

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

In the Matter of the Accusation Against:

**LISA CHAPLINSKY
P.O. Box 7617
Menlo Park, CA 94026**

Pharmacist License Number RPH 49278

Respondent.

Case No. 4687

OAH No. 2016010586

DECISION AND ORDER (CORRECTED)

The Decision and Order previously issued adopting the stipulation inadvertently transposed the effective date and the date the Order was issued. The Decision and Order in the above-entitled matter is therefore amended and corrected nunc pro tunc as of the date of entry of the decision to read as follows:

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

This Decision shall become effective at 5:00 p.m. on December 22, 2016.

It is so ORDERED on November 30, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 LESLIE E. BRAST
Deputy Attorney General
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6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

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11 In the Matter of the Accusation Against:

Case No. 4687

12 **LISA CHAPLINSKY**
13 **P.O. Box 7617**
Menlo Park, CA 94026

OAH No. 2016010586

14 **Pharmacist License Number RPH 49278**

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 Respondent.
16

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

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
21 (Board), Department of Consumer Affairs. She brought this action solely in her official capacity
22 and is represented in this matter by Kamala D. Harris, Attorney General of the State of California,
23 by Leslie E. Brast, Deputy Attorney General.

24 2. Lisa Chaplinsky (Respondent) is represented in this proceeding by attorney John L.
25 Fleeer, whose address is 1850 Mt. Diablo Boulevard, Suite 120, Walnut Creek, California 94596.

26 3. On or about March 20, 1997, the Board issued Pharmacist License No. RPH 49278 to
27 Respondent. The license was in full force and effect at all times relevant to the charges brought
28 in Accusation No. 4687. The license will expire on November 30, 2016, unless renewed.

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JURISDICTION

4. Accusation No. 4687 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 4, 2015. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 4687 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4687. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits that at hearing, Complainant could establish a factual basis for the charges and allegations in Accusation No. 4687, and that those charges and allegations are cause for discipline. Respondent hereby give up her right to contest those charges and allegations.

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

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CONTINGENCY

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

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

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 49278, issued to Respondent Lisa Chaplinsky, is surrendered and accepted by the Board of Pharmacy.

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

1 2. Respondent shall lose all rights and privileges as a Registered Pharmacist in
2 California as of the effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
4 issued, her wall certificate on or before the effective date of the Decision and Order.

5 4. Respondent understands and agrees that if he or she ever files an application for
6 licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new
7 application for licensure.

8 Respondent may not apply for any license, permit, or registration from the Board for three
9 (3) years from the effective date of this Decision and Order. Respondent stipulates that, should
10 she apply for any license from the Board on or after the effective date of this decision, all
11 allegations set forth in the Accusation shall be deemed to be true, correct and admitted by
12 respondent when the Board determines whether to grant or deny the application.

13 Respondent shall satisfy all requirements applicable to that license as of the date the
14 application is submitted to the Board, including, but not limited to taking and passing the
15 California Pharmacist Licensure Examination prior to the issuance of a new license.

16 Respondent is required to report this surrender as disciplinary action.

17 ~~5. Respondent shall pay the agency its costs of investigation and enforcement in the~~
18 amount of \$8,403.50 prior to issuance of a new or reinstated license.

19 6. If Respondent should ever apply or reapply for a new license or certification, or
20 petition for reinstatement of a license, by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Accusation, No. 4687 shall be deemed
22 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
23 other proceeding seeking to deny or restrict licensure.

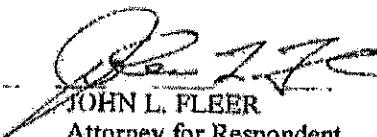
24 25 ACCEPTANCE

26 I have carefully read the above Stipulated Surrender of License and Order and have fully
27 discussed it with my attorney, John L. Fleer. I understand the stipulation and the effect it will
28 have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order

1 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
2 Board of Pharmacy.

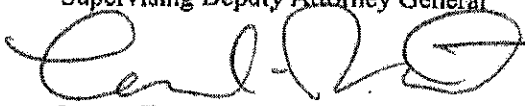
3
4 DATED: 5/15/16 _____ 
5 LISA CHAPLINSKY
6 Respondent

7 I have read and fully discussed with my client, Respondent Lisa Chaplinsky, the terms and
8 conditions and other matters contained in this Stipulated Surrender of License and Order. I
9 approve its form and content.

10
11 DATED: 5-14-16 _____ 
12 JOHN L. FLEER
13 Attorney for Respondent

14 ENDORSEMENT

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

17 Dated: 5/16/16
18 Respectfully submitted,
19 KAMALA D. HARRIS
20 Attorney General of California
21 FRANK H. PACOE
22 Supervising Deputy Attorney General
23 
24 LESLIE E. BRAST
25 Deputy Attorney General
26 Attorneys for Complainant

27 SF2014408407
28 41518860.doc

Exhibit A

Accusation No. 4687

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 LESLIE E. BRAST
Deputy Attorney General
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Attorneys for Complainant
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STATE OF CALIFORNIA
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11 In the Matter of the Accusation Against:

Case No. 4687

12 **LISA CHAPLINSKY**
P.O. Box 7617
13 Menlo Park, CA 94026

A C C U S A T I O N

14 **Pharmacist License Number RPH 49278**

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

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

21 2. On or about March 20, 1997, the Board issued Pharmacist License Number RPH
22 49278 to Lisa Chaplinsky ("Respondent"). The Pharmacist License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on November 30, 2014, unless
24 renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following laws.
27 All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

1 4. Code section 4011 provides that the Board shall administer and enforce both the
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
3 [Health & Safety Code, § 11000 et seq.].

4 5. Code section 4300(a) provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 STATUTORY AND REGULATORY PROVISIONS

12 7. Code section 4301 provides, in pertinent part, that the Board shall take action against
13 any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be
14 limited to, any of the following:

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

18 ...

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

24 ...

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

27 ...

28 (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.

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1 8. California Code of Regulations, title 16, section 1770, states:

2 For the purpose of denial, suspension, or revocation of a personal or
3 facility license pursuant to Division 1.5 (commencing with Section 475) of the
4 Business and Professions Code, a crime or act shall be considered substantially related
5 to the qualifications, functions or duties of a licensee or registrant if to a substantial
6 degree it evidences present or potential unfitness of a licensee or registrant to perform
7 the functions authorized by her license or registration in a manner consistent with the
8 public health, safety, or welfare.

9 9. Code section 4059, in pertinent part, prohibits furnishing of any dangerous drug or
10 dangerous device except upon the prescription of an authorized prescriber.

11 10. Code section 4060 provides, in pertinent part, that no person shall possess any
12 controlled substance, except that furnished upon a valid prescription/drug order.

13 11. Health and Safety Code section 11170 provides that no person shall prescribe,
14 administer, or furnish a controlled substance for himself or herself.

15 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
18 or subterfuge; or (2) by the concealment of a material fact.

19 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
20 any controlled substance listed in Schedule II (Health and Safety Code section 11055), subdivision
21 (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

22 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23 14. Code section 4021 states:

24 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code."

26 15. Code section 4022 states, in pertinent part:

27 "Dangerous drug" or "dangerous device" means any drug or device unsafe
28 for self use, except veterinary drugs that are labeled as such, 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.

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<i>Strength</i>	<i>Quantity/Tablets</i>	<i>Variance</i>
5 mg	3,127	66.5 percent
10 mg	2,770	60.2 percent
15 mg	3,150	76.8 percent
20 mg	900	75 percent
30 mg	11,235	29.4 percent

Safeway Store #4526, Los Altos

21. Between about December 14, 2012, and April 27, 2013, while working as a staff pharmacist at Safeway in Los Altos, Respondent stole from the pharmacy, possessed and self-administered, without a valid prescription, large quantities of **oxycodone**, a Schedule II controlled substance and a dangerous drug. Safeway reported losses in the following quantities and strengths:

<i>Strength</i>	<i>Quantity/Tablets</i>	<i>Variance</i>
5 mg	500	23 percent
10 mg	1,140	100 percent
15 mg	900	100 percent
20 mg	914	100 percent
30 mg	1,620	7.8 percent

22. In an effort to conceal her diversion from Safeway, Respondent falsified the pharmacy's Perpetual Inventory Log by reducing the inventory count she recorded from the quantity she actually received, or by increasing the quantities recorded as dispensed by other pharmacists from the quantities actually dispensed.

23. On or about April 29, 2013, Respondent admitted stealing oxycodone from the Safeway pharmacy for self-use to treat chronic, post-surgical pain, and signed a promissory note by which she agreed to repay Safeway \$5,128.00—the approximate value of the drugs Respondent

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1 was estimated to have diverted. On July 2, 2013, Respondent admitted stealing oxycodone from
2 inventory at LAP—Mountain View since December 2012, due to her addiction to pain medication.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct—Acts of Dishonesty, Fraud, Deceit)**

5 24. Respondent's license is subject to disciplinary action for unprofessional conduct
6 pursuant to Code section 4301(f), and/or Health and Safety Code section 11173(a), in that she
7 committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption when she stole
8 oxycodone for her personal use, as described in paragraphs 18 through 23, above.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct—Self-Administration of a Controlled Substance)**

11 25. Respondent's license is subject to disciplinary action for unprofessional conduct
12 pursuant to Code section 4301(h), and/or Health and Safety Code section 11170, in that she self-
13 administered oxycodone, as described in paragraphs 18 through 23, above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct—Unlawful Possession of a Controlled Substance)**

16 26. Respondent's license is subject to disciplinary action for unprofessional conduct
17 pursuant to Code sections 4301(j), 4301(o), 4060, and/or Health and Safety Code section 11350,
18 in that she possessed a controlled substance without a valid prescription, as described in
19 paragraphs 18 through 23, above.

20 **DISCIPLINARY CONSIDERATIONS**

21 27. To determine the degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges the following:

23 a. On or about February 23, 2012, the Board issued Respondent Citation Number
24 C1 2011 51391, including a \$5,000 fine and an order of abatement, for violation of Code
25 section 4126.5(a)(4), in that, while she was the pharmacist-in-charge at LAP—Mountain View, the
26 pharmacy failed to comply with restrictions on furnishing dangerous drugs to pharmacies
27 or wholesalers. The order of abatement required enrollment in and successful completion
28 within 18 months of a Board-approved course in ethics.

