

**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 GITA PATEL ONLY

DECISION AND ORDER

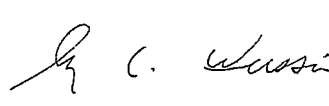
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

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

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
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14 Pharmacy Permit No. PHY 45438,
15 **and**
16 **GITA PATEL**
a.k.a. GITA D. PATEL
17 12033 Fairford Avenue
Norwalk, CA 90650
18 Pharmacist License No. RPH 31173
19
20 Respondents.

Case No. 3358
OAH No. L-2011061497

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

**[AS TO GITA PATEL
a.k.a. GITA D. PATEL 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 Gita Patel a.k.a. Gita D. Patel (Respondent) is represented in this
2 proceeding by attorney Stephen B. Mashney, whose address is: Mashney Law Offices
3 335 North Brookhurst Street, Suite A, Anaheim, CA 92801-5610.

4 3. On or about August 1, 1977, the Board of Pharmacy issued Pharmacist License No.
5 RPH 31173 to Gita Patel a.k.a. Gita D. Patel (Respondent). The Pharmacist License was in full
6 force and effect at all times relevant to the charges brought in Accusation No. 3358 and will
7 expire on August 31, 2012, unless renewed.

8 JURISDICTION

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

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

15 ADVISEMENT AND WAIVERS

16 6. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in Accusation No. 3358. Respondent has also carefully read, fully
18 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
19 Order.

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

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

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 3358.

4 10. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
5 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 CIRCUMSTANCES IN MITIGATION

7 11. Respondent Gita Patel a.k.a. Gita D. Patel has never been the subject of any
8 disciplinary action. She is admitting responsibility at an early stage in the proceedings.

9 CONTINGENCY

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

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

22 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.

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1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

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

10 **4. Cooperate with Board Staff**

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

14 **5. Continuing Education**

15 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
16 pharmacist as directed by the board or its designee.

17 **6. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 3358 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause her direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 3358, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

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1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 3358 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause her direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that she has read the decision in case number 3358
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

12 Failure to timely notify present or prospective employer(s) or to cause that/those
13 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
14 probation.

15 "Employment" within the meaning of this provision shall include any full-time,
16 part-time, temporary, relief or pharmacy management service as a pharmacist or any
17 position for which a pharmacist license is a requirement or criterion for employment,
18 whether the respondent is an employee, independent contractor or volunteer.

19 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
20 **Designated Representative-in-Charge, or Serving as a Consultant**

21 During the period of probation, respondent shall not supervise any intern pharmacist, be the
22 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
23 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
24 unauthorized supervision responsibilities shall be considered a violation of probation.

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of One Thousand, Five Hundred
28 Dollars (\$1,500.) Respondent shall make said payment on a schedule as approved by the Board.

1 There shall be no deviation from this schedule absent prior written approval by the board or its
2 designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
3 probation.

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

6 **9. Probation Monitoring Costs**

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

11 **10. Status of License**

12 Respondent shall, at all times while on probation, maintain an active, current license with
13 the board, including any period during which suspension or probation is tolled. Failure to
14 maintain an active, current license shall be considered a violation of probation.

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

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

20 Following the effective date of this decision, should respondent cease practice due to
21 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
22 respondent may tender her license to the board for surrender. The board or its designee shall have
23 the discretion whether to grant the request for surrender or take any other action it deems
24 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
25 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
26 record of discipline and shall become a part of the respondent's license history with the board.

27 Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to
28 the board within ten (10) days of notification by the board that the surrender is accepted.

1 Respondent may not reapply for any license from the board for three (3) years from the effective
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
3 of the date the application for that license is submitted to the board, including any outstanding
4 costs.

5 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
6 **Employment**

7 Respondent shall notify the board in writing within ten (10) days of any change of
8 employment. Said notification shall include the reasons for leaving, the address of the new
9 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
10 shall further notify the board in writing within ten (10) days of a change in name, residence
11 address, mailing address, or phone number.

12 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
13 phone number(s) shall be considered a violation of probation.

14 **13. Tolling of Probation**

15 Except during periods of suspension, respondent shall, at all times while on probation, be
16 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
17 Any month during which this minimum is not met shall toll the period of probation, i.e., the
18 period of probation shall be extended by one month for each month during which this minimum is
19 not met. During any such period of tolling of probation, respondent must nonetheless comply
20 with all terms and conditions of probation.

21 Should respondent, regardless of residency, for any reason (including vacation) cease
22 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
23 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
24 must further notify the board in writing within ten (10) days of the resumption of practice. Any
25 failure to provide such notification(s) shall be considered a violation of probation.

26 It is a violation of probation for respondent's probation to remain tolled pursuant to the
27 provisions of this condition for a total period, counting consecutive and non-consecutive months,
28 exceeding thirty-six (36) months.

1 "Cessation of practice" means any calendar month during which respondent is not
2 practicing as a pharmacist for at least forty (40) hours, as defined by Business and
3 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
4 month during which respondent is practicing as a pharmacist for at least forty (40) hours as
5 a pharmacist as defined by Business and Professions Code section 4000 et seq.

6 **14. Violation of Probation**

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

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

19 **15. Completion of Probation**

20 Upon written notice by the board or its designee indicating successful completion of
21 probation, respondent's license will be fully restored.

22 **16. Community Services Program**

23 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
24 board or its designee, for prior approval, a community service program in which respondent shall
25 provide free health-care related services on a regular basis to a community or charitable facility or
26 agency for at least 100 (one hundred) hours per each year of probation. Within thirty (30) days of
27 board approval thereof, respondent shall submit documentation to the board demonstrating
28 commencement of the community service program. A record of this notification must be

1 provided to the board upon request. Respondent shall report on progress with the community
2 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
3 program shall be considered a violation of probation.

4 **17. Remedial Education**

5 Within sixty (60), days of the effective date of this decision, respondent shall submit to the
6 board or its designee, for prior approval, an appropriate program of remedial education related to
7 the area of pharmacy operations, maintaining security, inventory control, supervision of staff or
8 as approved by board. The program of remedial education shall consist of at least 10 hours per
9 year for each year of probation, which shall be completed at respondent's own expense. All
10 remedial education shall be in addition to, and shall not be credited toward, continuing education
11 (CE) courses used for license renewal purposes.

12 Failure to timely submit or complete the approved remedial education shall be considered a
13 violation of probation. The period of probation will be automatically extended until such
14 remedial education is successfully completed and written proof, in a form acceptable to the board,
15 is provided to the board or its designee.

16 Following the completion of each course, the board or its designee may require the
17 respondent, at her own expense, to take an approved examination to test the respondent's
18 knowledge of the course. If the respondent does not achieve a passing score on the examination,
19 this failure shall be considered a violation of probation. Any such examination failure shall
20 require respondent to take another course approved by the board in the same subject area.

21 **18. No New Ownership of Licensed Premises**

22 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
23 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
24 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
25 has any legal or beneficial interest in, or serve as a manager, administrator, member, officer,
26 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
27 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
28 that interest, but only to the extent of that position or interest as of the effective of this decision.

1 Violation of this restriction shall be considered a violation of probation.

2 19. **Separate File of Records**

3 Respondent shall maintain and make available for inspection a separate file of all records
4 pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such
5 file or make it available for inspection shall be considered a violation of probation.

6 20. **Consultant for Owner or Pharmacist-In-Charge**

7 During the period of probation, respondent shall not supervise any intern pharmacist or
8 serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
9 charge. However, if during the period of probation respondent serves as a pharmacist-in-charge,
10 respondent shall retain an independent consultant at her own expense who shall be responsible for
11 reviewing pharmacy operations on a quarterly basis for compliance by respondent with state and
12 federal laws and regulations governing the practice of pharmacy and for compliance by
13 respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist
14 licensed by and not on probation with the board and whose name shall be submitted to the board
15 or its designee, for prior approval, within thirty (30) days of the effective date of this decision.
16 Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of
17 which she is not the sole owner. Failure to timely retain, seek approval of, or ensure timely
18 reporting by the consultant shall be considered a violation of probation.

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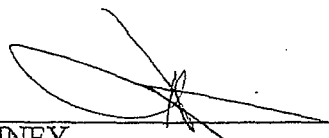
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Stephen B. Mashney. 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 of Pharmacy.

DATED: 2/17/12 
GITA PATEL a.k.a GITA D. PATEL
Respondent

I have read and fully discussed with Respondent Gita Patel a.k.a. Gita D. Patel the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.


DATED: 2/17/12 
STEPHEN B. MASHNEY
Attorney for Respondent

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: 2-17-12

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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Exhibit A

Accusation No. 3358

1 EDMUND G. BROWN JR.
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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Attorneys for Complainant
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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.
19

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
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