

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

In the Matter of the Accusation Against:

TARGET STORE NO. T-289
20200 Bloomfield Avenue
Cerritos, CA 90703
Pharmacy Permit No. PHY 45438

and

GITA PATEL
a.k.a. **GITA D. PATEL**
12033 Fairford Avenue
Norwalk, CA 90650
Pharmacy License No. RPH 31173

Respondents.

Case No. 3358

OAH No. L-2011061497

**RESPONDENT TARGET STORE
NO. T-289 ONLY**

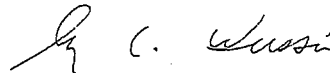
DECISION AND ORDER

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 June 25, 2012.

It is so ORDERED on May 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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2 GREGORY J. SALUTE
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

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15 **and**

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Norwalk, CA 90650
18 Pharmacist License No. RPH 31173

19 Respondents.

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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

[AS TO TARGET STORE NO.T-289 ONLY]

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

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Susan Melton Wilson, Deputy Attorney
27 General.

28 ///

1 2. Respondent Target Store No. T-289 (Respondent) a corporation, is represented in this
2 proceeding by attorney J. Susan Graham, of the Law Offices of Epstein Becker and Green, 1925
3 Century Park East, Suite 500, Los Angeles, CA 90067-2506. Jose Barra, the individual signing
4 this Stipulated Settlement on behalf of Target Stores, is the authorized representative of the
5 corporate licensee.

6 3. On or about June 19, 2001, the Board of Pharmacy (Board) issued Pharmacy Permit
7 No. PHY 45438 to Target Store No. T-289. Gita D. Patel was its Pharmacist-In-Charge, from the
8 date the permit was issued, June 19, 2001, through November 2, 2008; and Thanh-Van Pham
9 Tran, is Pharmacist-In-Charge, November 3, 2008 to present. The Pharmacy Permit was in full
10 force and effect at all times relevant to the charges brought herein and will expire on June 1,
11 2012, unless renewed.

12 JURISDICTION

13 4. Accusation No. 3358 was filed before the Board of Pharmacy (Board), Department of
14 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
15 statutorily required documents were properly served on Respondent on February 10, 2010.
16 Respondent timely filed a timely Notice of Defense contesting the Accusation.

17 5. A copy of Accusation No. 3358 is attached as **Exhibit A** and incorporated herein by
18 reference.

19 ADVISEMENT AND WAIVERS

20 6. Respondent Target Store No. T-289, by its authorized representative, has carefully
21 read, fully discussed with counsel, and understands the charges and allegations in Accusation No.
22 3358. Respondent has also carefully read, fully discussed with counsel, and understands the
23 effects of this Stipulated Settlement and Disciplinary Order.

24 7. Respondent Target Store No. T-289, by its authorized representative is fully aware of
25 its legal rights in this matter, including the right to a hearing on the charges and allegations in the
26 Accusation; the right to be represented by counsel at its own expense; the right to confront and
27 cross-examine the witnesses against it; the right to present evidence and to testify on its own
28 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the

1 production of documents; the right to reconsideration and court review of an adverse decision;
2 and all other rights accorded by the California Administrative Procedure Act and other applicable
3 laws.

4 8. Respondent Target Store No. T-289, by its authorized representative, voluntarily,
5 knowingly, and intelligently waives and gives up each and every right set forth above.

6 CULPABILITY

7 9. Respondent Target Store No. T-289, by its authorized representative, admits the truth
8 of each and every charge in Accusation No. 3358.

9 10. Respondent Target Store No. T-289, by its authorized representative, agrees that its
10 Pharmacy Permit is subject to discipline and agrees to be bound by the Board's probationary
11 terms as set forth in the Disciplinary Order below.

12 CONTINGENCY

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

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

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 45438 issued to Respondent
8 Target Store No. 289 is revoked. However, the revocation is stayed and Respondent is placed on
9 probation for five (5) years on the following terms and conditions.

10 1. **Obey All Laws**

11 Respondent shall obey all state and federal laws and regulations.

12 Respondent shall report any of the following occurrences to the board, in writing, within
13 seventy-two (72) hours of such occurrence:

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

24 Failure to timely report any such occurrence shall be considered a violation of probation.

25 2. **Report to the Board**

26 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
27 designee. The report shall be made either in person or in writing, as directed. Among other
28 requirements, respondent shall state in each report under penalty of perjury whether there has

1 been compliance with all the terms and conditions of probation. Failure to submit timely reports
2 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
3 in submission of reports as directed may be added to the total period of probation. Moreover, if
4 the final probation report is not made as directed, probation shall be automatically extended until
5 such time as the final report is made and accepted by the board.

6 **3. Interview with the Board**

7 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
8 with the board or its designee, at such intervals and locations as are determined by the board or its
9 designee. Failure to appear for any scheduled interview without prior notification to board staff,
10 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
11 the period of probation, shall be considered a violation of probation.

12 **4. Cooperate with Board Staff**

13 Respondent shall cooperate with the board's inspection program and with the board's
14 monitoring and investigation of respondent's compliance with the terms and conditions of her
15 probation. Failure to cooperate shall be considered a violation of probation.

16 **5. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, respondent shall pay to the
18 board its costs of investigation and prosecution in the amount of \$6,000.00 (Six Thousand
19 Dollars). Respondent shall make said payments as approved by the Board. There shall be no
20 deviation from this schedule absent prior written approval by the board or its designee. Failure to
21 pay costs by the deadline(s) as directed shall be considered a violation of probation.

22 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to
23 reimburse the board its costs of investigation and prosecution.

24 **6. Probation Monitoring Costs**

25 Respondent shall pay any costs associated with probation monitoring as determined by the
26 board each and every year of probation. Such costs shall be payable to the board on a schedule as
27 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
28 be considered a violation of probation.

1 **7. Status of License**

2 Respondent shall, at all times while on probation, maintain current licensure with the board.
3 If respondent submits an application to the board, and the application is approved, for a change of
4 location, change of permit or change of ownership, the board shall retain continuing jurisdiction
5 over the license, and the respondent shall remain on probation as determined by the board.
6 Failure to maintain current licensure shall be considered a violation of probation.

7 If respondent's license expires or is cancelled by operation of law or otherwise at any time
8 during the period of probation, including any extensions thereof or otherwise, upon renewal or
9 reapplication respondent's license shall be subject to all terms and conditions of this probation not
10 previously satisfied.

11 **8. License Surrender While on Probation/Suspension**

12 Following the effective date of this decision, should respondent discontinue business,
13 respondent may tender the premises license to the board for surrender. The board or its designee
14 shall have the discretion whether to grant the request for surrender or take any other action it
15 deems appropriate and reasonable. Upon formal acceptance of the surrender of the license,
16 respondent will no longer be subject to the terms and conditions of probation..

17 Upon acceptance of the surrender, respondent shall relinquish the premises wall and
18 renewal license to the board within ten (10) days of notification by the board that the surrender is
19 accepted. Respondent shall further submit a completed Discontinuance of Business form
20 according to board guidelines and shall notify the board of the records inventory transfer.

21 Respondent shall also, by the effective date of this decision, arrange for the continuation of
22 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing
23 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more
24 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary
25 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision
26 to the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the
27 board. For the purposes of this provision, "ongoing patients" means those patients for whom the
28 pharmacy has on file a prescription with one or more refills outstanding, or for whom the

1 pharmacy has filled a prescription within the preceding sixty (60) days.

2 Respondent may not apply for any new licensure from the board for three (3) years from the
3 effective date of the surrender. Respondent shall meet all requirements applicable to the license
4 sought as of the date the application for that license is submitted to the board.

5 Respondent further stipulates that he or she shall reimburse the board for its costs of
6 investigation and prosecution prior to the acceptance of the surrender.

7 **9. Notice to Employees at Target Store No. T-289**

8 Respondent shall, upon or before the effective date of this decision, ensure that all
9 employees involved in permit operations are made aware of all the terms and conditions of
10 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
11 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
12 remain posted throughout the probation period. Respondent shall ensure that any employees
13 hired or used after the effective date of this decision are made aware of the terms and conditions
14 of probation by posting a notice, circulating a notice, or both. Additionally, respondent shall
15 submit written notification to the board, within fifteen (15) days of the effective date of this
16 decision, that this term has been satisfied. Failure to submit such notification to the board shall be
17 considered a violation of probation.

18 "Employees" as used in this provision includes all full-time, part-time,
19 volunteer, temporary and relief employees and independent contractors employed or
20 hired at any time during probation.

21 **10. Owners and Officers: Knowledge of the Law**

22 Respondent shall provide within thirty (30) days after the effective date of this decision,
23 signed and dated statements from the current pharmacist-in-charge of the Target No.T -289
24 Pharmacy and his/her immediate supervisor, stating under penalty of perjury that said individuals
25 have read and are familiar with state (California) and federal laws and regulations governing the
26 practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall
27 be considered a violation of probation.
28

1 **11. Posted Notice of Probation at Target Store No. T-289**

2 Respondent shall prominently post a probation notice provided by the board in a place
3 conspicuous and readable to the public at Target Store No. T-289. The probation notice shall
4 remain posted during the entire period of probation.

5 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
6 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
7 member of the public, or other person(s) as to the nature of and reason for the probation of the
8 licensed entity.

9 Failure to post such notice shall be considered a violation of probation.

10 **12. Violation of Probation**

11 If Respondent has not complied with any term or condition of probation, the board shall
12 have continuing jurisdiction over respondent license, and probation shall be automatically
13 extended until all terms and conditions have been satisfied or the board has taken other action as
14 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
15 probation, and to impose the penalty that was stayed.

16 If respondent violates probation in any respect, the board, after giving respondent notice
17 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
18 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
19 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
20 a petition to revoke probation or an accusation is filed against respondent during probation, the
21 board shall have continuing jurisdiction and the period of probation shall be automatically
22 extended until the petition to revoke probation or accusation is heard and decided.

23 **13. Completion of Probation**

24 Upon written notice by the board or its designee indicating successful completion of
25 probation, respondent license will be fully restored.

26 **14. Community Services Program**

27 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
28 board or its designee, for prior approval, a community service program in which respondent shall

1 provide free health-care related services to a community or charitable facility or agency for at
2 least 125 (One Hundred Twenty-Five) Hours within the first three years of probation.

3 Within thirty (30) days of board approval thereof, respondent shall submit documentation to
4 the board demonstrating commencement of the community service program. Respondent shall
5 report on progress with the community service program in the quarterly reports.

6 Failure to timely submit, commence, or comply with the program shall be considered a
7 violation of probation.

8 **15. Report of Controlled Substances**

9 Respondent shall submit quarterly reports to the board detailing the total acquisition and
10 disposition of such controlled substances as the board may direct. Respondent shall specify the
11 manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a
12 manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report
13 on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the
14 board no later than ten (10) days following the end of the reporting period. Failure to timely
15 prepare or submit such reports shall be considered a violation of probation.

16 **16. Provide Training Program for Pharmacists-In-Charge at All of Target Stores'**
17 **California Pharmacies**

18 Respondent is required to develop and/or provide for Board approval within 90 days of the
19 effective date of this decision, a training program for all Target employees who are pharmacists-
20 in-charge at Target Stores' California pharmacies on the subject of detecting drug losses from
21 their pharmacies and maintaining inventory control of all prescription drugs, including controlled
22 substances. This training program shall be approved by the Board. Once the program is
23 approved by the Board, Target shall certify within 90 days of said approval, that all Target
24 employees currently employed as pharmacists-in-charge at Target Stores' California pharmacies
25 have satisfactorily completed the approved program. Afterward, any Target employee who
26 becomes a pharmacist-in-charge at any Target Stores' Pharmacy in California during the
27 probation period shall complete the approved training program within 30 day of becoming
28 pharmacist-in-charge. This requirement shall be in effect through December 31, 2016.

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17. Administrative Penalty

Respondent Target Store T-289 shall pay an administrative penalty of One Hundred Thousand Dollars (\$100,000:00). Respondent shall make payment of the assessed administrative penalty as follows: Payment shall be made in eighteen (18) equal installments, beginning with the first payment due on or before the effective date of this Decision and Order, with payment due every ninety (90) days thereafter. Respondent may pay the full remaining unpaid balance at any time. It shall be Respondent's responsibility to mail or otherwise deliver each payment directly to the Board at the Board's Sacramento address in a timely manner. Failure to make any payment when due shall be considered a violation of probation.

ACCEPTANCE

I am the authorized representative of Respondent Target Store No. 289. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with attorney for Target Stores, J. Susan Graham. I understand the stipulation and the effect it will have on the Pharmacy Permit. On behalf of Respondent Target Store No. 289, 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: 2/15/12 _____
JOSE BARRA
For TARGET STORE No 289
Respondent

I have read and fully discussed with the authorized representative(s) of Target Store No. 289 the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/16/12 _____
JSUSAN GRAHAM
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: February 17, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



SUSAN MELTON WILSON
Deputy Attorney General
Attorneys for Complainant

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60708499.doc (final)

Exhibit A

Accusation No. 3358

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
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ACCUSATION

14 **and**

15 **GITA PATEL**
16 **a.k.a. GITA D. PATEL**
12033 Fairford Avenue
17 Norwalk, CA 90650
Pharmacist License No. RPH 31173

18 Respondents.

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20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about June 19, 2001, the Board of Pharmacy (Board) issued Pharmacy Permit
26 No. PHY 45438 to Target Store #T-289 (Respondent TARGET STORE #T-289). Gita D. Patel
27 was its Pharmacist-In-Charge, from the date the permit was issued, June 19, 2001, through
28 November 2, 2008; and Thanh-Van Pham Tran, is Pharmacist-In-Charge, November 3, 2008 to

1 present. The Pharmacy Permit was in full force and effect at all times relevant to the charges
2 brought herein and will expire on June 1, 2010, unless renewed.

3 3. On or about August 1, 1977, the Board of Pharmacy issued Pharmacist License No.
4 RPH 31173 to Gita Patel a.k.a. Gita D. Patel (Respondent GITA PATEL). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on August 31, 2010, unless renewed.

7 JURISDICTION

8 4. This Accusation is brought before the Board, Department of Consumer Affairs, under
9 the authority of the following laws. All section references are to the Business and Professions
10 Code unless otherwise indicated.

11 STATUTORY PROVISIONS

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

16 6. Section 4005 states:

17 “(a) The board may adopt rules and regulations, not inconsistent with the laws of this
18 state, as may be necessary for the protection of the public. Included therein shall be the right to
19 adopt rules and regulations as follows: for the proper and more effective enforcement and
20 administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of
21 persons and establishments licensed under this chapter; pertaining to establishments wherein any
22 drug or device is compounded, prepared, furnished, or dispensed; providing for standards of
23 minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs
24 by or through any mechanical device; and relating to pharmacy practice experience necessary for
25 licensure as a pharmacist.

26 “(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt
27 regulations permitting the dispensing of drugs or devices in emergency situations, and permitting
28 dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a

1 state other than California where the person, if licensed in California in the same licensure
2 classification would, under California law, be permitted to prescribe drugs or devices and where
3 the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

4 "(c) The adoption, amendment, or repeal by the board of these or any other board rules or
5 regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1
6 of Division 3 of Title 2 of the Government Code."

7 7. Section 4059.5, subdivision (a), states:

8 "Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may
9 only be ordered by an entity licensed by the board and shall be delivered to the licensed premises
10 and signed for and received by a pharmacist. Where a licensee is permitted to operate through a
11 designated representative, the designated representative may sign for and receive the delivery."

12 8. Section 4081 states:

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

22 "(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
23 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or
24 representative-in-charge, for maintaining the records and inventory described in this section.

25 "(c) The pharmacist-in-charge or representative-in-charge shall not be criminally
26 responsible for acts of the owner, officer, partner, or employee that violate this section and of
27 which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or
28 she did not knowingly participate."

1 9. Section 4105 states:

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

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

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

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

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

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

21 10. Section 4115, subdivision (h), states that "[t]he pharmacist on duty shall be directly
22 responsible for the conduct of a pharmacy technician supervised by that pharmacist.

23 11. Section 4300 states, in pertinent part, that "[e]very license issued may be suspended
24 or revoked."

25 12. Section 4301 states, in pertinent part:

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

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

....

"(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 this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . ."

REGULATORY PROVISIONS

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

....

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

....

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

14. California Code of Regulations, title 16, section 1718 states:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

"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."

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1 COST RECOVERY

2 15. Section 125.3 provides that the Board may request the administrative law judge to
3 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
4 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

5 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

6 16. **Hydrocodone** with Acetaminophen is a Schedule III controlled narcotic substance
7 pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to section
8 4022. Preparations containing hydrocodone in combination with other non-narcotic medicinal
9 ingredients are in Schedule III. Norco is the brand name for a pain medication combining
10 narcotic Hydrocodone with non-narcotic Acetaminophen.

11 17. **Codeine**, generic name codeine phosphate, is a Schedule II controlled substance as
12 defined in Health and Safety Code section 11055 (b)(1)(h); or "Codeine", not more than 1.8
13 grams per 100 milliliters, Schedule III controlled substance as defined in Health and Safety Code
14 section 11056 (e)(2), and categorized as a dangerous drug pursuant to section 4022.

15 18. **Lorazepam** (marketed under various brand names, including Alzapam, Ativan,
16 Loraz, Lorazepam Intensol) is an anti-anxiety agent (benzodiazepines, mild tranquilizer,
17 depressant) used for the relief of anxiety. It is a Schedule IV controlled substance as defined in
18 Health and Safety Code section 11057(d)(16) and a dangerous drug according to section 4022.

19 19. **Temazepam**, in a class of sedative/hypnotics, is a Schedule IV controlled substance
20 pursuant to Health and Safety Code section 11057(d)(29) and a dangerous drug pursuant to
21 section 4022.

22 20. **Xanax**, a brand name for alprazolam, is an anti-anxiety benzodiazepin and is a
23 Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(1)
24 and is categorized as a dangerous drug pursuant to section 4022.

25 SUMMARY OF FACTS

26 21. The following facts are common to all charges of the Accusation:

27 a. On or about October 22, 2007, the Board received a "*DEA Report of Theft or*
28 *Loss of Controlled Substances*" from Respondents in which they reported significant losses of

1 controlled substances, attributed to employee pilferage, and reported plans to improve security
2 (including installation of surveillance cameras) to prevent future losses. Respondents reported
3 tracking shortages since 2006. However, significant losses continued, with no effective action
4 taken to improve pharmacy security until August of 2009.

5 b. In August of 2007, Lisa Thomas was a licensed pharmacy technician who had
6 been an employee of Respondent TARGET STORE #T-289 for approximately five years.

7 c. On or about August 28, 2007, a reserve pharmacist observed Thomas attempt to
8 sign for a drug delivery of 19 bottles of Hydrocodone 500 count (9,500 tablets). The reserve
9 pharmacist stopped Thomas - and the unauthorized delivery of Hydrocodone tablets she had
10 attempted to sign for was returned to the supplier/wholesaler. At or about that time, Thomas was
11 also observed concealing a bottle of Hydrocode 500 count while on duty in the pharmacy.

12 d. During the month of August 2007, Thomas signed for drug deliveries
13 containing controlled substances, as follows:

Delivery Dates	Controlled Substances Delivered
August 1, 2007	Hydrocodone (3,000 tablets)
August 2, 2007	Hydrocodone (4,000 tablets)
August 3, 2007	Hydrocodone (4,000 tablets), Codeine (100 tablets), Lorazepam (100 tablets), Temazepam (100 tablets), Xanax (200 tablets)
August 10, 2007	Hydrocodone (4,000 tablets)
August 14, 2007	Hydrocodone (4,000 tablets)
August 16, 2007	Hydrocodone (5,000 tablets)
August 17, 2009	Hydrocodone (5,000 tablets)
August 23, 2007	Hydrocodone (5,000 tablets)
August 24, 2007	Hydrocodone (7,000 tablets)

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25 e. Commencing on October 22, 2007, a selected drug audit was performed by
26 Board inspectors. The audit period was from July 4, 2006 through July 3, 2008. The audit
27 revealed that 315,429 tablets of Hydrocodone had been ordered and received at Respondent
28 Target Store #T-289 but were not in stock and unaccounted for.

DRUG	7/4/2006 INVENTORY AMOUNT	PURCHASED AMOUNT	DISPENSED AMOUNT	7/3/2008 INVENTORY AMOUNT	AMOUNT SHORT
Hydrocodone	2,370	441,500	124,488	3,953	315,429

f. It appears that Thomas' methodology was to order controlled substances electronically from the supplier/wholesaler, using the pharmacy's account number, and arranged for delivery of unauthorized orders on days when she was working and could sign for the deliveries. Thomas would then delete the electronic invoices when the products arrived. Irregular activities of this pharmacy technician were neither noticed nor questioned by Respondents until August of 2009.

g. Presumably, Thomas destroyed or otherwise disposed of purchase invoices to conceal losses of controlled substances through theft. That invoices were missing was not discovered by Respondents.

h. During the approximately summer of 2006 through the summer of 2008, Respondent TARGET STORE #T-289 rarely dispensed Hydrocodone 500 count – perhaps two to three bottles per month – and kept a minimal amount of the drug in stock, generally one or two bottles.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Complete and Accurate Records)

22. Respondents TARGET STORE #T-289 and GITA PATEL are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with sections 4005, 4081 and 4105, and California Code of Regulations, title 16, section 1718 for failure to maintain a complete and accurate record for all controlled substances/dangerous drugs received, sold, or otherwise disposed of by them. As described in paragraph 22, above, Respondents were unable to account for 315,429 doses of Hydrocodone, a controlled substance and dangerous drug, per a selected drug audit performed by Board inspectors. The audit period was from July 4, 2006 to July 4, 2008. The audit revealed that 315,429

1 doses of Hydrocodone had been ordered and received but were not in stock and not accounted for.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Failure to Maintain Complete Acquisition/Disposition Records)**

4 23. Respondents TARGET STORE #T-289 and GITA PATEL are subject to disciplinary
5 action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j)
6 and (o), in conjunction with sections 4081, subdivision (a), and 4105 for failure to maintain all
7 records of acquisition and disposition for three (3) years from date of making and to keep a
8 current inventory of dangerous drugs. Respondents' employee stole and/or destroyed purchase
9 invoices to conceal losses of controlled substances through theft. Neither the missing invoices,
10 nor the large volume of controlled substances ordered without authorization by Thomas and
11 delivered to the pharmacy, were discovered by Respondents during the subject time period, as
12 described in paragraph 22, above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Allowing a Non-Pharmacist to Order and Receive Controlled Substances)**

15 24. Respondents TARGET STORE #T-289 and GITA PATEL are subject to disciplinary
16 action under section 4300 for unprofessional conduct as defined in section 4301, subdivision (o),
17 in conjunction with section 4059.5, subdivision (a), for allowing a non pharmacist, pharmacy
18 technician Lisa Thomas, to order and sign for the delivery (on 8/1/07, 8/2/07, 8/3/07, 8/10/07,
19 8/14/07, 8/17/07 and 8/24/07) of controlled substances and dangerous drugs, as described in
20 paragraph 22 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Properly Supervise Pharmacy Staff)**

23 25. Respondents TARGET STORE #T-289 and GITA PATEL are subject to disciplinary
24 action under section 4300 for unprofessional conduct as defined in section 4301, subdivision (o),
25 in conjunction with section 4115, subdivision (h), for failing to properly supervise pharmacy
26 technician Lisa Thomas' activities while working in the pharmacy, allowing her to steal
27 Hydrocodone, a controlled substance and dangerous drug, failing to institute theft and loss
28 controls, and not maintaining complete inventory controls. Complainant refers to and by this

1 reference incorporates allegations of paragraphs 22 - 25 above as though fully set forth.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Failure to Maintain Security of Pharmacy)**

4 26. Respondents TARGET STORE #T-289 and GITA PATEL are subject to disciplinary
5 action under section 4300 for unprofessional conduct as defined in section 4301, subdivision (o),
6 in conjunction with section 4005 and California Code of Regulations, title 16, section 1714,
7 subdivision (b), for failing to maintain its facilities, space, fixtures, and equipment so that drugs
8 are safely and properly prepared, maintained, secured. Respondents failed to secure and maintain
9 its facilities from diversion and theft. Complainant refers to and by this reference incorporates
10 allegations of paragraphs 22 - 26 above as though fully set forth.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Security of Controlled Substances)**

13 27. Respondent GITA PATEL is subject to disciplinary action under section 4300 for
14 unprofessional conduct as defined in section 4301, subdivisions (o), in conjunction with section
15 4005 and California Code of Regulations, title 16, section 1714, subdivision (d), for failing to
16 secure the prescription department and provide effective controls to prevent theft or diversion of
17 315,429 doses of Hydrocodone, a controlled substance and dangerous drug, between July 4, 2006
18 and July 3, 2008, and maintain records for such drugs. Complainant refers to and by this reference
19 incorporates allegations of paragraphs 22 - 27 above as though fully set forth.

20 **PRAYER**

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

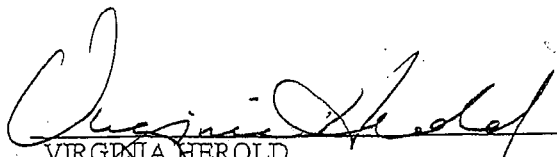
- 23 1. Revoking or suspending Pharmacy Permit No. PHY 45438, issued to Target Store
24 #T-289;
- 25 2. Revoking or suspending Pharmacist License No. RPH 31173, issued to Gita Patel
26 a.k.a. Gita D. Patel Gita D. Patel;
- 27 3. Ordering Target Store #T-289 and Gita D. Patel to pay the Board of Pharmacy the
28 reasonable costs of the investigation and enforcement of this case, pursuant to Business and

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Professions Code section 125.3; and

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

DATED: 1/29/10



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

LA2009603201
7/31/2009
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