 account for these missing drugs.

21 48. On November 23, 2011, the Board received a copy of the report filed with the DEA
22 by Respondent D'Angelo.

23 49. When questioned by a Board Inspector regarding why he ordered large amounts of
24 three different strengths of Oxycodone days apart, Respondent Austin replied "I don't know."
25 When asked why he ordered an average of 1300 tablets of Oxycotin a month, after he confirmed
26 that the pharmacy dispensed an average of 300 Oxycontin 80 mg tablets per month, Respondent
27 Austin again replied "I don't know."
28

1 FIRST CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Lack of Operational Standards and Security- Pharmacy**
3 **(Against Respondent Glesener Pharmacy)**

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5 50. Respondent Glesener Pharmacy is subject to discipline under section 4301,
6 subsection (o) of the Code, and/or California Code of Regulations, title 16, section 1714,
7 subsection (b), for failure to maintain its facilities, space, fixtures, and equipment so that drugs
8 are safely and properly prepared, maintained, secured and distributed. The circumstances are as
9 follows:

10 a. From May 1, 2011 through November 14, 2011, Respondent Glesener Pharmacy
11 could not account for the following drugs: 7, 200 tablets of Oxycontin 80 mg, 3,450 tablets of
12 Oxycontin 60 mg and 7, 520 tablets of Oxycodone 30 mg. Complainant hereby incorporates
13 paragraphs 32 through 49 inclusive, as though fully set forth herein.

14 b. From May 1, 2011 through November 14, 2011, Schedule II controlled drugs were
15 placed in a locked cabinet located in the dispensing area or left on the dispensing counter. There
16 was no log book or any record keeping of any Schedule II narcotics for receipt or dispensing.
17 Employees worked in the backroom bubble packing 30 day dispensing card for board and care
18 homes. The employees would come to the dispensing counter and, without telling a pharmacist
19 or showing them prescription labels, would take whatever Schedule II controlled drugs they
20 needed to bubble pack. A pharmacist had a key to the locked drawer which contained Schedule II
21 controlled drugs, except Percocet. However, the drawer was unlocked at the start of the day and
22 left open until a pharmacist locked it at the end of the day. The drawer was not secure and was
23 accessible to others in the pharmacy. Complainant hereby incorporates paragraphs 35 through 36
24 inclusive, as though fully set forth herein.

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SECOND CAUSE FOR DISCIPLINE

Unprofessional Conduct: Lack of Operational Standards and Security- Pharmacists
(Against Respondent D'Angelo, Respondent Bradley, and Respondent Austin)

51. Respondent D' Angelo, Respondent Bradley, and Respondent Austin are each and severally subject to discipline under section 4301, subdivision (o), of the Code, and California Code of Regulations, title 16, section 1714, subdivision (d), for failure to maintain the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices and to ensure that possession of a key to the pharmacy where dangerous drugs and controlled substances are stored is restricted to pharmacists. The circumstances are as follows:

a. From May 1, 2011 through November 14, 2011, Respondent D'Angelo and Respondent Bradley failed to maintain the security of the prescription department and allowed and/or were aware the pharmacy was ordering excessive amounts of Schedule II controlled drugs without reason. A total of 7,200 tablets of Oxycontin 80 mg, 3,450 tablets of Oxycontin 60 mg and 7,520 tablets of Oxycodone 30 mg were unaccounted for. Complainant hereby incorporates paragraphs 32 through 49 inclusive, as though fully set forth herein.

b. From May 1, 2011 through November 14, 2011, Respondent D'Angelo and Respondent Bradley failed to maintain the security of the prescription department and allowed Schedule II controlled drugs to be placed in a locked cabinet located in the dispensing area or left on the dispensing counter. There was no log book or any record keeping of any Schedule II narcotics for receipt or dispensing. Employees worked in the backroom bubble packing 30 day dispensing card for board and care homes. The employees would come to the dispensing counter and, without telling a pharmacist or showing them prescription labels, would take whatever Schedule II controlled drugs they needed to bubble pack. A pharmacist had a key to the locked drawer which contained all Schedule II controlled drugs, except Percocet. However, the drawer was unlocked at the start of the day and left open until a pharmacist locked it at the end of the

1 day. The drawer was not secure and was accessible to others in the pharmacy. Complainant
2 hereby incorporates paragraphs 35 through 36 inclusive, as though fully set forth herein.

3 c. From May 1, 2011 through November 14, 2011, Respondent D'Angelo, and
4 Respondent Bradley knowingly allowed pharmacy technicians to order Schedule II controlled
5 drugs electronically using a CSOS password/account assigned to Respondent Austin.
6 Complainant hereby incorporates paragraphs 32 through 34, inclusive, as though fully set forth
7 herein.

8 d. From May 1, 2011 to November 14, 2011, Respondent Austin knowingly left his
9 CSOS password to electronically order Schedule II controlled rugs available for any staff to
10 access. Using his encrypted password, 1,200 Oxycontin 80 mg tablets were ordered by someone
11 other than himself between September 15, 2011 and September 23, 2011 and could not be
12 accounted for. Complainant hereby incorporates paragraphs 32 through 34, inclusive, as though
13 fully set forth herein.

14 e. From May 1, 2011 through November 14, 2011 while working at Respondent
15 Glesener Pharmacy and Respondent Austin ordered an excessive amount of Oxycontin 80 mg
16 tablets, although he was aware the pharmacy dispensed on average 300 tablets of Oxycontin 80
17 mg per month, and could not explain why. 7, 200 tablets of Oxycontin 80 mg, 3,450 tablets of
18 Oxycontin 60 mg and 7, 520 tablets of Oxycodone 30 mg were unaccounted for. Complainant
19 hereby incorporates paragraphs 32 through 49 inclusive, as though fully set forth herein.

20 THIRD CAUSE FOR DISCIPLINE

21 **Failure to Maintain Records of Acquisition and Disposition of Dangerous Drugs** 22 **(Against Respondent Glesener Pharmacy, Respondent D'Angelo and Respondent Bradley)**

23 52. Respondent Glesener Pharmacy, Respondent D'Angelo, and Respondent Bradley, are
24 each and severally subject to disciplinary action under section 4081, subdivision (a), and section
25 4105, of the Code, for failure to maintain all records of acquisition or disposition of dangerous
26 drugs at all times open to inspection and preserved for at least three years from the date of
27 making. The circumstances are as follows:
28

1 a. From May 1, 2011 through November 14, 2011, Glesener Pharmacy, Respondent
2 Bradley, and Respondent D' Angelo, did not maintain disposition records for 7,200 tablets of
3 Oxycontin 80 mg, 3,450 tablets of Oxycontin 60 mg and 7,520 tablets of Oxycodone 30 mg.
4 Complainant hereby incorporates paragraphs 40 through 47 inclusive, as though fully set forth
5 herein.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **Unprofessional Conduct: Failure to Maintain Records for CSOS Electronic Orders**
8 **Against Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley**
9 **and Respondent Austin)**

10 53. Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley, and
11 Respondent Austin are each and severally subject to disciplinary action under section 4301,
12 subdivision (o), of the Code and under Code of Federal Regulations section 1311.60, subdivision
13 (a), for unprofessional conduct in that they violated or attempted to violate, directly or indirectly,
14 any provision of the applicable federal and state laws and regulations governing pharmacy when
15 they failed to maintain records of CSOS electronic orders and any linked orders for two years.
16 The circumstances are as follows:

17 a. From May 1, 2011 through November 14, 2011, Respondent Glesener Pharmacy,
18 Respondent D'Angelo, Respondent Bradley and Respondent Austin failed to maintain records of
19 CSOS electronic orders as required by law. They knowingly allowed pharmacy staff to use a
20 CSOS password registered to Respondent Austin to order Schedule II controlled drugs. The
21 password was located in a folder accessible by all staff and was used on at least September 15,
22 2011 and September 22, 2011 by staff other than Respondent Austin to order Schedule II
23 controlled drugs. Complainant hereby incorporates paragraphs 32 through 34, inclusive, as
24 though fully set forth herein.

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1 FIFTH CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Failure to Prevent Unauthorized Use of CSOS Password**
3 **(Against Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley, and**
4 **Respondent Austin)**

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6 54. Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley, and
7 Respondent Austin are each and severally subject to disciplinary action under section 4301,
8 subdivision (o), of the Code, and under Code of Federal Regulations section 1311.30, subdivision
9 (c), for unprofessional conduct in that they violated or attempted to violate, directly or indirectly,
10 any provision of the applicable federal and state laws and regulations governing pharmacy when
11 they failed to prevent unauthorized use of CSOS password for digitally signing orders. The
12 circumstances are as follows:

13 a. From May 1, 2011 through November 14, 2011, Respondent Glesener Pharmacy,
14 Respondent D'Angelo, and Respondent Bradley encouraged Respondent Austin to provide his
15 CSOS password to the pharmacy staff so they could order Schedule II controlled drugs when he
16 was not present. The private password assigned to Respondent Austin was located in a folder
17 accessible by all staff and was used on September 15, 2011 and September 22, 2011 by staff other
18 than Respondent Austin to order Schedule II controlled drugs. Complainant hereby incorporates
19 paragraphs 32 through 34, inclusive, as though fully set forth herein.

20 b. From May 1, 2011 through November 14, 2011, Respondent Austin failed to prevent
21 the unauthorized use of his CSOS password. He willingly left his CSOS password in a folder for
22 any staff to access in his absence and it was used on September 15, 2011 and September 22, 2011
23 by someone other than himself. Complainant hereby incorporates paragraphs 32 through 34,
24 inclusive, as though fully set forth herein.

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1 SIXTH CAUSE FOR DISCIPLINE

2 Unprofessional Conduct: Dishonesty

3 (Against Respondent D'Angelo, Respondent Bradley and Respondent Austin)

4 55. Respondent D'Angelo, Respondent Bradley, and Respondent Austin are each and
5 severally subject to discipline under section 4301, subdivisions (f) and (p), of the Code, for
6 unprofessional conduct in that they were dishonest and knowingly allowed pharmacy technicians
7 to represent Respondent Austin and use a CSOS password registered to Respondent Austin to
8 electronically order Schedule II controlled drugs from a drug wholesaler. Complainant hereby
9 incorporates paragraphs 32 through 34, inclusive, as though fully set forth herein.

10 SEVENTH CAUSE FOR DISCIPLINE

11 Unprofessional Conduct: Falsely Representing Facts

12 (Against Respondent D'Angelo and Respondent Bradley)

13 56. Respondent D'Angelo and Respondent Bradley are each and severally subject to
14 discipline under section 4301, subdivision (g), of the Code, for unprofessional conduct in that
15 they knowingly made or signed a certificate or other document that falsely represented the
16 existence of the fact that only Respondent Austin used his CSOS password to order all Schedule
17 II controlled drugs, when they knowingly allowed pharmacy technicians to use a CSOS password
18 registered to Respondent Austin to electronically order Schedule II controlled drugs from a drug
19 wholesaler. Complainant hereby incorporates paragraphs 32 through 34, and 43, inclusive, as
20 though fully set forth herein.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Failure to Report Loss, Theft or Compromise of Private Key or**
3 **Password to Certification Authority Within 24 Hours**
4 **(Against Respondent Austin)**

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6 57. Respondent Austin is subject to disciplinary action under section 4301, subdivision
7 (o), of the Code, and under Code of Federal regulations 1311.30, subdivision (e), for
8 unprofessional conduct in that he violated or attempted to violate, directly or indirectly, any
9 provision of the applicable federal and state laws and regulations governing pharmacy when he
10 failed to report the loss, theft or compromise of his CSOS password within 24 hours of the loss,
11 theft or compromise to the Drug Enforcement Administration's Certification Authority³. From
12 May 1, 2011 through November 14, 2011, Respondent Austin, while working at Respondent
13 Glesener Pharmacy, knew his CSOS password had been used by staff other than himself,
14 including on September 15, 2011 and September 22, 2011, and did not report the compromise to
15 the Drug Enforcement Administration's Certification Authority. Complainant hereby
16 incorporates paragraphs 32 through 34, inclusive, as though fully set forth herein.

17 PRAYER

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

- 20 1. Revoking or suspending Pharmacy License Number PHY 45665, issued to
21 GLESENER PHARMACY;
- 22 2. Revoking or suspending Pharmacist Number 22883, issued to JOSEPH D'ANGELO;
- 23 3. Revoking or suspending Pharmacist Number 36740, issued to ANTONY M.
24 BRADLEY;

25 ///

26 _____
27 ³ As set forth above, the CSOS Certification Authority is operated by the DEA and issues
28 CSOS Certificates for the electronic ordering of controlled substances.

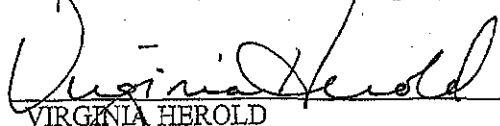
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4. Revoking or suspending Pharmacist Number 40244, issued to DOUGLAS JAY AUSTIN;

5. Ordering GLESENER PHARMACY, JOSEPH D'ANGELO, ANTONY M. BRADLEY and DOUGLAS JAY AUSTIN to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/7/13



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

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