

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

In the Matter of the Accusation Against:

RINGO PHARMACY
Original Pharmacy Permit No. PHY 35278

and

KENNETH LOVELACE
Original Pharmacist License No. RPH 35049,

Respondents.

Case No. 2896

OAH No. 2007080758

DECISION


The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on November 14, 2008.

It is so ORDERED on October 15, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

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

In the Matter of the First Amended Accusation
Against:

RINGO PHARMACY
Original Pharmacy Permit No. PHY 35278

and

KENNETH LOVELACE
Original Pharmacist License No. RPH 35049,

Respondents.

Case No. 2896

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PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 22, 2008, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Anne Hunter, Deputy Attorney General, represented Complainant.

Richard A. Moss, Esq., represented Respondents. Kenneth Lovelace was also present.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Virginia K. Herold (Complainant) brought the First Amended Accusation solely in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board). Respondents timely submitted a Notice of Defense, which contained a request for a hearing.

2. On or about December 11, 1979, the Board issued Original Pharmacist License Number 35049 to Kenneth Lovelace (Respondent Lovelace). The pharmacist license was in full force and effect at all times relevant and was recently renewed through April 30, 2010.

3. On or about November 22, 1988, the Board issued Original Pharmacy Permit Number 35278 to Kenneth Lovelace and Evelyn Lovelace, doing business as Ringo Pharmacy (Respondent Ringo Pharmacy). The pharmacy permit was in full force and effect at all times relevant, but it expired on November 1, 2004, and it has not been renewed.¹

4. Kenneth Lovelace, Original Pharmacist License No. 35049, was the Pharmacist-in-Charge of Ringo Pharmacy at all relevant times.

Respondent Lovelace's Conviction

5. On or after January 10, 2005, in the United States District Court, Eastern District of California, case number 2:03CR00210-001, Respondent Lovelace was convicted, on his plea of guilty to count number one of a superseding information, of violating 42 U.S.C. section 1320a-7b(b)(2) (illegal kickbacks) and 18 U.S.C. section 2 (aiding and abetting), a felony.

6. Respondent Lovelace was sentenced to 48 months supervised probation, under terms including that he pay a \$30,000.00 fine and serve 11 months in a half-way house. Although the court documents do not reflect it, the parties agree that Respondent also paid approximately \$900,000 in restitution to the Medi-Cal program.

7. In or about June of 2005, Respondent Lovelace violated the policy of the half-way house by having an unauthorized laptop computer (he had not submitted it to half-way house authorities for inspection as required) and using it to go on to the internet (which was prohibited). Respondent Lovelace was subsequently terminated from the half-way house program due to that violation. On November 21, 2005, the court found that Respondent Lovelace had violated his probation by having and using the laptop to access the internet and revoked his probation. Respondent Lovelace was ordered to serve four months in federal prison and to be supervised for 36 months upon his release. He began serving his prison sentence at Lompoc on or after February 16, 2006. Respondent Lovelace was subsequently released from prison. He remains on supervised release and currently reports to a federal probation officer.

8. As established by the count of the superseding information to which he pled guilty, the circumstances surrounding the conviction are that, from on or about January 1, 2000, to on or about August 31, 2001, Respondent Lovelace knowingly and willfully offered and paid remuneration to induce a person to refer individuals to his business, Ringo Pharmacy, for furnishing items for which payments were made under the Medi-Cal program. Respondent acted with deliberate ignorance, which was the equivalent of willful behavior,

¹ Business and Professions Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. All further statutory references are to the Business and Professions Code unless otherwise noted.

that illegal kickbacks were being paid to secure customers for diabetic test strips and lancets that his pharmacy supplied to Medi-Cal beneficiaries. Many of these beneficiaries did not need those diabetic supplies, thereby causing the Medi-Cal Program to improperly pay approximately \$790,000.

9. Respondent Lovelace's conviction was substantially related to the qualifications, functions, or duties of a pharmacist. His crime was carried out by use of his pharmacist license and pharmacy permit. By paying illegal kickbacks to induce the dispensing of items from his pharmacy which, for the most part, were not needed by patients, Respondent caused substantial damage to the Medi-Cal program. Respondent Lovelace, to a substantial degree, has thereby evidenced a present unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

10. Respondents presented some mitigating evidence. The gist of Respondent Lovelace's misconduct was the provision of free glucometers to diabetic patients as an inducement for them to use Ringo Pharmacy to obtain diabetic test strips and lancets. Although Respondent Lovelace admitted in his guilty plea that many of the involved patients did not need the diabetic test strips and lancets, those patients still had prescriptions to obtain them from his pharmacy.² Respondents dispensed all of the supplies for which Medi-Cal was billed. Moreover, while his criminal case was pending, Respondent Lovelace cooperated with the FBI and the federal prosecutor to such an extent that the prosecutor recommended to the court that Respondent Lovelace be given leniency in his sentence. The court ultimately gave Respondent Lovelace a sentence that was a significant downward departure from the federal sentencing guidelines.

11. Respondents have no history of prior discipline or warnings from the Board and no other criminal record.

12. Since his release from prison, Respondent Lovelace has worked without incident for over one year as a temporary placement pharmacist for Cameron and Company. He has a stable family life. He and his family regularly attend church. Respondent has been involved in charitable community activities. Several favorable character reference letters were submitted on Respondent's behalf from fellow community service volunteers, a neighbor, a work supervisor and family friends.

13. While Respondent denies that he submitted any false Medi-Cal claims, in that the patients received the diabetic supplies, he understands and acknowledges that his offer of free glucometers was an illegal inducement for Medi-Cal claimants to use his pharmacy to obtain those supplies.

² Respondents also offered evidence that manufacturers of the glucometers had rebate programs in which diabetic patients essentially got free glucometers. That evidence does not serve as persuasive mitigation because it was not established that those rebate programs also required the patients to obtain other diabetic supplies for which Medi-Cal would be billed, unlike Respondents' situation.

14. It was established that costs in the amount of \$6,913.75 were reasonably incurred by the Board in the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. **FIRST CAUSE FOR DISCIPLINE (Conviction of a Substantially Related Crime).** Respondents Lovelace and Ringo Pharmacy are subject to disciplinary action under sections 4300, 4301, subdivision (l), and 490, as further defined by California Code of Regulations, title 16, section 1770, in the Respondent Lovelace was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacist, and he committed his crime while acting in the capacity as Pharmacist-in-Charge of Respondent Ringo Pharmacy. (Factual Findings 1-9.)

2. **SECOND CAUSE FOR DISCIPLINE (Knowingly Making or Signing a False Document).** It was not established that Respondent Lovelace is subject to disciplinary action pursuant to sections 4300 or 4301, subdivisions (f), (g) and (o), on the ground of unprofessional conduct, for knowingly making and submitting falsified Medi-Cal claims. Although many of the Medi-Cal claims submitted for the diabetic strips and lancets could be viewed as false because the involved patients did not need those supplies, the count of the superseding information to which Respondent Lovelace pled guilty does not establish that he knew any of those claims were false or that he knew those patients did not need the supplies. There was no other evidence presented establishing that Respondent Lovelace knowingly submitted false Medi-Cal claims. (Factual Findings 1-10.)

3. **THIRD CAUSE FOR DISCIPLINE (Dishonest Acts).** It was not established that Respondent Lovelace is subject to disciplinary action under sections 4300 or 4301, subdivision (f), for committing dishonest acts by presenting false claims via the Medi-Cal electronic billing system, for the same reason described above in Legal Conclusion 2. (Factual Findings 1-10; Legal Conclusion 2.)

4A. **DISPOSITION.** Since cause for discipline was established, the level of discipline must be determined. In reaching a decision on disciplining a license, the Board's disciplinary guidelines [revised 1/2001] (Guidelines) are considered. (Cal. Code Regs, tit. 16, § 1760.) In this case, Respondents' misconduct was serious, i.e. a felony conviction in federal court for illegal kickbacks given in the context of the Medi-Cal program. Such misconduct is viewed as falling within Category II, which is described in the Guidelines as discipline recommended for violations which reflect on ethics or a criminal conviction not involving dangerous drugs or controlled substances. The minimum discipline recommended in the Guidelines for such a violation is three years probation with various terms as appropriate; the maximum discipline recommended is revocation.

4B. The Guidelines list 14 factors to be considered in determining the level of discipline to be imposed within the various categories. These factors are applied to Respondents as follows:

1. *Actual or potential harm to the public.* This factor goes against Respondents because they caused significant damage to the Medi-Cal program, i.e. approximately \$790,000.
2. *Actual or potential harm to any consumer.* This factor is in Respondents' favor, in that no actual or potential harm to any consumer was proven.
3. *Prior disciplinary record, including level of compliance with disciplinary order(s).* This factor is in Respondents' favor, in that they have no prior disciplinary record.
4. *Prior warnings of record(s), including citation(s) and fine(s).* This factor is in Respondents' favor, in that they have no prior record of warnings.
5. *Number and/or variety of current violations.* This factor is in Respondents' favor, in that only one violation was proven, i.e. a substantially related conviction.
6. *Nature and severity of the act(s), offense(s) or crime(s) under consideration.* This factor goes against Respondents, in that the conviction in question involved serious misconduct.
7. *Mitigating evidence.* This factor is somewhat in Respondents' favor, in that some mitigating evidence was presented, including that the criminal judge gave Respondent Lovelace a lenient sentence.
8. *Rehabilitation evidence.* Respondent Lovelace submitted some evidence of rehabilitation, in that since his release from prison, he has remained gainfully employed, enjoys a stable family life, is active in his community, and he expressed acceptance of his past misconduct.
9. *Compliance with terms of any criminal sentence.* This factor has mixed application to Respondent Lovelace. On the one hand, he violated his probation and was ordered to serve four months in prison. On the other hand, he has paid a significant amount of fines and restitution and has remained in compliance with the terms of his supervised release from prison.
10. *Overall criminal record.* This factor is in Respondents' favor, in that the conviction in question is their only criminal record.
11. *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to section 1203.4 of the Penal Code.* This factor is not applicable, in that it was not established that the conviction in federal court is subject to expungement.

12. *Time passed since the act(s) or offense(s).* This factor is in Respondents' favor, in that the misconduct was committed several years ago, i.e. 2000 and 2001.

13. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.* This factor goes against Respondents, in that it was established that Respondent Lovelace's deliberate ignorance of the legality of the glucometer inducements was the "equivalent of willful behavior."

14. *Financial benefit to the respondent from the misconduct.* This factor goes against Respondents. As established by the count of the superseding information for which Respondent Lovelace was convicted and the amount of his restitution order, Respondents gained a significant financial benefit from the misconduct in question.

4C. The factors listed above have mixed application to Respondent Lovelace, in that several go against him but many others are in his favor. The overall weight of those factors indicates that Respondent Lovelace has engaged in serious misconduct but has presented sufficient mitigation and rehabilitation establishing that the public health, safety or welfare will not be adversely affected by his retaining a probationary license with optional terms calculated to maximize public protection. The above application of the Guideline factors also indicates that an upward departure from the recommended minimum discipline is warranted. On the other hand, it was not demonstrated that anything less than maximum discipline is warranted for Respondent Ringo Pharmacy. For example, Respondent Lovelace was able to facilitate his misconduct, in large part, due to the use of that pharmacy permit. The permit has been expired since 2004. Unlike Respondent Lovelace, no track record of exemplary use of the pharmacy permit since the conviction has therefore been demonstrated. While Respondent Lovelace, as a pharmacist, will have supervision through his employing pharmacy while he serves probation, the same would not be true for the pharmacy permit. During the hearing, Respondent Lovelace did not express any interest in retaining the pharmacy permit and/or using one in the future. Under these circumstances, it was not established that the public would be adequately protected should Respondent Ringo Pharmacy retain a probationary pharmacy permit. (Factual Findings 1-13.)

5. COSTS. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the Pharmacy Law to pay the reasonable costs of the investigation and enforcement of the case. Respondents were found to have violated some provisions of that law. In accordance with section 125.3, Respondents should pay the Board its costs of investigating and enforcing this disciplinary matter, which amounts to \$6,913.75. (Factual Finding 14.)

ORDER

A. The Original Pharmacy Permit No. PHY 35278, issued to Kenneth Lovelace and Evelyn Lovelace, doing business as Ringo Pharmacy, is revoked.

B. The Original Pharmacist License No. RPH 35049, issued to Kenneth Lovelace (respondent), is revoked; however, the revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy. Respondent 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; or

- * discipline, citation, or other administrative action filed by any state and federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

2. Reporting to the Board

Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent 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.

3. Interview with the Board

Upon receipt of reasonable notice, respondent 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.

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4. Cooperation with Board Staff

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

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

6. Notice to Employers

Respondent shall notify all present and prospective employers of the decision in case number 2896 and the terms, conditions and restrictions imposed on respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent 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 2896.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of the decision in case number 2896 in advance of the respondent 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 is considered an employee or independent contractor.

7. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant

Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

8. Reimbursement of Board Costs

See Order C below. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondent 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.

10. Status of License

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

11. License Surrender while on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent 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 will no longer be subject to the terms and conditions of probation.

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

12. Notification of Employment/Mailing Address Change

Respondent 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 shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

13. Tolling of Probation

Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in California, 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.

14. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent 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 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 a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, 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.

15. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

16. Actual Suspension

As part of probation, respondent is suspended from the practice of pharmacy for 30 days beginning the effective date of this decision.

During suspension, respondent 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 shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent 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 shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

17. Community Services Program

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 8 hours per month for the first year of probation.

18. Remedial Education

Within 60 days of the effective date of this decision, respondent shall submit to the Board, for its prior approval, an appropriate course of remedial education related to ethics and/or the Pharmacy Law, which is related to the cause for discipline established in this case. The program of remedial education shall consist of at least 40 hours, which shall be completed within the first year of probation at respondent's own expense. The period of probation shall be extended until such remedial education is successfully completed and written proof, in a form acceptable to the Board, is provided to the Board. All remedial education shall be in addition to continuing education courses used for license renewal purposes. Failure to complete the remedial education as set forth hereinabove is grounds for the filing of a petition to revoke probation.

19. No Ownership of Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.

20. Criminal Probation/Parole Reports

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after respondent receives a copy of such a report.

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C. Respondents Ringo Pharmacy and Kenneth Lovelace shall pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, in the amount of \$6,913.75, pursuant to Business and Professions Code section 125.3. The payment of costs may, at the Board's discretion, be made by monthly payment; however, the full amount of these costs shall be paid before the start of the last year of Respondent Lovelace's probationary period.

DATED: August 29, 2008

A handwritten signature in black ink, appearing to read 'Eric Sawyer', written over a horizontal line.

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 2896

12 RINGO PHARMACY
403 South Long Beach Boulevard
13 Compton, California 90221

OAH NO. 2007080758

14 Original Pharmacy Permit
No. PHY 35278

**FIRST-AMENDED
ACCUSATION**

15 and

16 KENNETH LOVELACE
17 5434 South Corning Avenue
Los Angeles, California 90056

18 Original Pharmacist License
19 No. RPH 35049

20 Respondents.

22 Complainant alleges:

23 **PARTIES**

24 1. Complainant Virginia Herold brings this First-Amended Accusation
25 [hereinafter "Accusation"] solely in her official capacity as the Executive Officer of the Board of
26 Pharmacy, Department of Consumer Affairs.

27 2. On or about November 22, 1988, the Board of Pharmacy issued Original
28 Pharmacy Permit No. 35278 to Kenneth Lovelace and Evelyn Lovelace to do business as Ringo

1 Pharmacy (Respondent Pharmacy). The Pharmacy Permit was in full force and effect at all times
2 relevant to the charges brought herein. The Original Pharmacy Permit expired on November 1,
3 2004, and has not been renewed.

4 3. Kenneth Lovelace, Original Pharmacist License No. 35049, is the
5 Pharmacist-in-Charge of Ringo Pharmacy since November 12, 1988.

6 4. On or about December 11, 1979, the Board of Pharmacy issued Original
7 Pharmacist License No. 35049 to Kenneth Lovelace (Respondent Lovelace). The Pharmacist
8 License was in full force and effect at all times relevant to the charges brought herein, and will
9 expire on April 30, 2008, unless renewed.

10 **JURISDICTION**

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

14 **STATUTORY PROVISIONS**

15 6. Section 4300 of the Code provides, in pertinent part, that every license
16 issued by the Board is subject to discipline, including suspension or revocation.

17 7. Section 4301 of the Code states:

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

22 ...

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

26 "(g) Knowingly making or signing any certificate or other document that falsely
27 represents the existence or nonexistence of a state of facts.

28 ...

1 “(l) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
11 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
12 meaning of this provision. The board may take action when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under Section
15 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
16 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
17 or indictment.

18

...

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

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

24 8. Section 490 of the Code states:

25 “A board may suspend or revoke a license on the ground that the licensee
26 has been convicted of a crime, if the crime is substantially related to the qualifications, functions,
27 or duties of the business or profession for which the license was issued. A conviction within the
28 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo

1 contendere. Any action which a board is permitted to take following the establishment of a
 2 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
 3 been affirmed on appeal, or when an order granting probation is made suspending the imposition
 4 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
 5 Penal Code.”

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

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

11 “For the purpose of denial, suspension, or revocation of a personal or facility
 12 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
 13 Code, a crime or act shall be considered substantially related to the qualifications, functions or
 14 duties of a licensee or registrant if to a substantial degree it evidences present or potential
 15 unfitness of a licensee or registrant to perform the functions authorized by his license or
 16 registration in a manner consistent with the public health, safety, or welfare.”

17 11. United States Code, title 42, section 1320a-7(b) provides in pertinent part:

18 “(b) Illegal remunerations

19 “(1)

20 “(2) Whoever knowingly and willfully offers or pays any remuneration (including
 21 any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any
 22 person to induce such person –

23 “(A) to refer an individual to a person for the furnishing or arranging for the
 24 furnishing of any item or service for which payment may be made in whole or in part under a
 25 Federal health care program, or

26 “(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or
 27 ordering any good, facility, service, or item for which payment may be made in whole or in part
 28 under a Federal health care program,

1 shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or
2 imprisoned for not more than five years, or both.”

3 12. United States Code, title 18, section 2, provides:

4 “(a) Whoever commits an offense against the United States or aids, abets,
5 counsels, commands, induces or procures its commission, is punishable as a principal.

6 “(b) Whoever willfully causes an act to be done which if directly performed by
7 him or another would be an offense against the United States, is punishable as a principal.”

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

12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of a Substantially Related Crime)

14 14. Respondents Kenneth Lovelace and Ringo Pharmacy are subject to
15 disciplinary action under sections 4300, 4301, subdivision (1), and 490 of the Code as defined in
16 California Code of Regulations, title 16, section 1770, in the Respondent Lovelace was convicted
17 of a crime substantially related to the qualifications, functions, or duties of a pharmacist. The
18 circumstances are as follows:

19 a. On or about January 20, 2005, Respondent was convicted by the
20 Court on a plea of guilty to one count of violating 18 U.S.C. section 1320a-7(b)(2), a felony
21 (illegal kickbacks), and one count of violating 18 U.S.C. section 2, a felony (aiding and abetting)
22 in the United States District Court for the Eastern District of California, Case No. CR-S-03-0210
23 FCD, entitled *United States of America v. Kenneth Lovelace*.

24 b. The circumstances surrounding the conviction are that from on or
25 about January 1, 2000, to on or about August 31, 2001, Respondent Lovelace knowingly and
26 willfully offered and paid remuneration to induce a person to refer individuals to his business,
27 Ringo Pharmacy, to furnish items for which payments were made under the Medi-Cal program.
28 Respondent acted with a deliberate ignorance which was the equivalent of willful behavior that

1 illegal kickbacks were being paid to secure customers for diabetic test strips and lancets that his
2 pharmacy supplied to Medi-Cal beneficiaries. Many of these beneficiaries did not need the
3 diabetic supplies, thereby causing the Medi-Cal Program to improperly pay approximately seven
4 hundred ninety thousand dollars (\$790,000.00).

5 c. On January 10, 2005, Respondent was sentenced to 48 months
6 supervised probation. The terms of his probation included the payment of a \$30,000.00 fine. On
7 June 17, 2005, Respondent reportedly violated probation when he was terminated from the 11
8 month Community Corrections Center Program, a condition of his probation.

9 c. On November 21, 2005, Respondent was found to have violated
10 his probation and his probation was revoked. In addition, Respondent was ordered to serve 4
11 months in federal prison and to be supervised for 36 months upon release. Respondent began
12 serving his prison sentence at Lompoc on or about February 27, 2006.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Knowingly Making or Signing a False Document)**

15 15. Respondent Kenneth Lovelace is subject to disciplinary action under
16 Sections 4300 and 4301, subdivisions (f), (g) and (o), on the ground of unprofessional conduct in
17 that from on or about January 1, 2000, through August 31, 2001, Respondent knowingly made
18 and submitted falsified Medi-Cal claims as described in paragraph 14 above and incorporated
19 herein by reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Dishonest Acts)**

22 16. Respondent Kenneth Lovelace is subject to disciplinary action under
23 Sections 4300 and 4301, subdivision (f), in that Respondent committed dishonest acts by
24 presenting false claims via the Medi-Cal electronic billing system, as described in paragraph 14
25 above and incorporated herein by reference.

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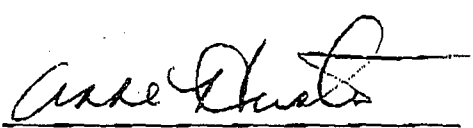
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PRAYER

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 No. PHY 35278, issued to Kenneth Lovelace and Evelyn Lovelace doing business as Ringo Pharmacy.
- 2. Revoking or suspending Original Pharmacist License No. RPH 35049, issued to Kenneth Lovelace.
- 3. Ordering Ringo Pharmacy and Kenneth Lovelace 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: 3-26-08

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

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