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Attorneys for Complainant

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

In the Matter of the Accusation Against: FALAH H. KHALIFA, dba CALIFA PHARMACY 1133 Celis Street San Fernando, CA 91340 FALAH H. KHALIFA, Owner and Pharmacist-in-Charge Original Pharmacy Permit No. PHY 30196 and FALAH H. KHALIFA 1133 Celis Street San Fernando, CA 91340 Original Pharmacist License No. RPH 31694 Respondents.	Case No. 2288 OAH No. L2002030117 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER AS TO ALL RESPONDENTS**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation with respect to Respondents FALAH H. KHALIFA, dba CALIFA PHARMACY and FALAH H. KHALIFA ("Respondents").

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PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Gregory J. Salute, Deputy Attorney General.

2. Respondents are represented in this proceeding by attorney Ronald S. Marks, Esq. whose address is 6320 Canoga Avenue, Woodland Hills, CA 91367.

3. On or about September 1, 1983, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 30196 to FALAH H. KHALIFA, Individual License Owner, to do business as CALIFA PHARMACY ("Respondent CALIFA PHARMACY"). The Original Pharmacy Permit Number was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2003, unless renewed.

4. On or about December 19, 1977, the Board of Pharmacy issued Original Pharmacist License Number RPH 31694 to FALAH H. KHALIFA ("Respondent KHALIFA"). The Original Pharmacist License Number was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2004, unless renewed.

JURISDICTION

5. Accusation No. 2288 was filed before the Board of Pharmacy (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondents on January 23, 2002. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 2288 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 2288. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondents are fully aware of their 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 their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their 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.

8. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

9. Respondents understand that although they are not making personal admissions to the alleged violations of the items of the Accusation #2288, their signature and agreement herein will allow the Board or its duly authorized representative to deem the violations of the Accusation affirmed and sustained as if true and proven for the purpose of imposing discipline or civil penalties. Respondents further understand that the sustained violations of the Accusation herein may be considered for any future administrative or disciplinary matter by the Board.

10. Respondents agree that their license(s) and/or pharmacy permit(s) are subject to discipline and they agree to be bound by the Board of Pharmacy (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondents have never been the subject of any disciplinary action. They are admitting responsibility at an early stage in the proceedings.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their 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 Settlement 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.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. 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 Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacy Permit Number No. PHY 30196 issued to Respondent FALAH H. KHALIFA, Individual License Owner, to do business as CALIFA PHARMACY is REVOKED.

IT IS HEREBY FURTHER ORDERED that Pharmacist License Number RPH 31694 issued to Respondent FALAH H. KHALIFA is revoked. However, the revocation on Pharmacist License Number RPH 31694 is stayed and Respondent FALAH H. KHALIFA is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension - Pharmacist.** Pharmacist License Number RPH 31694, issued to Respondent FALAH H. KHALIFA is suspended for a period of one-hundred and twenty (120) days.

During suspension, Respondent KHALIFA shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent KHALIFA shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent

KHALIFA manage, administer, **or** be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent KHALIFA shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent KHALIFA shall not direct or control any aspect of the practice of pharmacy. Respondent KHALIFA shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board.

2. **Obey All Laws.** Respondent KHALIFA shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent KHALIFA shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

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

3. **Reporting to the Board.** Respondent KHALIFA shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent KHALIFA shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. **Interview with the Board.** Upon receipt of reasonable notice,

Respondent KHALIFA shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

5. **Cooperation with Board Staff.** Respondent KHALIFA shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent KHALIFA's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

6. **Continuing Education.** Respondent KHALIFA shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

7. **Notice to Employers.** Respondent KHALIFA shall notify all present and prospective employers of the decision in case number 2288 and the terms, conditions and restrictions imposed on Respondent KHALIFA by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent KHALIFA undertaking new employment, Respondent KHALIFA shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2288.

If Respondent KHALIFA works for or is employed by or through a pharmacy employment service, Respondent KHALIFA must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2288 in advance of the Respondent KHALIFA commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the Respondent KHALIFA is considered an employee or independent contractor.

8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent KHALIFA shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent KHALIFA be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in

this order.

9. **Reimbursement of Board Costs.** Respondent KHALIFA shall pay to the Board its costs of investigation and prosecution in the amount of $15,000.00. Respondent KHALIFA shall make said payments as follows: Said payments shall be made in equal monthly installments over the three year period of probation with the final payment being made to the Board no later than 90 days prior to the completion of the three (3) year probationary term.

The filing of bankruptcy by Respondent KHALIFA shall not relieve Respondent KHALIFA of his responsibility to reimburse the Board its costs of investigation and prosecution.

10. **Probation Monitoring Costs.** Respondent KHALIFA shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

11. **Status of License**. Respondent KHALIFA shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

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

12. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent KHALIFA cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent KHALIFA may tender his license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent KHALIFA will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent KHALIFA shall relinquish his

pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent KHALIFA may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent KHALIFA shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

13. **Notification of Employment/Mailing Address Change.** Respondent KHALIFA shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent KHALIFA shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

14. **Tolling of Probation.** Respondent must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code.

During Respondent's final year of probation, Respondent shall work at least 20 hours in each calendar month as a pharmacist and at least an average of 40 hours per month in any six consecutive months. Failure to do so will be a violation of probation. <u>If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition.</u>

15. **Violation of Probation.** If Respondent KHALIFA violates probation in any respect, the Board, after giving Respondent KHALIFA notice and an opportunity to be heard,

may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent KHALIFA during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

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

16. **Completion of Probation.** Upon successful completion of probation, Respondent KHALIFA's license will be fully restored.

17. **Supervised Practice.** Respondent KHALIFA shall practice only under the supervision of a pharmacist not on probation with the Board. Respondent KHALIFA shall not practice until the supervisor is approved by the Board. The supervision shall be, as required by the Board:

Substantial - At least 50% of a work week

Within 30 days of the effective date of this decision, Respondent KHALIFA shall have his supervisor submit notification to the Board in writing stating the supervisor has read the decision in case number 2288 and is familiar with the level of supervision as determined by the Board.

If Respondent KHALIFA changes employment, Respondent KHALIFA shall have his new supervisor, within 15 days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 2288 and is familiar with the level of supervision as determined by the Board.

Within 10 days of leaving employment, Respondent KHALIFA shall notify the Board in writing. Respondent KHALIFA's level of supervision shall be reevaluated by the Board after the completion of one year of probation to determine whether or not a lower level of

1 supervision is appropriate.

2 18. **No Ownership of Premises.** Respondent KHALIFA shall not own,
3 have any legal or beneficial interest in, or serve as a manager, administrator, member, officer,
4 director, associate, or partner of any business, firm, partnership, or corporation currently or
5 hereinafter licensed by the Board. Respondent KHALIFA shall sell or transfer any legal or
6 beneficial interest in any entity licensed by the Board within 90 days following the effective
7 date of this decision and shall immediately thereafter provide written proof thereof to the
8 Board.

9 19. **Tolling of Suspension.** If Respondent KHALIFA leaves California to reside
10 or practice outside this state, for any period exceeding 10 days (including vacation),
11 Respondent KHALIFA must notify the Board in writing of the dates of departure and return.
12 Periods of residency or practice outside the state - or any absence exceeding a period of 10
13 days shall not apply to the reduction of the suspension period.

14 Respondent KHALIFA shall not practice pharmacy upon returning to this state
15 until notified by the Board that the period of suspension has been completed.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order
18 and have fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation
19 and the effect it will have on my Original Pharmacy Permit Number No. PHY 30196. I enter
20 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
21 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

22 DATED: 12/20/02.

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24 Falah H. Khalifa

25 FALAH H. KHALIFA dba CALIFA PHARMACY
Respondent

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I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation and the effect it will have on my Pharmacist License Number RPH 31694. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 12/20/02

FALAH H. KHALIFA
Respondent

I have read and fully discussed with Respondents FALAH H. KHALIFA and FALAH KHALIFA dba CALIFA PHARMACY the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/20/02

RONALD S. MARKS
Attorney for Respondent

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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: 12/23/02

BILL LOCKYER, Attorney General
of the State of California

GREGORY J. SALUTE
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03585110-LA2000AD0541

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

In the Matter of the Accusation Against:	Case No. 2288
FALAH H. KHALIFA, dba CALIFA PHARMACY 1133 Celis Street San Fernando, CA 91340 FALAH H. KHALIFA, Owner and Pharmacist-in-Charge Original Pharmacy Permit No. PHY 30196 and FALAH H. KHALIFA 1133 Celis Street San Fernando, CA 91340 Original Pharmacist License No. RPH 31694 Respondents.	OAH No. L2002030117

DECISION AND ORDER

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

This Decision shall become effective on February 26, 2003.

It is so ORDERED January 27, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

JOHN D. JONES
Board President

BILL LOCKYER, Attorney General
of the State of California
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BEFORE THE
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Complainant alleges:

PARTIES

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

2. On or about September 1, 1983, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 30196 to FALAH H. KHALIFA, Individual License Owner, to

do business as CALIFA PHARMACY ("Respondent CALIFA PHARMACY"). The Original Pharmacy Permit Number was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2002, unless renewed.

3. On or about December 19, 1977, the Board of Pharmacy issued Original Pharmacist License Number RPH 31694 to FALAH H. KHALIFA ("Respondent KHALIFA"). The Original Pharmacist License Number was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2002, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Pharmacy ("Board"), under the authority of the following sections of the Business and Professions Code ("Code").

5. Business and Professions Code Section 118(b) provides that the suspension, expiration, or forfeiture by operation of law of a certificate does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the certificate or to order suspension or revocation of the certificate, during the period within which the certificate may be renewed, restored, reissued or reinstated.

6. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license.

7. 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:

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

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

(m) The cash compromise of a charge of violation of Chapter 13 (commencing

with Section 801) of Title 21 of the United States Code regulating controlled substances. The record of the compromise is conclusive evidence of unprofessional conduct.

(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 Chapter 9 (commencing with Section 4000) of the Business and Professions Code or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

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

6. **CONTROLLED SUBSTANCE**

A. "Atridol" is a dangerous drug manufactured in Mexico. It is a combination of Indomethacin, Methocarbamol and Bethamethasone and is not authorized for use in the United States.

B. "Cyclobenzaprine" is a trade name for Flexeril, which is designated by Business and Professions Code 4022 as a dangerous drug.

C. "Lodine" is a trade name for Estodolac, which is designated by Business and Professions Code 4022 as a dangerous drug.

D. "Miltrate 10" is a combination of Meprobamate and Peritrate, which has been discontinued by the manufacturer and is designated by Health and Safety Code section 11057(d)(15) as a Schedule IV controlled substance and by Business and Professions Code 4022 as a dangerous drug.

E. "Vicodin" is a trade name for Hydrocodone 5mg and Acetaminophen 500mg, which is designated by Health and Safety Code section 11055(j) as a Schedule II controlled substance and by Business and Professions Code 4022 as a dangerous drug.

F. "Vicodin" is a trade name for Hydrocodone 7.5mg and Acetaminophen 750mg, which is designated by Health and Safety Code section 11055(j) as a Schedule II controlled substance and by Business and Professions Code 4022 as a dangerous drug.

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G. "Phentermine" is a trade name for Adipex P, Fastin, which is designated by Health and Safety Code section 11057(f)(2) as a Schedule IV controlled substance and by Business and Professions Code 4022 as a dangerous drug.

H. "Otilin eardrops" is a dangerous drug manufactured in Mexico. It is a combination of Neomycin Sulfate, Tetracaine and Chlorbutanol and is not authorized for use in the United States.

I. "Dispan Doble" is a dangerous drug manufactured in Mexico. It contains Belladonna and is not authorized for use in the United States.

J. "Incremin" is an iron supplement manufactured in Mexico and is not authorized for use in the United States.

K. "Lomotil" is a combination of diphenoxylate and atropine. It is a Schedule V controlled substance and not authorized for use in the United States.

L. "Neomycin" is an ointment manufactured in Mexico and is not authorized for use in the United States.

M. "Homatropine drops" is manufactured in Mexico and is not authorized for use in the United States.

N. "Bonadoxin" is manufactured in Mexico and is not authorized for use in the United States.

O. "Lidocaine" is manufactured in Mexico and is not authorized for use in the United States.

P. "Salsalate" is a trade name for Disalcid, which is designated by Business and Professions Code 4022 as a dangerous drug.

6. Section 4059 of the Code states, in pertinent part, that no person shall furnish any dangerous drug upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. No person shall furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

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7. Section 4081(a) of the Code states:

All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, medical device retailer, veterinary food-animal drug retailer, physician, 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.

8. Section 4332 of the Code provides that any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the Board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

9. 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.

10. Section 4342(a) of the Code states, in pertinent part, that the Board may institute any action or actions necessary as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard tests as to quality strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

11. Title 16, California Code of Regulations, section 1717(a) states:

No medication shall be dispensed on prescription except in a new container which conforms with standards established in the official compendia.

12. Title 16, California Code of Regulations, section 1718 states:

"Current Inventory" as used in Section 4232 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section 4232. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

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

FIRST CAUSE FOR DISCIPLINE

(FAILURE TO MAINTAIN RECORDS)

14. Respondents CALIFA PHARMACY and KHALIFA are subject to disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), (m) and (p) of the Code for unprofessional conduct for violating Code sections 4081(a), 4332, 4333, Title 16, California Code of Regulations, section 1718, and Health and Safety Code section 111208, in that Respondents failed to keep a complete, accurate and current inventory or complete accountability of dangerous drugs by reason of the following:

a. On March 18, 1999, Inspector Venegas requested all the acquisition records for May 30, 1997 to March 18, 1999. Respondent KHALIFA informed the Inspector that these records were not on the premises. A request was made by the Inspector that Respondent bring all the records back to the pharmacy within 72 hours and to call once available. The Inspector issued a violation notice for unprofessional conduct.

b. On or about May, 1999, a review of records was conducted of the invoices received from Respondents and that of the wholesalers, which revealed that Respondents failed

to provide 11 invoices. Respondents failed to account for 1500 Vicodin tablets, 500 Vicodin Es tablets and 10,000 Phentermine 37.5. Additionally, inspectors conducted a Selected Drug Audit Summary, using the May 30, 1997 DEA Biennial Inventory as a starting point, on Tylenol #3, Vicodin, Vicodin ES and Didrex, which revealed that Respondents were short 8,585 tablets of Tylenol #3, 6,376 tablets of Vicodin, and 264 tablets of Didrex.

c. On or about September 20, 1999, inspectors from the Board performed an additional audit on Phentermine. Inspectors requested an inspection report of all acqusitions and dispositions from May 30, 1997 to September 20, 1999, which was to include all purchases of Adipex P, Fastin, Phentermine 37.5, Phentermine 30mg and all prescriptions filled during that time period. Additionally, inspectors requested all sales to doctors, other pharmacies and wholesalers, prescription documents from December 1, 1996, which would include the prescription refills for said time period.

d. The September 20, 1999 audit revealed that Respondents had purchased 3000 capsules of Phentermine 30mg and returned 2000 and purchased 11,000 capsules of Phentermine 37.5. Respondents failed to provide any invoices for the purchase of 3000 capsules of Phentermine 30mg and invoices for 10,000 Phentermine 37.5. Additionally, inspectors conducted a Selected Drug Audit Summary, using the May 30, 1997 DEA Biennial Inventory as a starting point on Phentermine 30mg and Phentermine 37.5mg, which revealed that Respondents were short 1,140 of Phentermine 30mg and 11,076 of Phentermine 37.5mg.

SECOND CAUSE FOR DISCIPLINE

(DISPENSING WITHOUT A PRESCRIPTION)

15. Respondents CALIFA PHARMACY and KHALIFA are subject to disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), and (p) of the Code for unprofessional conduct for violating Code sections 4059, 4342(a), Health and Safety Code section 11158 and Title 16, California Code of Regulations, section 1717(a) in that Respondents dispensed dangerous drugs without a prescription by reason of the following:

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a. From on or about May 12, 1998 to on or about March 18, 1999, the Board conducted an undercover operation for the purchase of dangerous drugs without a prescription from Respondents.

b. The undercover operation revealed that on five separate visits, Respondents sold dangerous drugs without a prescription to Inspector, Venegas as follows:

1. On or about May 12, 1998, Inspector Venegas went to CALIFA PHARMACY and explained to Respondent that he needed ear drops for his child who had a fever and an earache and that he also needed something for his back pain. Respondent gave him some eardrops called "Otilin" and instructed him in the use of the medication. Respondents also gave him a pink suspension in a "Prominicol Cough Syrup" bottle (generic for Triaminicol-OTC medication). Respondent informed him that it was an antibiotic, penicillin and instructed him in the proper storage. Additionally, he received some "Motrin" suspension for children. Respondent then gave him some yellow tablets (scored and printed with 257/10) and said that they were muscle relaxants and some white and green capsules called "Atridol," for pain. Respondent then charged Inspector Venegas $49.00 for the medication.

2. On or about May 19, 1998, Inspector Venegas returned to CALIFA PHARMACY and asked Respondent for some stronger medication than "Atridol" that he gave him last time. Respondent gave him some red and gray capsules in a white box and said that they were for pain. The capsules were marked "Lodine 300". Respondent then charged Inspector Venegas $20.00 for the medication.

3. On or about August 24, 1998, Inspector Venegas returned to CALIFA PHARMACY and asked for something for his pain. Respondent KHALIFA examined him physically and asked him to extend his arms and questioned him on his physical being. Respondent gave him a pack of Atridol and 6 round white tablets with "Dan" imprinted on one side and the number "5658" on the other. Respondent placed the while tablets in an "Otilin" box. Respondent then charged Inspector Venegas $16.00 for the medication. The white tablets were later identified as generic for Flexeril, a muscle relaxant.

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4. On or about October 19, 1998, Inspector Venegas returned to CALIFA PHARMACY and asked Respondent for something for pain. Respondent KHALIFA gave him some more Atridol and some white tablets with the name "Wallace" and "37" on top and "5201" underneath and were placed in a "Quadriderm" box. Respondent then charged Inspector Venegas $17.00 for the medication and gave him instructions to lose weight and avoid stress. The white tablets were later identified as Miltrate 10, which had been discontinued for many years and is a Schedule IV controlled substance per Health and Safety Code section 11057(d)(15).

5. On March 18, 1999, Inspector Venegas returned to CALIFA PHARMACY and asked Respondent for something for pain. Respondent KHALIFA gave the Inspector some yellow tablets which had SL391 imprinted on them and put them in a "Dermicort" box. Respondent then charged Inspector Venegas $10.00 for the medication. The yellow tablets were later identified as Salsalate, the generic for Disalcid, which is a dangerous drug used in the treatment of arthritis.

THIRD CAUSE FOR DISCIPLINE

(STORING DRUGS IN MISLABELED CONTAINERS)

15. Respondents CALIFA PHARMACY and KHALIFA are subject to disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), and (p) of the Code for unprofessional conduct for violating Code sections 4342(a), Health and Safety Code sections 111320 and 111255, and 21 U.S.C. 353 in that Respondents stored dangerous drugs in mislabeled containers by reason of the following (see attached copy of Ex. "7"):

a. The Board conducted a physical inspection of the premises on March 18, 1999 and revealed that 125 containers contained dangerous drugs. The drugs were secured and later summarized.

b. During the summary of the audit, items 7, 12, 18-21, 25, 27-29, 39, 41-43, 45-47, 49, 50, and 54 were dangerous drugs that were stored in containers of another product.

c. During the summary of the audit, items 2, 5, 10, 14, 15, 22, 23, 34-36, 38, 51-53, 56-59, 63, 4, 67, and 68 were dangerous drugs that were mis-labeled or not labeled at all.

d. During the summary of the audit, items 1, 17, 24, 31, 32, 37, 61, 62, 65, and 66 were foreign drugs not authorized for use in the United States.

e. Item number 44 was Miltrate 10, expiration date of 5/87 was found in a large box of expires drugs. This was the only bottle of Miltrate 10 in stock.

f. Items 35, 50, and 59 were samples of legend drugs that were in stock.

PRAYER

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

1. Revoking or suspending Original Pharmacy Permit Number PHY 30196, issued to FALAH H. KHALIFA, Individual License Owner, doing business as, CALIFA PHARMACY.

2. Revoking or suspending Original Pharmacist License Number RPH 31694, issued to FALAH H. KHALIFA;

3. Ordering CALIFA PHARMACY and FALAH H. KHALIFA 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;

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

DATED: 1/17/02.

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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