

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

In the Matter of the Accusation Against:

Case No(s). 4998 and 5106

KERR'S PHARMACY,
12142 Santa Monica Blvd.
Los Angeles, CA 90025
HARRY PETERS, Pharmacist-In-Charge

Original Permit No. PHY 35423

HARRY PETERS
12142 Santa Monica Blvd.
Los Angeles, CA 90025

Original Pharmacist License No. RPH 28331

and

JOHN WILLIAM SHAFER
151 Ventura Way
Chatsworth, CA 91311

Original Pharmacist License No. RPH 36106

Respondents.

**STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
RESPONDENT JOHN WILLIAM
SHAFER ONLY**

DECISION AND ORDER

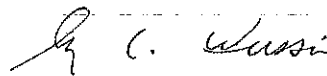
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 20, 2015.

It is so ORDERED on May 13, 2015.

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 MARC D. GREENBAUM
Supervising Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Attorneys for Complainant
7

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STATE OF CALIFORNIA

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17 **and**
18 **JOHN WILLIAM SHAFER**
19 151 Ventura Way
Chatsworth, CA 91311
20 Original Pharmacist License No. RPH 36106
21 Respondents.

Case Nos. 4998 and 5106

**STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO
RESPONDENT JOHN WILLIAM
SHAFER ONLY**

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties¹ to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
26 She brought this action solely in her official capacity and is represented in this matter by Kamala
27

28 ¹ The parties to this stipulation are the Board of Pharmacy and Respondent John William Shafer only, neither Kerr's Pharmacy nor Harry Peters is a party to this stipulation.

1 D. Harris, Attorney General of the State of California, by Zachary T. Fanselow, Deputy Attorney
2 General.

3 2. John William Shafer is representing himself in this proceeding and has chosen not to
4 exercise his right to be represented by counsel.

5 3. On or about December 19, 1980, the Board of Pharmacy issued Original Pharmacist
6 License Number RPH 36106 to John William Shafer ("Respondent"). The Pharmacist License
7 was in full force and effect at all times relevant to the charges brought herein and expired on
8 February 28, 2015.

9 **JURISDICTION**

10 4. Accusation Nos. 4998 and 5106 was filed before the Board of Pharmacy ("Board"),
11 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
12 and all other statutorily required documents were properly served on Respondent on February 17,
13 2015. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
14 Accusation Nos. 4998 and 5106 is attached as Exhibit A and incorporated by reference.

15 **ADVISEMENT AND WAIVERS**

16 5. Respondent has carefully read, and understands the charges and allegations in
17 Accusation Nos. 4998 and 5106. Respondent also has carefully read, and understands the effects
18 of this Stipulated Surrender of License and Order.

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

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

28 ///

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 Nos. 4998 and 5106, agrees that cause exists for discipline and hereby surrenders his Original
4 Pharmacist License Number RPH 36106 for the Board's formal acceptance.

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

7 CONTINGENCY

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

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

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

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

28 ///

ORDER

IT IS HEREBY ORDERED that Original Pharmacist License Number RPH 36106, issued to Respondent John William Shafer is surrendered and accepted by the Board of Pharmacy.

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

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

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

4. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 5106 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application. Respondent may not apply for any license, permit, or registration from the board for three years from the effective date of this decision.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$4,417.50 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation Nos. 4998 and 5106 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.


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1 ACCEPTANCE

2 I have carefully read the Stipulated Surrender of License and Order. I understand the
3 stipulation and the effect it will have on my Original Pharmacist License. I enter into this
4 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
5 be bound by the Decision and Order of the Board of Pharmacy.

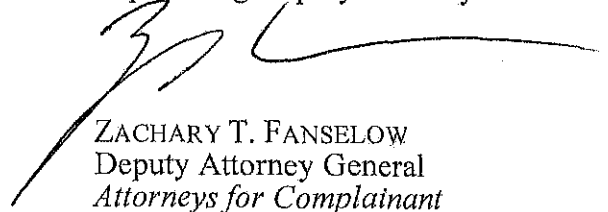
6
7 DATED: MARCH 16, 2015 
8 JOHN WILLIAM SHAFER
9 Respondent

10 ENDORSEMENT

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

13
14 Dated: 3/24/15

15 Respectfully submitted,
16 KAMALA D. HARRIS
17 Attorney General of California
18 MARC D. GREENBAUM
19 Supervising Deputy Attorney General


20 ZACHARY T. FANSELOW
21 Deputy Attorney General
22 *Attorneys for Complainant*

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Exhibit A

Accusation Nos. 4998 and 5106

1 KAMALA D. HARRIS
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2 MARC D. GREENBAUM
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14 **HARRY PETERS, Pharmacist-In-Charge**

A C C U S A T I O N

15 Original Permit No. PHY 35423,

16 **HARRY PETERS**
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18 **and**

19 **JOHN WILLIAM SHAFER**
20 151 Ventura Way
Chatsworth, CA 91311

21 Original Pharmacist License No. RPH 36106

22 Respondents.

23
24
25 Complainant alleges:

26 **PARTIES**

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

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

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

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

8 9. Section 4036.5 states: "Pharmacist-in-charge" means a pharmacist proposed by a
9 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
10 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of
11 pharmacy."

12 10. Section 4059, subdivision (a), states:

13 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
14 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
15 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
16 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

17 11. Section 4060 states, in pertinent part:

18 "A person shall not possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
21 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
22 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
24 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
25 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
26 midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with
27 the name and address of the supplier or producer."

28 ///

1 12. Section 4113, subdivision (c), states: "The pharmacist-in-charge shall be responsible
2 for a pharmacy's compliance with all state and federal laws and regulations pertaining to the
3 practice of pharmacy."

4 13. Section 4301 states: "The board shall take action against any holder of a license who is
5 guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation
6 or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
7 following:

8

9 "(b) Incompetence.

10 "(c) Gross negligence.

11

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

15

16 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
17 administering, or offering to sell, furnish, give away, or administer, any controlled substance to an
18 addict.

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

21

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

26 14. Section 4342, subdivision (a), states:

27 "The board may institute any action or actions as may be provided by law and that, in its
28 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not

1 conform to the standard and tests as to quality and strength, provided in the latest edition of the
2 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
3 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875 of Division
4 104 of the Health and Safety Code).”

5 15. Health and Safety Code section 11170 states: “No person shall prescribe, administer,
6 or furnish a controlled substance for himself.”

7 16. Health and Safety Code section 11217 states, in pertinent part:

8 “Except as provided in Section 11223, no person shall treat an addict for addiction to a
9 narcotic drug except in one of the following:

10 “(a) An institution approved by the State Department of Health Care Services, and where
11 the patient is at all times kept under restraint and control.

12 “(b) A city or county jail.

13 “(c) A state prison.

14 “(d) A facility designated by a county and approved by the State Department of Health Care
15 Services pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions
16 Code.

17 “(e) A state hospital.

18 “(f) A county hospital.

19 “(g) A facility licensed by the State Department of Health Care Services pursuant to Division
20 10.5 (commencing with Section 11750).

21 “(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3.”

22 17. Health and Safety Code section 11350, subdivision (a), states:

23 “Except as otherwise provided in this division, every person who possesses (1) any
24 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
25 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
26 specified in subdivision (b) or (c) of Section 11055; or specified in subdivision (h) of Section
27 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
28 unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to

1 practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section
2 1170 of the Penal Code.”

3 18. Health and Safety Code section 11550, subdivision (a), states, in pertinent part:

4 “No person shall use, or be under the influence of any controlled substance which is (1)
5 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
6 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
7 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or
8 in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule
9 III, IV, or V, except when administered by or under the direction of a person licensed by the state
10 to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to
11 show that it comes within the exception.”

12 REGULATORY PROVISIONS

13 19. California Code of Regulations, title 16, section 1709.1, subdivision (a), states: “The
14 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility
15 for the daily operation of the pharmacy.”

16 20. California Code of Regulations, title 16, section 1714 states, in pertinent part:

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

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

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

1 21. Code of Federal Regulations, title 21, section 1304.11 states, in pertinent part:

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

17

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

22 COST RECOVERY

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

27 ///

28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 23. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (f),
4 for unprofessional conduct, in that Respondent Shafer admittedly took controlled substances from
5 Respondent Pharmacy without a prescription. The circumstances are as follows:

6 a. On or about April 30, 2013, officers from the Ventura County Sheriff's Department
7 searched the home of Respondent Shafer. Officers found a large supply of prescription medication
8 during their search and some of the controlled substances featured labels from Respondent
9 Pharmacy. Examples of controlled substances found at Respondent Shafer's home include:
10 Fentanyl Patches, Meprobamate, Hydrocodone/APAP, Desoxyn, Preludin, Qualude, Tylenol with
11 Codeine, Diethylprodin, Phenobarbital, Temazepam, Zolpidem, Flurazepam, Propoxyphene/APAP,
12 Alprazolam, Chloral Hydrate, Lorazepam, Tranxene and Marijuana. Examples of non controlled
13 dangerous drugs found were: Lisinopril, Cimetidine, Naltrexone and Levoxyl.

14 b. During an interview with Ventura County Sheriff's Department officers, Respondent
15 Shafer stated that, while he was working at Respondent Pharmacy, he became friendly with A.S.,
16 the care taker of a terminal cancer patient. Respondent Shafer stated that he suspected that A.S.
17 was using illegal drugs and after discussing A.S.' use of controlled substances, Respondent Shafer
18 offered to let her stay at his home and help her detox from heroin. While A.S. was staying at his
19 home, Respondent Shafer provided her with controlled substances he had stored in his home to
20 allegedly assist her detoxification.

21 c. During the interview with Ventura County Sheriff's Department officers, Respondent
22 Shafer admitted that he took hydrocodone pills from Respondent Pharmacy to keep at his home
23 for his own consumption. Respondent Shafer stated that he took the hydrocodone recreationally
24 and analogized it to drinking beer.

25 d. On or about May 13, 2013, during an interview with a Board inspector, Respondent
26 Shafer admitted that he had taken some expired zolpidem 10mg tablets and a dozen ibuprofen 600
27 mg tablets from Respondent Pharmacy.

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of Controlled Substances)**

3 24. Respondent Shafer is subject to disciplinary action under section 4060, and section
4 4301, subdivision (j), in conjunction with Health and Safety Code section 11170, and Health and
5 Safety Code section 11350, subdivision (a), in that Respondent Shafer took controlled substances
6 and other dangerous drugs from Respondent Pharmacy without a prescription and was found to be
7 in possession of large quantities of controlled substances in his home. The conduct is described in
8 additional detail in paragraph 23, subparagraphs (a) through (d) inclusive, which is hereby
9 incorporated by reference as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unlawful Use of Controlled Substances)**

12 25. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (j),
13 in conjunction with Health and Safety Code section 11550, subdivision (a), in that Respondent
14 Shafer admittedly used marijuana, admitted to testing positive for marijuana after a police field
15 urinalysis and admitted to using hydrocodone recreationally. The conduct is described in
16 additional detail in paragraph 23, subparagraph (c), which is hereby incorporated by reference as
17 though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Furnishing Dangerous Drugs to an Addict without a Prescription)**

20 26. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (i)
21 for furnishing controlled substances to an addict and section 4059, subdivision (a), for furnishing
22 those controlled substances without a prescription. The conduct is described in additional detail in
23 paragraph 23, subparagraphs (a) and (b), which is hereby incorporated by reference as though set
24 forth fully.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Treating an Addict Outside of an Authorized Treatment Facility)**

27 27. Respondent Shafer is subject to disciplinary action under Health and Safety Code
28 section 11217, subdivision (a), for admittedly treating an addict in his home, which is not an

1 authorized treatment facility. The conduct is described in additional detail in paragraph 23,
2 subparagraphs (a) and (b), which is hereby incorporated by reference as though set forth fully.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Diversion of Controlled Substances from Respondent Pharmacy by Employee)**

5 28. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
6 section 4113, subdivision (c), and California Code of Regulations, title 16, section 1709.1,
7 subdivision (a), for the possession and diversion of controlled substances from Respondent
8 Pharmacy by employee Respondent Shafer in violation of section 4301, subdivisions (j) and (o), in
9 conjunction with section 4060 and Health and Safety Code section 11350, subdivision (a). The
10 circumstances are as follows:

11 a. On or about May 13, 2013, an inspector for the Board interviewed Respondent Peters.
12 Respondent Peters stated that Respondent Shafer has worked for him since the 1980's, that he
13 knew Respondent Shafer used marijuana and that Respondent Shafer also used other prescription
14 drugs. Respondent Peters further admitted that he knew Respondent Shafer kept large quantities
15 of controlled substances at his home and described Respondent Shafer as a "hoarder."

16 b. The conduct is described in additional detail in paragraph 23, subparagraphs (a)
17 through (d) inclusive, which is hereby incorporated by reference as though set forth fully.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Inventory Controlled Substances)**

20 29. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
21 section 4301, subdivision (o), in that Respondent Pharmacy and Respondent Peters violated Code
22 of Federal Regulations, title 21, section 1304.11, by failing to inventory all controlled substances in
23 stock at least every two years as required by the Drug Enforcement Administration ("DEA")
24 Controlled Substances Inventory. The circumstances are as follows:

25 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an
26 inspector for the Board asked Respondent Peters for the pharmacy's bi-annual inventory.
27 Respondent Peters gave the Board inspector an inventory dated May 1, 2013, but admitted that
28 the inventory was incomplete.

1 b. During the Board's inspection on or about May 13, 2013, the Board inspector also
2 asked to review Respondent Pharmacy's prior bi-annual inventory. Respondent Peters provided
3 an inventory dated March 31, 2011. However, the March 31, 2011, inventory only listed schedule
4 II narcotics and did not contain any inventory for schedule III through schedule V narcotics.
5 Respondent Peters admitted that the pharmacy did not complete an inventory for schedule III
6 through schedule V drugs in 2011.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Drugs Lacking Quality or Strength)**

9 30. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
10 section 4342 for the willful sale of drugs lacking quality or strength. The circumstances are as
11 follows:

12 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an
13 inspector for the Board found numerous expired medications kept for sale throughout the
14 pharmacy's shelves.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)**

17 31. Respondent Pharmacy is subject to disciplinary action under section 4301, subdivision
18 (o), in that Respondent Pharmacy violated California Code of Regulations, title 16, section 1714,
19 subdivision (b), for failing to maintain its dangerous drugs in a safe and secure manner. During the
20 Board's inspection on or about May 13, 2013, the Board requested records of drug purchases and
21 disposition. A review of Respondent Pharmacy's DEA inventory,¹ purchase orders, disposition
22 records, and drugs on the pharmacy's shelves identified the following variances:

- 23 a. Over one hundred unaccounted for tablets of Acetaminophen/Codeine 300/30 mg.
24 b. Over five hundred unaccounted for tablets of Alprazolam 0.5 mg.
25 c. Over fifty unaccounted for tablets of Diazepam 2mg.
26 d. Over five hundred unaccounted for tablets of Oxycodone/APAP 5/325.

27 _____
28 ¹ Only Schedule II controlled substances had been inventoried as detailed in paragraph 19.

- 1 e. Over one thousand unaccounted for tablets of Oxycodone/APAP 10/325.
2 f. Five unaccounted for 75 mcg Fentanyl patches.
3 g. Nine unaccounted for tablets of Flurazepam 30 mg.
4 h. Over five hundred unaccounted for tablets of Hydrocodone/APAP 10/325.
5 i. Over two hundred unaccounted for tablets of Hydrocodone/APAP 7.5/325.
6 j. Over three hundred unaccounted for tablets of Hydrocodone/APAP 5/325.
7 k. Over one hundred unaccounted for tablets of Hydrocodone/APAP 7.5/750.
8 l. Over four hundred unaccounted for tablets of Hydrocodone/APAP 5/500.
9 m. Over two hundred unaccounted for tablets of Methylphenidate ER 10 mg.
10 n. Over one hundred unaccounted for tablets of Methylphenidate 10 mg.
11 o. Over four hundred unaccounted for of Methylphenidate 20 mg.
12 p. Two unaccounted for tablets of Methylphenidate ER 36mg.
13 q. Over fifty unaccounted for tablets of Oxycodone/APAP 7.5/325.
14 r. Over five hundred unaccounted for tablets of Temazepam 15 mg.
15 s. Over one thousand unaccounted for tablets of Temazepam 30 mg.
16 t. Over one hundred unaccounted for tablets of Zolpidem 5 mg.
17 u. Over one thousand unaccounted for tablets of Zolpidem 10 mg.

18 **TENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)**

20 32. Respondent Peters is subject to disciplinary action under section 4301, subdivision (o),
21 in that Respondent Peters violated California Code of Regulations, title 16, section 1714,
22 subdivision (d), for failing to maintain the security and safety of dangerous drugs while on duty at
23 Respondent Pharmacy. Following the Board's May 13, 2013, inspection and review of
24 Respondent Pharmacy's bi-annual DEA inventory, purchase orders, disposition records, and drugs
25 on the pharmacy shelves, the Board identified dangerous drug variances numbering in the
26 thousands. The conduct and specific variances are detailed in paragraph 31, subparagraphs (a)
27 through (u) inclusive, which is hereby incorporated by reference as though set forth fully.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Incompetence and/or Gross Negligence)**

3 33. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
4 section 4301, subdivisions (b) and/or (c), in that Respondent Pharmacy and Respondent Peters'
5 failure to identify and record the number of dangerous drugs stored at Respondent Pharmacy, as
6 well as Respondent Pharmacy and Respondent Peters' failure to properly maintain and secure
7 those drugs, amounts to incompetence and/or gross negligence. The conduct and specific
8 dangerous drug variances, numbering in the thousands, are described in paragraph 31,
9 subparagraphs (a) through (u) inclusive, and paragraph 32, which are hereby incorporated by
10 reference as though set forth fully.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Keep the Pharmacy in a Clean and Orderly Condition)**

13 34. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
14 section 4301, subdivision (o), in that Respondent Pharmacy and Respondent Peters violated
15 California Code of Regulations, title 16, section 1714, subdivision (c), by failing to keep the
16 pharmacy in a clean and orderly condition. The circumstances are as follows:

17 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an inspector for
18 the Board found that the pharmacy's drug shelves, drawers and cabinets were extremely dirty, with
19 a thick layer of dust and grim throughout the pharmacy storage areas. In addition, the sink in the
20 bathroom did not have running water.

21 **DISCIPLINARY CONSIDERATIONS**

22 35. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy
23 and Respondent Peters, Complainant alleges the following:

24 a. On or about November 25, 1991, the California State Board of Pharmacy brought a
25 disciplinary action against Respondent Peters and Respondent Pharmacy entitled *In the Matter of*
26 *the Accusation Against Harry Peters, Kerr's Pharmacy*, Board Case No. AC 1988-1581. On or
27 about June 10, 1994, a stipulation became effective whereby Respondent Peters' Original License
28 Certificate No. PGO28331 was placed on probation for three years and Respondent Pharmacy's

1 Original Permit No. ZBO18241 was placed on probation for three years. That decision is now
2 final and is incorporated by reference as if set forth fully.

3 36. To determine the degree of discipline, if any, to be imposed on Respondent John
4 William Shafer, Complainant alleges the following:

5 a. On or about December 21, 1984, the California State Board of Pharmacy brought a
6 disciplinary action against Respondent Shafer entitled *In the Matter of the Accusation Against The*
7 *Pharmacy; John Shafer; Richard Foster; Amos Cranford*, Board Case No. 1222. On or about
8 December 6, 1985, the Board adopted the Administrative Law Judge's Proposed Decision
9 suspending Respondent Shafer's license for one year. The suspension was stayed and Respondent
10 Shafer was placed on probation for one year. That decision is now final and is incorporated by
11 reference as if set forth fully.

12 **PRAYER**

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

15 1. Revoking or suspending Pharmacy Permit Number PHY 35423, issued to Kerr's
16 Pharmacy, Harry Peters, Pharmacist-In-Charge;

17 2. Revoking or suspending Pharmacist License Number RPH 28331, issued to Harry
18 Peters;

19 3. Revoking or suspending Pharmacist License Number RPH 36106, issued to John
20 William Shafer;

21 4. Ordering Harry Peters, Harry Peters and John William Shafer to pay the Board of
22 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3; and,

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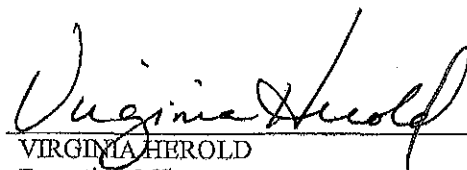
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5. Taking such other and further action as deemed necessary and proper.

DATED:

2/2/15



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

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