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

12 In the Matter of the Accusation Against:

Case No. 2959

13
14 **RESIDENTIAL CARE HOME FOR YOU,**
INC. d.b.a. HOME CARE PHARMACY, Luis
Gaurano, President and Valerie Gaurano, Vice
15 President and Owners

OAH No. L 2006070547

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR
ANNE CABRERA

16 11711 Sterling Avenue, Suite E
17 Riverside, CA 92503

18 Original Pharmacy Permit No. PHY 45192

19 **VALERIE GAURANO, Pharmacist-in**
Charge at HOME CARE PHARMACY

20 2051 Kristi Ct.
21 Fallbrook, CA 92028

22 Original Pharmacist License No. RPH 38852

23 **ANNE R. CABRERA, Pharmacist-in-Charge**
at HOME CARE PHARMACY

24 31921 Old Hickory Road
25 Trabuco Canyon, CA 92679

26 Original Pharmacist License No. RPH 40776

27 Respondents.
28

1 In the interest of a prompt and speedy settlement of this matter, consistent with the
2 public interest and the responsibility of the Board of Pharmacy (Board) the parties hereby agree
3 to the following Stipulated Settlement and Disciplinary Order which will be submitted to the
4 Board for approval and adoption as the final disposition of the Accusation solely with respect to
5 Anne R. Cabrera. It does not apply to Valerie Reyes Gaurano.

6 **PARTIES**

7 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
8 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
9 by Bill Lockyer, Attorney General of the State of California, by James M. Ledakis, Deputy
10 Attorney General.

11 2. ANNE R. CABRERA (Respondent) is represented in this proceeding by
12 attorney Donald Brown, whose address is 3848 Carson Street, Suite 206, Torrance, CA 90503.

13 3. On or about March 17, 1986, the Board issued Pharmacy Permit No. RPH
14 40776 to ANNE R. CABRERA. The Permit was in full force and effect at all times relevant to
15 the charges brought in Accusation No. 2959 and will expire on July 31, 2006, unless renewed.

16 **JURISDICTION**

17 4. Accusation No. 2959 was filed before the Board, and is currently pending
18 against Respondent. The Accusation and all other statutorily required documents were properly
19 served on Respondent on November 15, 2006. Respondent timely filed her Notice of Defense
20 contesting the Accusation. A copy of Accusation No. 2959 is attached as exhibit A and
21 incorporated herein by reference.

22 **ADVISEMENT AND WAIVERS**

23 5. Respondent has carefully read, fully discussed with counsel, and
24 understands the charges and allegations in Accusation No. 2959. Respondent has also carefully
25 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
26 Disciplinary Order.
27
28

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

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

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 2959, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacist License No. 40776.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest those charges.

10. Respondent agrees that her Pharmacy License is subject to discipline and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. 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.

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacy License No. RPH 40776 issued to
6 ANNE R. CABRERA is revoked. However, the revocation is stayed and Respondent is placed
7 on probation for three (3) years on the following terms and conditions.

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

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

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

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

1 3. **Interview with the Board.** Upon receipt of reasonable notice,
2 Respondent shall appear in person for interviews with the Board upon request at various
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled
4 interview without prior notification to Board staff shall be considered a violation of probation.

5 4. **Cooperation with Board Staff.** Respondent shall cooperate with the
6 Board's inspection program and in the Board's monitoring and investigation of Respondent's
7 compliance with the terms and conditions of their probation. Failure to comply shall be
8 considered a violation of probation.

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

11 6. **Notice to Employers.** Respondent shall notify all present and
12 prospective employers of the decision in case number 2959 and the terms, conditions and
13 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
14 this decision, and within 15 days of Respondent undertaking new employment, Respondent
15 shall cause their direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
16 writing acknowledging the employer has read the decision in case number 2959.

17 If Respondent works for or is employed by or through a pharmacy employment
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
19 every pharmacy of the and terms conditions of the decision in case number 2959 in advance of
20 the Respondent commencing work at each pharmacy.

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

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

1 8. **Reimbursement of Board Costs.** Respondent shall pay to the Board
2 its costs of investigation and prosecution in the amount of \$2,000.00. Respondent shall
3 complete all payments six months prior to completion of probation.

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

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

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

13 If Respondent's license expires or is canceled by operation of law or otherwise,
14 upon renewal or re-application, Respondent's license shall be subject to all terms and
15 conditions of this probation not previously satisfied.

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

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

28

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

6 13. **Tolling of Probation.** Should Respondent, regardless of residency, for
7 any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in
8 California, Respondent must notify the Board in writing within 10 days of cessation of the
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
10 shall not apply to the reduction of the probation period. It is a violation of probation for
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
12 period exceeding three years.

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

16 14. Respondent shall work at least 40 hours in each calendar month as a
17 pharmacist and at least an average of 80 hours per month in any six consecutive months.
18 Failure to do so will be a violation of probation. If Respondent has not complied with this
19 condition during the probationary term, and Respondent has presented sufficient
20 documentation of their good faith efforts to comply with this condition, and if no other
21 conditions have been violated, the Board, in its discretion, may grant an extension of
22 Respondent's probation period up to one year without further hearing in order to comply with
23 this condition.

24 15. **Violation of Probation.** If Respondent violates probation in any
25 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
26 probation and carry out the disciplinary order which was stayed. If a petition to revoke
27 probation or an accusation is filed against Respondent during probation, the Board shall have
28 continuing jurisdiction and the period of probation shall be extended, until the petition to

1 revoke probation or accusation is heard and decided.

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

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

9 17. **No Ownership of Premises.** Respondent shall not own, have any legal
10 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
11 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
12 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
13 entity licensed by the Board within 90 days following the effective date of this decision and
14 shall immediately thereafter provide written proof thereof to the Board.

15 **ACCEPTANCE**

16 I have carefully read the above Stipulated Settlement and Disciplinary Order
17 and have fully discussed it with my attorney, Donald Brown. I understand the stipulation and
18 the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and
19 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
20 Decision and Order of the Board.

21 DATED: 12/5/06 
22 ANNE R. CABRERA (Respondent)

23 I have read and fully discussed with ANNE R. CABRERA the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
25 Order. I approve its form and content.

26 DATED: DEC - 5 2006 
27 DONALD BROWN, Attorney for Respondent
28

1 revoke probation or accusation is heard and decided.

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

7 16. **Completion of Probation.** Upon successful completion of probation,
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12 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
13 entity licensed by the Board within 90 days following the effective date of this decision and
14 shall immediately thereafter provide written proof thereof to the Board.

15 ACCEPTANCE

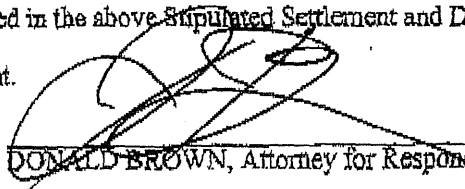
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19 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
20 Decision and Order of the Board.

21 DATED: 12/5/06


ANNE R. CABRERA (Respondent)

22
23 I have read and fully discussed with ANNE R. CABRERA the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
25 Order. I approve its form and content.

26 DATED: DEC - 5 2006


DONALD BROWN, Attorney for Respondent

revoke probation or accusation is heard and decided.

If 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.

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

17. **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 or 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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Donald Brown. I understand the stipulation and the effect it will have on my Pharmacist License. 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.

DATED: _____;
ANNE R. CABRERA (Respondent)

I have read and fully discussed with ANNE R. CABRERA the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

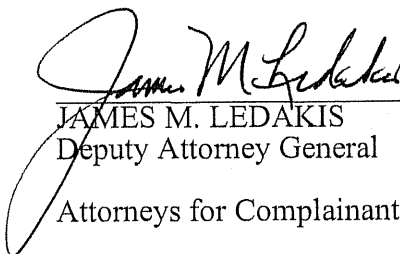
DATED: _____; DONALD BROWN, Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby
respectfully submitted for consideration by the Board.

DATED: December 12, 2006

BILL LOCKYER, Attorney General
of the State of California


JAMES M. LEDAKIS
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SD2005800399
Stipulation Anne C.wpd

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

In the Matter of the Accusation Against:

**ANNE R. CABRERA, Pharmacist-in-
Charge at HOME CARE PHARMACY**

31921 Old Hickory Road
Trabuco Canyon, CA 92679

Original Pharmacist License No. RPH 40776

Respondent.

Case No. 2959

OAH No. L2006070547

DECISION AND ORDER

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

This Decision shall become effective on February 21, 2007.

It is so ORDERED January 22, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS

Board President

Exhibit A
Accusation No. 2959

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
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6 Telephone: 619-645-2105
Facsimile: 619-645-2061

7 Attorneys for Complainant
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13 **RESIDENTIAL CARE HOME FOR YOU,**
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President and Owners

OAH No.

A C C U S A T I O N

15 11711 Sterling Avenue, Suite E
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18 **VALERIE GAURANO, Pharmacist-in**
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22 **ANNE R. CABRERA, Pharmacist-in-Charge**
at HOME CARE PHARMACY

23 31921 Old Hickory Road
24 Trabuco Canyon, CA 92679

25 Original Pharmacist License No. RPH 40776

26 Respondents.
27
28

1 Complainant alleges:

2 **PARTIES**

3 1. (Complainant) Patricia F. Harris brings this Accusation solely in her
4 official capacity as the Executive Officer for the California State Board of Pharmacy, Department
5 of Consumer Affairs.

6 2. On or about April 25, 2001, the Board of Pharmacy issued Original
7 Pharmacy Permit Number PHY 45192 to Residential Care Home For You, Inc., d.b.a. Home
8 Care Pharmacy. The license will expire on April 1, 2006, unless renewed.

9 3. On or about August 23, 1984, the Board of Pharmacy issued Original
10 Pharmacist license no. 38852 to Valerie Reyes Gaurano aka Valerie Anne Abanil Reyes. She
11 was the pharmacist in charge at HOME CARE PHARMACY from March 26, 2004 through
12 August 23, 2004. Her license will expire on April 1, 2006, unless renewed.

13 4. On or about March 17, 1986, the Board of Pharmacy issued Original
14 Pharmacist license no. 40776 to Anne Roberto Cabrera. She was the pharmacist in charge at
15 HOME CARE PHARMACY from August 23, 2004 to the present. Her license will expire on
16 July 31, 2006, unless renewed.

17 **JURISDICTION**

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

21 6. Section 4059 (a) of the Code states, in pertinent part, that a person may not
22 furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist,
23 optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the
24 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

25 7. Section 4070 (a) of the Code entitled, Oral or electronic data transmission
26 prescription; reduction to writing states: Except as provided in Section 4019 and subdivision (b),
27 an oral or an electronic data transmission prescription as defined in subdivision (c) of Section
28 4040 shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by,

1 or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address,
2 telephone number, license classification, federal registry number of the prescriber or the address
3 of the patient or patients if the information is readily retrievable in the pharmacy.

4 8. Section 4081 of the Code states:

5 (a) All records of manufacture and of sale, acquisition, or disposition of
6 dangerous drugs or dangerous devices shall be at all times during business hours open to
7 inspection by authorized officers of the law, and shall be preserved for at least three years
8 from the date of making. A current inventory shall be kept by every manufacturer,
9 wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist,
10 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently
11 valid and unrevoked certificate, license, permit, registration, or exemption under Division
12 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
13 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code
14 who maintains a stock of dangerous drugs or dangerous devices.

15 (b) The owner, officer, and partner of any pharmacy, wholesaler, or
16 veterinary food-animal drug retailer shall be jointly responsible, with the
17 pharmacist-in-charge or exemptee, for maintaining the records and inventory described in
18 this section.

19 (c) The pharmacist-in-charge or exemptee shall not be criminally
20 responsible for acts of the owner, officer, partner, or employee that violate this section
21 and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or
22 she did not knowingly participate.

23 9. Section 4105 of the Code states:

24 (a) All records or other documentation of the acquisition and disposition of
25 dangerous drugs and dangerous devices by any entity licensed by the board shall be
26 retained on the licensed premises in a readily retrievable form.

27 (b) The licensee may remove the original records or documentation from
28 the licensed premises on a temporary basis for license-related purposes. However, a
duplicate set of those records or other documentation shall be retained on the licensed
premises.

(c) The records required by this section shall be retained on the licensed
premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so
that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not
on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the
exemptee, shall, at all times during which the licensed premises are open for business, be
able to produce a hard copy and electronic copy of all records of acquisition or
disposition or other drug or dispensing-related records maintained electronically.

(e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon
written request, grant to a licensee a waiver of the requirements that the records described
in subdivisions (a), (b), and (c) be kept on the licensed premises.

(2) A waiver granted pursuant to this subdivision shall not affect the
board's authority under this section or any other provision of this chapter.

26 10. Section 4301 of the Code states:

27 The board shall take action against any holder of a license who is guilty of
28 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

1 the following:

2 (c) Gross negligence.

3 (f) The commission of any act involving moral turpitude, dishonesty,
4 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.

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

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

9 (q) Engaging in any conduct that subverts or attempts to subvert an
10 investigation of the board.

11 11. Section 4333 of the Code states, in pertinent part, that all prescriptions
12 filled by a pharmacy and all other records required by Section 4081 shall be maintained on the
13 premises and available for inspection by authorized officers of the law for a period of at least
14 three years. In cases where the pharmacy discontinues business, these records shall be
15 maintained in a board-licensed facility for at least three years.

16 12. Section 480 states, in pertinent part:

17 (a) A board may deny a license regulated by this code on the grounds that
18 the applicant has one of the following:

19 (2) Done any act involving dishonesty, fraud or deceit with the intent to
substantially benefit himself or another, or substantially injure another; or

20 (3) Done any act which if done by a licentiate of the business or profession
in question, would be grounds for suspension or revocation of license.

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

25 14. California Code of Regulations, title 16, section 1717, states:

26 (c) Promptly upon receipt of an orally transmitted prescription, the
27 pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted
28 prescription. If the prescription is then dispensed by another pharmacist, the dispensing

1 pharmacist shall also initial the prescription to identify him or herself.

2 All orally transmitted prescriptions shall be received and transcribed by a
3 pharmacist prior to compounding, filling, dispensing, or furnishing.

4 Chart orders as defined in Section 4019 of the Business and Professions
5 Code are not subject to the provisions of this subsection.

6

7 15. California Code of Regulations section 1715, entitled, Self-Assessment of
8 a Pharmacy by the Pharmacist-in-Charge states:

9 (a) The pharmacist-in-charge of each pharmacy as defined under section 4029 or
10 section 4037 of the Business and Professions Code shall complete a self-assessment of
11 the pharmacy's compliance with federal and state pharmacy law. The assessment shall be
12 performed before July 1 of every odd-numbered year. The primary purpose of the
13 self-assessment is to promote compliance through self-examination and education.

14 (b) In addition to the self-assessment required in subdivision (a) of this section,
15 the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

16 (1) A new pharmacy permit has been issued, or

17 (2) There is a change in the pharmacist-in-charge, and he or she becomes the new
18 pharmacist-in-charge of a pharmacy.

19 (c) The components of this assessment shall be on Form 17M-13 (Rev. 1/05)
20 entitled "Community Pharmacy & Hospital Outpatient Pharmacy Self-Assessment" or
21 Form 17M-14 (Rev. 1/05) entitled "Hospital Pharmacy Self-Assessment" which are
22 hereby incorporated by reference to evaluate compliance with federal and state laws and
23 regulations.

24 (d) Each self-assessment shall be kept on file in the pharmacy for three years after
25 it is performed.

26 16. California Code of Regulations section 1793.1 states:.

27 Only a pharmacist, or an intern pharmacist acting under the supervision of a
28 pharmacist, may:

(a) Receive a new prescription order orally from a prescriber or other person
authorized by law.

17. Title 21, Code of Federal Regulations section 1304.11, (a) and c), states in
part as follows:

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

1 be taken either as of opening of business or as of the close of business on the inventory
2 date and it shall be indicated on the inventory.

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

7 **FACTS:**

8 18. On July 23, 2004, the Board filed an accusation against pharmacist Cesar
9 Cabrera resulting from his conviction for possession of dangerous drugs. Following Cesar
10 Cabrera's conviction and subsequent stipulated settlement, the Board placed Cabrera on five
11 years probation, ordered him to serve 90 days suspension and to enter the Pharmacist's Recovery
12 Program. Cabrera's suspension was to be served from March 5, 2005 through June 4, 2005.

13 19. On March 8, 2005, Cabrera met with the Inspector Knight as part of a
14 probation conference to go over the conditions of his probation. Cabrera acknowledged that he
15 was suspended for 90 days, that he could not be employed where a relative was employed and
16 that he had to complete the paper work to get prior approval for a work site monitor in order to
17 work at a pharmacy. Cabrera was employed at Home Care Pharmacy where his wife, Anne R.
18 Cabrera, was the pharmacist in charge. Cabrera signed a declaration that he understood the terms
19 of his probation and suspension.

20 20. On May 25, 2005, Maximus representative, Don Fensterman, the manager
21 for the Pharmacists Recovery Program (PRP), met with Cabrera and discussed the terms of the
22 pharmacists recovery program treatment contract with him. Thereafter, on June 10, 2005,
23 Cabrera signed the contract and agreed to be bound by the terms and conditions.

24 21. The following are some of the pertinent conditions of PRP recovery
25 program that Cabrera contractually agreed to:

- 26 A. Not work in a pharmacy where a family member is employed or where
27 a family member has a beneficial interest;
- 28 B. Be supervised 75% of each work week by another pharmacist;
- C. Not supervise others, act as a pharmacist in charge, pharmacy manager,
or as a preceptor to interns or new employees;
- D. Understand that he could be terminated from the program for failure to
comply with the contract;
- E. Agree to abstain from the use of alcohol and all other mind altering

1 drugs, except as prescribed by a physician;

2 F. Agree to report all relapses to Maximus immediately and to cease
3 practice upon relapse.

4 22. On July 6, 2005, Maximus notified the Board that Cabrera has relapsed
5 and verbally suspended Cabrera from practicing pharmacy and told him to leave Home Care
6 Pharmacy, where he was working. Maximus advised Cabrera that he had not completed the
7 work site monitor paper work, that he did not have a work site monitor in place, and that he was
8 working at Home Care Pharmacy where his wife, Anne R. Cabrera, was the pharmacist in charge,
9 and hence, he violated the terms of his recovery program. Maximus notified Cabrera of the
10 aforementioned violations in writing on July 6, 2005. Maximus ordered Cabrera to cease
11 practice and to enter into a residential inpatient chemical dependency treatment program on or
12 before July 13, 2005, and to complete a 30 day treatment.

13 23. On July 12, 2005, the Board conducted an inspection of the Home Care
14 Pharmacy and discovered that Cabrera was the only pharmacist on duty. There were two
15 pharmacy technicians, a clerk, and a manager, Ms. Marian Rano, who was in her office next to
16 the pharmacy.

17 24. The Board inspector noted violations at Home Care Pharmacy, that were
18 the direct responsibility of the pharmacist in charge, in this case, Anne R. Cabrera. Home Care
19 Pharmacy pharmacist in charge, Anne R. Cabrera, failed to maintain a DEA inventory which
20 required all schedules to be faxed to the Board. The pharmacist in charge allowed a suspended
21 pharmacist to possess a key to the pharmacy. The Pharmacy/pharmacist in charge failed to
22 provide a current self assessment and fax it to the Board. The pharmacy/pharmacist in charge
23 allowed Mr. Cabrera to work at Home Care Pharmacy and failed to include the initials of the
24 receiving pharmacist on all orally transmitted prescriptions. The Pharmacy/pharmacist in charge
25 failed to fax the required corrections to the Board as requested.

26 25. On July 12, 2005, the pharmacy inspector confronted Mr. Cabrera who
27 admitted that he knew that he was not supposed to be working because of the Maximus
28 suspension. Additional inspection of the prescriptions verified that Mr. Cabrera had been filling
and dispensing prescriptions from at least July 8, 2005 through July 12, 2005, as evidenced by

1 his initials "CC" on the prescriptions. Mr. Cabrera admitted to having a key to the pharmacy.
2 The inspector told Mr. Cabrera and the manager, Marian Rano, and a man representing himself
3 as the pending owner of the pharmacy, Richard Lacson, that Mr. Cabrera could not have a key to
4 the pharmacy and that he could not work as a pharmacist at Home Care Pharmacy while on
5 suspension. The inspector admonished Mr. Cabrera to stop working at the pharmacy.

6 26. On July 13, 2005, Maximus, notified the Board that Mr. Cabrera had been
7 terminated from the PRP for the following reasons:

- 8 A. Tested positive for alcohol on 6-27-05 and again on 7-05-05;
9 B. Returned to work without a work site monitor agreement in place;
10 C. Returned to work where a relative (wife, Anne) also works;
11 D. Failed to enter inpatient chemical dependency treatment;
12 E. Returned to work after relapse;
13 F. Returned to work after suspension by Maximus;
14 G. Non compliance with his PRP contact.

15 27. On July 13, 2005, Maximus notified Mr. Cabrera in writing that he was
16 terminated from the pharmacist recovery program. On July 14, 2005, the Board sent Mr. Cabrera
17 a certified letter informing him that his license was suspended due to his termination from the
18 PRP, as per his stipulated settlement and the decision of the Board. The letter admonished Mr.
19 Cabrera that he was not allowed to enter or work at any pharmacy or have access to or control of
20 controlled substances. On July 20, 2005, Mr. Cabrera signed for receipt of the Board's certified
21 letter placing him on disciplinary suspension.

22 28. On October 6, 2005, the Board conducted a follow up inspection at Home
23 Care Pharmacy. Again, Mr. Cabrera was the only pharmacist on duty. There was one technician
24 and a biller in the front office. Again, Mr. Cabrera admitted to working but had no excuse for
25 violating his suspension imposed by the both the Board and Maximus. Mr. Cabrera again had a
26 key to the pharmacy which he admitted to taking. He also admitted to continuing working at
27 Home Care Pharmacy after the Board's July 12, 2005, inspection in defiance of his suspension.

28 29. On October 6, 2005, the Board's inspection confirmed that none of the
prior July 12, 2005 corrections had been completed. For example, there was no completed DEA
inventory, no quality assurance and no current pharmacy self assessment on the premises.

1 30. The inspector asked Mr. Cabrera to get his wife (pharmacist in charge) on
2 the telephone for the inspector to speak with. Mrs. Cabrera denied receiving a copy of the
3 Board's prior July 12, 2005 correction notice. She admitted to knowing that her husband's
4 license was suspended. The inspector admonished Mrs. Cabrera that her husband was suspended
5 and could not work and that he should not have a key to the pharmacy where she is the
6 pharmacist in charge. The inspector reminded Mrs. Cabrera that as the pharmacist in charge, she
7 was responsible for compliance with all the rules and regulations pertaining to pharmacy at
8 Home Care Pharmacy. The inspector requested that Anne R. Cabrera fax a completed copy of
9 the corrections to her as soon as possible. As of November 4, 2005, Mrs. Cabrera has not faxed
10 the corrections as requested.

11 31. Following the telephone call to Mrs. Cabrera, the inspector continued to
12 look through prescription evidence. The inspector found and documented prescriptions filled by
13 Mr. Cabrera during the time of the Board imposed suspension on his license, that is, March 5,
14 2005 through June 4, 2005. Mr. Cabrera initially denied working during the 90 suspension but
15 later admitted to the inspector that he had worked during the suspension period. The prescription
16 dates filled by Mr. Cabrera, "CC", were from January 28, 2005 through October 6, 2005 which
17 confirm that he worked as a pharmacist after suspension from the PRP. Mr. Cabrera admitted to
18 the inspector that he allowed technicians to receive and transcribe prescriptions which is against
19 the Board regulations. Mr. Cabrera told the inspector that he was unaware of that regulation.

20 32. The inspector asked Mr. Cabrera for Home Care Pharmacy's recent drug
21 purchases. Mr. Cabrera stated that none of the invoices for the purchases were at the pharmacy
22 as required by regulations but were at the house of a purported new owner, Richard Lacson. The
23 inspector reminded Mr. Cabrera that all acquisition and disposition records had to be kept in the
24 pharmacy, accessible to the Board.

25 33. On October 25, 2005, written letters were sent by the Board to the owners
26 and the pharmacist in charge notifying them of the violations found during the October
27 inspection.
28

1 I. Violations by Residential Home Care For You, Inc., d.b.a. Home Care Pharmacy, its
2 owners, Luis Gaurano, and Valerie Gaurano license no. RPH 38852 and Pharmacist in
3 Charge, hereinafter Home Care Pharmacy.

4 FIRST CAUSE FOR DISCIPLINE

5 (No DEA Inventory)

6 34. Respondent Home Care Pharmacy is subject to disciplinary action under
7 section 4301 (j), (o), and Title 21, Code of Federal Regulations section 1304.11, (a) and c) for
8 failing to have a Biannual DEA Inventory at Home Care Pharmacy as set forth in paragraphs 18
9 through 33 above.

10 SECOND CAUSE FOR DISCIPLINE

11 (No Pharmacy Self Assessment)

12 35. Respondent Home Care Pharmacy is subject to disciplinary action under
13 section 4301 (j), (o) and California Code of Regulations section 1715 for failing to have a current
14 pharmacy self assessment on the premises at Home Care Pharmacy as set forth in paragraphs 18
15 through 33 above.

16 THIRD CAUSE FOR DISCIPLINE

17 (Pharmacists Initials Readily Retrievable)

18 36. Respondent Home Care Pharmacy is subject to disciplinary action under
19 section 4301 (j), (o) and California Code of Regulations section 1717 (c) for failing to have the
20 initials of the pharmacist filling the prescriptions readily available at Home Care Pharmacy upon
21 request by the Board as set forth in paragraphs 18 through 33 above.

22 FOURTH CAUSE FOR DISCIPLINE

23 (Failure to have Records on Licensed Premises)

24 37. Respondent Home Care Pharmacy is subject to disciplinary action under
25 section 4301 (j), (o), 4081 (a), 4105 and 4333 for failing to have all records of acquisition and
26 disposition of dangerous drugs on the premises of Home Care Pharmacy upon request by the
27 Board as set forth in paragraphs 18 through 33 above.
28

1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Have Quality Assurance Program Records)

3 38. Respondent Home Care Pharmacy is subject to disciplinary action under
4 section 4125 and California Code of Regulations section 1715 for failing to have the quality
5 assurance records at Home Care Pharmacy available upon request by the Board as set forth in
6 paragraphs 18 through 33 above.

7 SIXTH CAUSE FOR DISCIPLINE

8 (Non-Pharmacists Received and Transcribed Prescriptions)

9 39. Respondent Home Care Pharmacy is subject to disciplinary action under
10 section 4301 (j), (o), 4070 and California Code of Regulations section 1793.1 (a) and 1717 (c)
11 for allowing non-pharmacists to receive and transcribe orally transmitted prescriptions at Home
12 Care Pharmacy as set forth in paragraphs 18 through 33 above.

13 SEVENTH CAUSE FOR DISCIPLINE

14 (Allowing Suspended Pharmacist to Work as Pharmacist)

15 40. Respondent Home Care Pharmacy is subject to disciplinary action under
16 section 4301 (c), (f), (o), and (q) for allowing pharmacist Cesar Cabrera to work at Home Care
17 Pharmacy while on suspension, without regard to public health or safety as set forth in
18 paragraphs 18 through 33 above.

19 EIGHTH CAUSE FOR DISCIPLINE

20 (Allowing Non-Pharmacist to Receive Drug Orders)

21 41. Respondent Home Care Pharmacy is subject to disciplinary action under
22 section 4301 (j), (o), and 4059.5 (a) for allowing non-pharmacists, specifically pharmacy
23 technicians to receive drug wholesale orders at Home Care Pharmacy as set forth in paragraphs
24 18 through 33 above.

25 II. Violations by Pharmacist-in-Charge, Anne R. Cabrera

26 NINTH CAUSE FOR DISCIPLINE

27 (No DEA Inventory)

28 42. Respondent Pharmacist-in-Charge (PIC), Anne R. Cabrera, is subject to

1 disciplinary action under section 4301 (j), (o), and Title 21, Code of Federal Regulations section
2 1304.11, (a) and c) for failing to have a Biannual DEA Inventory at Home Care Pharmacy as set
3 forth in paragraphs 18 through 33 above.

4 TENTH CAUSE FOR DISCIPLINE

5 (No Pharmacy Self Assessment)

6 43. Respondent, (PIC) Anne R. Cabrera, is subject to disciplinary action under
7 section 4301 (j), (o) and California Code of Regulations section 1715 for failing to have a current
8 pharmacy self assessment on the premises at Home Care Pharmacy as set forth in paragraphs 18
9 through 33 above.

10 ELEVENTH CAUSE FOR DISCIPLINE

11 (Pharmacists Initials Readily Retrievable)

12 44. Respondent, PIC Anne R. Cabrera, is subject to disciplinary action under
13 section 4301 (j), (o) and California Code of Regulations section 1717 (c) for failing to have the
14 initials of the pharmacist filling the prescriptions readily available at Home Care Pharmacy upon
15 request by the Board as set forth in paragraphs 18 through 33 above.

16 TWELFTH CAUSE FOR DISCIPLINE

17 (Failure to have Records on Licensed Premises)

18 45. Respondent, PIC, Anne R. Cabrera, is subject to disciplinary action under
19 section 4301 (j), (o), 4081 (a), 4105 and 4333 for failing to have all records of acquisition and
20 disposition of dangerous drugs on the premises of Home Care Pharmacy upon request by the
21 Board as set forth in paragraphs 18 through 33 above.

22 THIRTEENTH CAUSE FOR DISCIPLINE

23 (Failure to Have Quality Assurance Program Records)

24 46. Respondent, PIC, Anne R. Cabrera, is subject to disciplinary action under
25 section 4125 and California Code of Regulations section 1715 for failing to have the quality
26 assurance records at Home Care Pharmacy available upon request by the Board as set forth in
27 paragraphs 18 through 33 above.

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1 4. Ordering Anne Roberto Cabrera and or VALERIE GAURANO to pay the
2 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

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

5 DATED: 4/3/06

6
7 P. F. Harris
8 Patricia F. Harris,
9 Executive Officer
10 Board of Pharmacy
11 Department of Consumer Affairs
12 State of California
13 Complainant
14

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16 ACCUSATION 4.wpd
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