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of the State of California
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3 Department of Justice
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5 Attorneys for Complainant
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7

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

10
11 In the Matter of the Accusation Against:)

12 JERRY E. DANNENBERG)
6 El Prado Court)
13 Santa Rosa, CA 95405)
Pharmacist License No. RPH 47672)

14 and)

15 KAISER FOUNDATION HEALTH)
16 PHARMACY 1 WEST PHARMACY 581)
401 Bicentennial Way)
17 Santa Rosa, CA 95401)
Pharmacy Permit No. PHY 22113)

18 and)

19 ROBERT GRAY MACKIE)
20 2010 Stony Oak Court)
Santa Rosa, CA 95403)
21 Pharmacist License)
No. RPH 25078)

22 and)
23)
24)
25)
26)
27)

NO. 2243

OAH NO. N2001050136

STIPULATED SETTLEMENT
AGREEMENT WITH RESPECT
TO RESPONDENTS (1) KAISER
FOUNDATION HEALTH
PHARMACY 1 WEST
PHARMACY 581; (2) ROBERT
GRAY MACKIE; (3) KAISER
FOUNDATION HEALTH PLAN1
EAST PHARMACY 583; (4)
CLAYTON EUGENE WHEELER,
III; (5) KAISER FOUNDATION
HEALTH PLAN 2 WEST
PHARMACY 582; and (6)
LAWRENCE J.
WEISSENBURGER, JR.

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KAISER FOUNDATION HEALTH PLAN)
1 EAST PHARMACY 583)
401 Bicentennial Way)
Santa Rosa, CA 95403)
Pharmacy Permit No. PHY 37604)

and

CLAYTON EUGENE WHEELER III)
326 Lorraine Court)
Sebastopol, CA 95472)
Pharmacist License)
No. RPH 28905)

and

KAISER FOUNDATION HEALTH PLAN)
2 WEST PHARMACY 582)
401 Bicentennial Way)
Santa Rosa, CA 95403)
Pharmacy Permit No. PHY 34285)

and

LAWRENCE J. WEISSENBURGER, JR.)
6101 Evelyn Avenue)
Rohnert Park, CA 94928)
Pharmacist License)
No. RPH 30374)

Respondents.

IT IS HEREBY STIPULATED AND AGREED by and between the Complainant,
Patricia F. Harris and Respondents (1) Kaiser Foundation Health Pharmacy 1 West Pharmacy
581; (2) Robert Gray Mackie; (3) Kaiser Foundation Health Plan 1 East Pharmacy 583; (4)
Clayton Eugene Wheeler, III; (5) Kaiser Foundation Health Plan 2 West Pharmacy 582; and (6)
Lawrence J. Weissenburger, Jr. (collectively "Kaiser respondents") that the following matters
are true:

PARTIES

1. Complainant Patricia F. Harris is the Executive Officer of the Board of
Pharmacy who brought this action solely in her official capacity and is represented in this matter

1 by Bill Lockyer, Attorney General of the State of California, by W. Lloyd Paris, Deputy
2 Attorney General.

3 2. The Kaiser respondents are represented in this proceeding by attorney
4 Cheryl L. Schreck, whose address is Thelen, Reid & Priest LLP, 333 South Grand Ave., 34th
5 Floor, Los Angeles, CA 900017.

6 3. Accusation, No. 2243, was filed before the Board of Pharmacy of the
7 Department of Consumer Affairs, ("Board"), and is currently pending against the Kaiser
8 respondents. The Accusation, together with all other statutorily required documents, was duly
9 served on respondents on March 16, 2001, and Kaiser respondents timely filed their Notices of
10 Defense contesting the Accusation. A copy of Accusation No. 2243 is attached as Exhibit A and
11 incorporated herein by reference.

12 4. The Kaiser respondents, through their authorized representative, have
13 carefully read and discussed with their counsel the nature of the charges and allegations in the
14 Accusation and the effects of this Stipulated Settlement and Disciplinary Order.

15 5. The Kaiser respondents are fully aware of their legal rights in this matter,
16 including the right to a hearing on the charges and allegations in the Accusation, the right to be
17 represented by counsel, at their own expense, the right to confront and cross-examine the
18 witnesses against them, the right to present evidence and to testify on their own behalf and to the
19 issuance of subpoenas to compel the attendance of witnesses and the production of documents,
20 the right to reconsideration and court review of an adverse decision, and all other rights accorded
21 by the California Administrative Procedure Act and other applicable laws.

22 6. The Kaiser respondents voluntarily, knowingly and intelligently waive and
23 give up each and every right set forth above.

24 7. The Kaiser respondents admit that the charges and allegations in the
25 Accusation, if proven at a hearing, constitute cause for imposing discipline upon the pharmacy
26 permits and pharmacists licenses. The Kaiser respondents agree that, at a hearing, Complainant
27 could establish a factual basis for the charges in the Accusation, and the Kaiser respondents

1 hereby gives up their rights to contest those charges at a hearing.

2 8. The admissions herein are made only for the purposes of this proceeding, or
3 any other proceedings in which the Board of Pharmacy or other professional licensing agency in
4 California is involved, and shall not be admissible in any other proceeding or forum.

5 CONTINGENCY

6 9. This stipulation shall be subject to the approval of the Board. The Kaiser
7 respondents understand and agree that the Board of Pharmacy's staff and counsel for complainant
8 may communicate directly with the Board regarding this stipulation and settlement, without
9 notice to or participation by the Kaiser respondents or their counsel. If the Board fails to adopt
10 this stipulation as its Order, except for this paragraph, this Stipulated Settlement Agreement
11 shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and
12 the Board shall not be disqualified from further action in this matter by virtue of its consideration
13 of this stipulation.

14 10. The parties agree that facsimile copies of this Stipulated Settlement
15 Agreement, including facsimile signatures thereto, shall have the same force and effect as
16 original Stipulated Settlement and signatures.

17 11. In consideration of the foregoing admissions and stipulations, the parties
18 agree that the Board shall, without further notice or formal proceeding, issue and enter the
19 following Disciplinary Order:

20 DISCIPLINARY ORDER

21 12. **IT IS HEREBY ORDERED** that (1) Pharmacy Permit Number PHY
22 22113 issued to Respondent Kaiser Foundation Health Pharmacy 1 West Pharmacy 581; (2)
23 Pharmacist License Number RPH 25078 issued to Respondent Robert Gray Mackie; (3)
24 Pharmacy Permit Number PHY 37604 issued to Kaiser Foundation Health Plan 1 East
25 Pharmacy; (4) Pharmacist License Number RPH 28905 issued to Clayton Eugene Wheeler, III;
26 (5) Pharmacy Permit Number PHY 34285 issued to Kaiser Foundation Health Plan 2 West
27 Pharmacy 582; and (6) Pharmacist License Number RPH 30374 shall by way of letter from the

1 California Board of Pharmacy be publically reprimanded; provided, however, that said public
2 reprimand is conditional on these respondents complying with the following condition precedent:

3 **(A) COST RECOVERY**

4 Respondents shall pay to the Board costs of investigation and prosecution in the amount
5 of \$1,000.00.

6 13. The Kaiser respondents specifically acknowledge and understand that the
7 order for public reprimand as a resolution to the charges against them in Case Number 2243 is
8 contingent upon the Kaiser respondents' full compliance with the condition specified in
9 paragraph 12, above. If the Kaiser respondents fail to pay the costs of investigation and
10 enforcement within 60 days of the effective date of the agreement, the Kaiser respondents
11 stipulate and agree that such deficiency shall render this agreement null and void. It is further
12 stipulated and agreed that, if the Kaiser respondents fail to comply with the condition in
13 paragraph 12, a hearing on the allegations contained in the Accusation in Case Number 2243 will
14 be set with the Office of Administrative Hearings, and that this agreement shall not be admissible
15 for any purpose at such hearing.

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21 ACCEPTANCE

22 I represent that I am fully authorized to enter into this settlement agreement on
23 behalf of Kaiser Foundation Health Pharmacy 1 West Pharmacy 581. I have carefully read the
24 above Stipulated Settlement and Disciplinary Order and have fully discussed the terms and
25 conditions and other matters contained therein with my attorney Cheryl Schreck. I understand
26 the effect this stipulation will have on the pharmacy permit. I enter into this Stipulated
27 Settlement voluntarily, knowingly and intelligently and agree to be bound by the Disciplinary

1 Order and Decision of the Board of Pharmacy. I further agree that a facsimile copy of this
2 Stipulated Settlement, including facsimile copies of signatures, may be used with the same force
3 and effect as the originals.

4 DATED: 8/29/01

5
6 print name

Robert Gray Mackie
ROBERT GRAY MACKIE
On Behalf of Respondent Kaiser Foundation Health
Pharmacy 1 West Pharmacy 581
Respondent

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10 I have carefully read the above Stipulated Settlement and Disciplinary Order and
11 have fully discussed the terms and conditions and other matters contained therein with my
12 attorney Cheryl Schreck. I understand the effect this stipulation will have on my pharmacist
13 license. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree
14 to be bound by the Disciplinary Order and Decision of the Board of Pharmacy. I further agree
15 that a facsimile copy of this Stipulated Settlement, including facsimile copies of signatures, may
16 be used with the same force and effect as the originals.

17 DATED: 8/29/01

18
19 Robert Gray Mackie
ROBERT GRAY MACKIE
Respondent

20
21
22 I represent that I am fully authorized to enter into this settlement agreement on
23 behalf of Kaiser Foundation Health Plan 1 East Pharmacy 583. I have carefully read the above
24 Stipulated Settlement and Disciplinary Order and have fully discussed the terms and conditions
25 and other matters contained therein with my attorney Cheryl Schreck. I understand the effect this
26 stipulation will have on the pharmacy permit. I enter into this Stipulated Settlement voluntarily,
27 knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the

1 Board of Pharmacy. I further agree that a facsimile copy of this Stipulated Settlement, including
2 facsimile copies of signatures, may be used with the same force and effect as the originals.

3 DATED: 8/29/01
4

5 print name

Clayton Eugene Wheeler III

6 On Behalf of Respondent Kaiser Foundation Health
7 Plan 1 East Pharmacy 583
8 Respondent
9

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and
11 have fully discussed the terms and conditions and other matters contained therein with my
12 attorney Cheryl Schreck. I understand the effect this stipulation will have on my pharmacist
13 license. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree
14 to be bound by the Disciplinary Order and Decision of the Board of Pharmacy. I further agree
15 that a facsimile copy of this Stipulated Settlement, including facsimile copies of signatures, may
16 be used with the same force and effect as the originals.

17 DATED: 8/29/01
18

19 Clayton Eugene Wheeler III
20 CLAYTON EUGENE WHEELER, III
21 Respondent

22 I represent that I am fully authorized to enter into this settlement agreement on
23 behalf of Kaiser Foundation Health Plan 2 West Pharmacy 582. I have carefully read the above
24 Stipulated Settlement and Disciplinary Order and have fully discussed the terms and conditions
25 and other matters contained therein with my attorney Cheryl Schreck. I understand the effect this
26 stipulation will have on the pharmacy permit. I enter into this Stipulated Settlement voluntarily,
27 knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the

1 Board of Pharmacy. I further agree that a facsimile copy of this Stipulated Settlement, including
2 facsimile copies of signatures, may be used with the same force and effect as the originals.

3 DATED: 8/30/2001.

4
5 print name

Lawrence J. Weissenburger
6 On Behalf of Respondent Kaiser Foundation Health
7 Plan 2 West Pharmacy 582
8 Respondent

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and
10 have fully discussed the terms and conditions and other matters contained therein with my
11 attorney Cheryl Schreck. I understand the effect this stipulation will have on my pharmacist
12 license. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree
13 to be bound by the Disciplinary Order and Decision of the Board of Pharmacy. I further agree
14 that a facsimile copy of this Stipulated Settlement, including facsimile copies of signatures, may
15 be used with the same force and effect as the originals.

16 DATED: 8/30/2001.

17
18 Lawrence J. Weissenburger, Jr.
19 LAWRENCE J. WEISSENBURGER, JR.
20 Respondent

21 I have read and fully discussed with the Kaiser respondents the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
23 and approve its form and content.

24 DATED: August 20, 2001.

25
26 Cheryl L. Schreck
27 CHERYL SCHRECK
Attorney for the Kaiser respondents

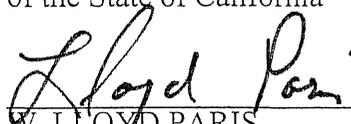
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ENDORSEMENT

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

DATED: 9/16/01.

BILL LOCKYER, Attorney General
of the State of California



W. LLOYD PARIS
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the **Accusation** Against:

Case No. 2243

JERRY E. DANNENBERG
Pharmacist License No. RPH 47672

**KAISER FOUNDATION HEALTH
PHARMACY 1 EAST PHARMACY 581**
Pharmacy Permit No. PHY 221133

ROBERT GRAY MACKIE
Pharmacist License No. RPH 25078

**KAISER FOUNDATION HEALTH PLAN
1 EAST PHARMACY 583**
Pharmacy Permit No. PHY 37604

CLAYTON EUGENE WHEELER III
Pharmacist License No. RPH 28905

**KAISER FOUNDATION HEALTH PLAN
2 WEST PHARMACY 582**
Pharmacy Permit No. PHY 34825

LAWRENCE J. WEISSENBURGER, JR.
Pharmacist License No. RPH 30374

Respondent.

**STIPULATED SETTLEMENT
AGREEMENT WITH
RESPECT TO RESPONDENTS
KAISER FOUNDATION
HEALTH PHARMACY 1 WEST
PHARMACY 581; ROBERT
GRAY MACKIE; KAISER
FOUNDATION HEALTH PLAN
1 EAST PHARMACY 583;
CLAYTON EUGENE
WHEELER III; KAISER
FOUNDATION HEALTH PLAN
2 WEST PHARMACY 582; and
LAWRENCE J.
WEISSENBURGER, JR.**

DECISION AND ORDER

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

This Decision shall become effective on February 2, 2002.

IT IS SO ORDERED January 3, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STEVE LITSEY
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 W. LLOYD PARIS
Deputy Attorney General, State Bar No. 124755
3 Department of Justice
455 Golden Gate Ave., Suite 1100
4 San Francisco, California 94102
Telephone: (415) 703-5553
5
6 Attorneys for Complainant

7
8 BEFORE THE
BOARD OF PHARMACY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation)
Against:)
12)
JERRY E. DANNENBERG) NO. 2243
13 6 El Prado Court)
Santa Rosa, CA 95405)
14 Pharmacist License) ACCUSATION
No. RPH 47672)
15)
and)
16)
KAISER FOUNDATION HEALTH)
17 PHARMACY 1 WEST PHARMACY 581)
401 Bicentennial Way)
18 Santa Rosa, CA 95401)
Pharmacy Permit No. PHY 22113)
19)
and)
20)
ROBERT GRAY MACKIE)
21 2010 Stony Oak Court)
Santa Rosa, CA 95403)
22 Pharmacist License)
No. RPH 25078)
23)
and)
24)
25)
26)
27)

1 KAISER FOUNDATION HEALTH PLAN)
 1 EAST PHARMACY 583)
 2 401 Bicentennial Way)
 Santa Rosa, CA 95403)
 3 Pharmacy Permit No. PHY 37604)
)
 4 and)
)
 5 CLAYTON EUGENE WHEELER III)
 326 Lorraine Court)
 6 Sebastopol, CA 95472)
 Pharmacist License)
 7 No. RPH 28905)
)
 8 and)
)
 9 KAISER FOUNDATION HEALTH PLAN)
 2 WEST PHARMACY 582)
 10 401 Bicentennial Way)
 Santa Rosa, CA 95403)
 11 Pharmacy Permit No. PHY 34285)
)
 12 and)
)
 13 LAWRENCE J. WEISSENBURGER, JR.)
 6101 Evelyn Avenue)
 14 Rohnert Park, CA 94928)
 Pharmacist License)
 15 No. RPH 30374)
)
 16 Respondents.)
)

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 18
 19 Complainant Patricia F. Harris, as causes for
 20 disciplinary action, alleges:

21 1. Complainant is the Executive Officer of the
 22 California Board of Pharmacy ("Board") and makes and files this
 23 accusation solely in her official capacity.

24 LICENSE INFORMATION

25 2. On or about September 12, 1994, Pharmacist License
 26 No. RPH 47672 was issued by the Board to Jerry E. Dannenberg
 27 ("Dannenberg"), and at all times relevant herein, said Pharmacist

1 License was, and currently is, in full force and effect.

2 3. On or about November 17, 1981 Pharmacy Permit No.
3 PHY 22113 was issued by the Board to Kaiser Foundation to do
4 business as Kaiser Foundation Health Pharmacy 1, West Pharmacy
5 581 ("Kaiser 1 West"). From October 1, 1992 through October 8,
6 1998 respondent Robert Mackie was the pharmacist-in-charge of
7 Kaiser 1 West. From October 8, 1998 respondent Lawrence John
8 Weissenburger was and still is the pharmacist-in-charge of Kaiser
9 1 West. At all time relevant herein, said Pharmacy Permit was,
10 and currently is, in full force and effect.

11 4. On or about August 2, 1967, Pharmacist License No.
12 RPH 25078 was issued by the Board to Robert Gray Mackie
13 ("Mackie"), and at all times relevant herein, said Pharmacist
14 License was, and currently is, in full force and effect.

15 5. On or about November 25, 1991 Pharmacy Permit No.
16 PHY 37604 was issued by the Board to Kaiser Foundation to do
17 business as Kaiser Foundation Health Plan 1, East Pharmacy 583
18 ("Kaiser 1 East"). From November 25, 1991 through September 28,
19 1998 respondent Clayton Wheeler was the pharmacist-in-charge of
20 Kaiser 1 East. From October 8, 1998 through March 1, 1999
21 respondent Robert Mackie was the pharmacist-in-charge of Kaiser 1
22 East. At all times relevant herein, said pharmacy permit was,
23 and currently is, in full force and effect.

24 6. On or about July 17, 1974, Pharmacist License No.
25 RPH 28905 was issued by the Board to Clayton Eugene Wheeler
26 ("Wheeler"), and at all times relevant herein, said Pharmacist
27 License was, and currently is, in full force and effect.

1 conduct with safety to the public the practice authorized by
2 the license.

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

6 "(o) Violating or attempting to violate, directly or
7 indirectly, or assisting in or abetting the violation of or
8 conspiring to violate any provision or term of this chapter
9 or of the applicable federal and state laws and regulations
10 governing pharmacy, including regulations established by the
11 board."

12 11. Under Business and Professions Code section
13 118(b), the expiration or forfeiture of a license shall not,
14 during any period in which it may be reissued or reinstated,
15 deprive the Board of the authority to institute disciplinary
16 action.

17 12. Code section 125.3 provides for recovery by the
18 Board of certain costs of investigation and enforcement in
19 disciplinary actions where a licentiate is found to have
20 committed a violation or violations of the licensing act. A
21 certified copy of the actual costs signed by the designated
22 representative of the Board, shall constitute prima facie
23 evidence of reasonable costs of investigation and prosecution of
24 the case up to the date of the hearing.

25 13. Drugs

26 "Vicodin", "Vicodin ES", "Lorcet" and "Lortab" are
27 brands of hydrocodone with acetaminophen; are Schedule III

1 controlled substances as defined in Health and Safety Code
2 section 11056(e)(4); and are dangerous drugs as defined by Code
3 section 4022; and are narcotic analgesics.

4 "Meprobamate", is a Schedule IV controlled substance as
5 defined in Health and Safety Code section 11057(d)(15) and a
6 dangerous drug as defined by Code section 4022; and is used as an
7 anti-anxiety agent.

8 "Xanax", is a brand of alprazolam, is a Schedule IV
9 controlled substance as defined in Health and Safety Code section
10 11057(d)(1) and a dangerous drug as defined by Code section 4022;
11 and is an anti-anxiety agent.

12 I.

13 CHARGES AGAINST RESPONDENT DANNENBERG

14 14. Code section 4059 provides that no person shall
15 furnish any dangerous drug, except upon the prescription of a
16 physician, dentist, podiatrist, or veterinarian.

17 15. Code section 4327 provides that a pharmacist,
18 while on duty, shall not dispense or compound any drug while
19 under the influence of any dangerous drug.

20 16. Health and Safety Code section 11170 provides that
21 no person shall prescribe, administer, or furnish a controlled
22 substance for himself.

23 17. Health and Safety Code section 11173(a) provides,
24 in pertinent part, that no person shall obtain or attempt to
25 obtain controlled substances by fraud, deceit, misrepresentation
26 or by concealment of material fact.

27 18. Respondent Dannenberg is subject to disciplinary

1 action pursuant to Code section 4301, subparagraph (h), in that
2 he self administered controlled substances.

3 The circumstances are that beginning in January, 1996
4 respondent Dannenberg was employed as a staff pharmacist at
5 respondent Kaiser pharmacies. By his own admission respondent
6 Dannenberg diverted 2-4 tablets a day of hydrocodone between
7 October, 1996 and April, 1997, and 8-12 tablets a day of
8 hydrocodone between May, 1997 and July 18, 1997 from the
9 respondent Kaiser pharmacies without a prescription.

10 Additionally, during the same time period, respondent Dannenberg
11 admitted to diverted 12 doses of Xanax and 10 doses of
12 Meprobamate from the respondent Kaiser pharmacies without a
13 prescription.

14 19. Respondent Dannenberg is subject to disciplinary
15 action pursuant to Code section 4301, subparagraphs (j) and (o)
16 for having violated Code section 4059 and/or Health and Safety
17 Code sections 11170 in that he furnished controlled substances to
18 himself without a prescription by virtue of the allegations in
19 paragraph 18 above.

20 20. Respondent Dannenberg is subject to disciplinary
21 action pursuant to Code section 4301, subparagraph (f), in that
22 he committed acts involving moral turpitude, dishonesty, fraud,
23 deceit, or corruption by taking the controlled substances from
24 the respondent Kaiser pharmacies as described in paragraph 18
25 above.

26 21. Respondent Dannenberg is subject to disciplinary
27 action pursuant to Code section 4301, subparagraphs (j) and (o)

1 evidence of guilt.

2 25. Title 16, California Code of Regulations, section
3 1718 defines "current inventory" to include complete
4 accountability of all dangerous drugs handled by every licensee.

5 26. Respondents Kaiser 1 West, Kaiser 1 East, Kaiser 2
6 West, Mackie, Wheeler and Weissenburger are subject to
7 disciplinary action pursuant to Code section 4301, subparagraphs
8 (j) and/or (o), for violating Code section 4081, as interpreted
9 by Title 16, California Code of Regulations, section 1718, for
10 failing to keep a complete, accurate and current inventory of
11 controlled substances. The circumstances are as follows:

12 A. As a result of respondent Dannenberg's
13 admission to diverting hydrocodone, Board inspectors requested
14 respondents Kaiser 1 West, Kaiser 1 East, and Kaiser 2 West to
15 perform an audit of hydrocodone for the period in which
16 respondent Dannenberg admitted to diverting controlled
17 substances. The results of the audits are as follows:

18 KAISER PHARMACY 1 WEST

19 Starting Inventory Date: 10/26/96

20 Ending Inventory Date: 11/3/97

21 Hydrocodone/APAP 5/500: Over 14,942 tablets (+2.9%)

22 Vicodin: Over 908 tablets (+17.83%)

23 Lortab 7.5/5000: Short 2,555 tablets (-24.75%)

24 KAISER PHARMACY 2 WEST

25 Starting Inventory Date: 10/23/96

26 Ending Inventory Date: 11/4/97

27 Hydrocodone/APAP 5/5000: Short 18,640 tablets (-14.5%)

1 Vicodin: Short 724 tablets (-67.66%)
2 Lortab 7.5/500: Short 1,392 tablets (-60.78%)

3
4 KAISER PHARMACY 1 EAST

5 Starting Inventory Date: 4/17/96
6 Ending Inventory Date: 11/3/97
7 Hydrocodone/APAP 5/5000: Short 1610 tablets
8 Vicodin: Over 90 tablets
9 Lortab 7.5/500: Short 1,778 tablets

10 B. Given the results of the 1996-1997 audits, Board
11 inspectors also asked for more recent audit results to be
12 provided by respondents Kaiser 1 West, Kaiser 2 West, and Kaiser
13 1 East. The results of the subsequent audits are as follows:

14 KAISER 1 WEST

15 Starting Inventory Date: 11/3/97
16 Ending Inventory Date: 11/6/98
17 Hydrocodone/APAP 5/5000: Short 7,824 tablets (-1.31%)
18 Vicodin: Short 2,664 tablets (-29.1%)
19 Lortab 7.5/500: Short 2,191 (-18.96).

20
21 KAISER 2 WEST

22 Starting Inventory Date: 11/4/97
23 Ending Inventory Date: 4/2/98
24 Hydrocodone/APAP 5/5000: Short 669 tablets (-1.45%)
25 Vicodin: Over 60 tablets (+7.5%)
26 Lortab 7.5/500: Over 101 tablets (+19.05%)

27

1 KAISER 1 EAST

2 Starting Inventory Date: 11/3/97

3 Ending Inventory Date: 10/20/98

4 Hydrocodone/APAP 5/5000: Short 418 tablets (-0.31%)

5 Vicodin: Over 56 tablets (+3.68%)

6 Lortab 7.5/500: Over 186 tablets (+12.73%)

7 C. Respondents Kaiser 1 West, Kaiser 2 West, Kaiser 1
8 East, Mackie, Wheeler and Weissenburger failed to completely and
9 accurately account for the above-listed controlled substances
10 during the audit periods listed above.

11 FAILURE TO MAINTAIN SEPARATE RECORDS

12 27. Respondents Kaiser 1 West, Kaiser 2 West, Mackie
13 and Weissenburger are subject to disciplinary action pursuant to
14 Code section 4301, (j) and/or (o), for violating Code section
15 4081 for failing to all records of acquisition and disposition
16 available to inspection. The circumstances are that, throughout
17 the audit periods set forth in paragraph 26 above, these two
18 pharmacies failed to maintain separate records of acquisition and
19 disposition. The result being that the inventories of the two
20 pharmacies were co-mingled.

21 FAILURE TO REPORT LOSSES

22 28. Title 16, California Code of Regulations, section
23 1715.6 provides that any losses of controlled substances shall be
24 reported to the Board within 30 days.

25 29. Title 21, Federal Code of Regulations, section
26 1301.76 provides that any losses of controlled substances shall
27 be reported to the DEA.

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- RPH 25078, heretofore issued to respondent Robert Gray Mackie;
4. Revoking or suspending Pharmacy Permit Number PHY 37604, heretofore issued to Kaiser Foundation, to do business as Kaiser Foundation Health Plan 1, East Pharmacy 583;
 5. Revoking or suspending Pharmacist License Number RPH 28905, heretofore issued to respondent Clayton Eugene Wheeler;
 6. Revoking or suspending Pharmacy Permit Number PHY 34285, heretofore issued to Kaiser Foundation, to do business as Kaiser Foundation Health Pharmacy 2, West Pharmacy 582;
 7. Revoking or suspending Pharmacist License Number RPH 30374, heretofore issued to respondent Lawrence J. Weissenburger, Jr.;
 8. Imposing cost recovery for investigative and prosecution costs as provided by Business and Professions Code section 125.3 as to each and every respondent;
 9. Imposing the restrictions provided by Business and Professions Code section 4307; and

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10. Taking such other and further action as the Board
deems proper.

DATED: 3/14/01

P. J. Harris
Patricia F. Harris
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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