

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

In the Matter of the Accusation Against:

Case No. 3515

ELMHURST PHARMACY

7400 MacArthur Boulevard
Oakland, CA 94605

Pharmacy License No. PHY 45683

and

PARAGI M. PATEL

16897 Robey Drive
San Leandro, CA 94578

Pharmacist License No. RPH 49421

Respondent.

DECISION AND ORDER

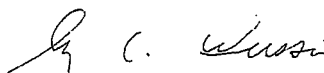
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 17, 2011.

It is so ORDERED on January 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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Attorney General of California
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3515 .

11 **ELMHURST PHARMACY**
12 **7400 MacArthur Boulevard**
13 **Oakland, CA 94605**

OAH No. 2010061052

14 **Pharmacy License No. PHY 45683**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **and**

16 **PARAGI M. PATEL**
17 **16897 Robey Drive**
San Leandro, CA 94578

18 **Pharmacist License No. RPH 49421**

19 Respondents.

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
23 be submitted to the Board for approval and adoption as the final disposition of the Accusation.
24

25 PARTIES

26 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
27 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
28 Jr., Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

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

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

6
7 CULPABILITY

8 9. Respondents admit the truth of each and every charge and allegation in Accusation
9 No. 3515.

10 10. Respondents agree that their respective Licenses are subject to discipline and agree to
11 be bound by the Board of Pharmacy (Board)'s imposition of discipline as set forth in the
12 Disciplinary Order below.

13
14 RESERVATION

15 11. Admissions made by Respondents herein are only for the purposes of this proceeding,
16 or any other proceedings in which the Board of Pharmacy or other professional licensing agency
17 is involved, and shall not be admissible in any other criminal or civil proceeding.

18
19 CONTINGENCY

20 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
21 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
22 communicate directly with the Board regarding this stipulation and settlement, without notice to
23 or participation by Respondents or counsel. By signing the stipulation, Respondents understand
24 and agree that they may not withdraw this agreement or seek to rescind the stipulation prior to the
25 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
26 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
27 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
28 and the Board shall not be disqualified from further action by having considered this matter.

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

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

10 15. In consideration of the foregoing, the parties agree that the Board may, without
11 further notice or formal proceeding, issue and enter the following Disciplinary Order(s):

12
13 **DISCIPLINARY ORDER AS TO RESPONDENT ELMHURST**

14 IT IS HEREBY ORDERED that Pharmacy License No. PHY 45683, issued to Respondent
15 Elmhurst, is revoked. However, the revocation is stayed and Respondent Elmhurst is placed on
16 probation for three (3) years on the following terms and conditions.

17 1. **Obey All Laws**

18 Respondent shall obey all state and federal laws and regulations. Respondent shall report
19 any of the following occurrences to the board, in writing, within seventy-two (72) hours:

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

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

///

1 **2. Report to the Board**

2 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
3 designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, respondent shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation. Failure to submit timely reports
6 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
7 in submission of reports as directed may be added to the total period of probation. Moreover, if
8 the final probation report is not made as directed, probation shall be automatically extended until
9 such time as the final report is made and accepted by the board.

10 **3. Interview with the Board**

11 Upon receipt of reasonable prior notice, respondent shall appear in person¹ for interviews
12 with the board or its designee, upon request at such intervals and locations as are determined by
13 the board or its designee. Failure to appear for any scheduled interview without prior notification
14 to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its
15 designee during the period of probation, shall be considered a violation of probation.

16 **4. Cooperate with Board Staff**

17 Respondent shall cooperate with the board's inspection program and with the board's
18 monitoring and investigation of respondent's compliance with the terms and conditions of its
19 probation. Failure to cooperate shall be considered a violation of probation.

20 **5. Reimbursement of Board Costs**

21 Respondent Elmhurst and Respondent Patel shall be jointly and severally liable for payment
22 to the board of its costs of investigation and prosecution in case number 3515 of \$6,578.50.

23 Absent prior written approval by the board or its designee, neither Respondent Elmhurst nor
24 Respondent Patel may successfully complete the terms of their respective probations until this
25 amount is paid in full. Each respondent shall be responsible for payment of the full amount and
26 neither may claim to owe only a portion or a share thereof.

27 _____
28 ¹ Appearances by Respondent Elmhurst shall be made by an owner or officer.

1 Respondents shall be permitted to pay these costs in a payment plan approved by the board
2 or its designee, so long as full payment is completed no later than thirty-three (33) months after
3 the effective date of this decision. There shall be no deviation from this schedule absent prior
4 written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed
5 shall be considered a violation of probation.

6 The filing of bankruptcy by either or both respondents shall not relieve either respondent of
7 its or her responsibility to reimburse the board its costs of investigation and prosecution.

8 **6. Probation Monitoring Costs**

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

13 **7. Status of License**

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

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

21 **8. Notice to Employees**

22 Respondent shall, on or before the effective date of this decision, ensure that all employees
23 are made aware of all the terms and conditions of probation, either by posting a notice of the
24 terms and conditions, circulating such notice, or both. If the notice required by this provision is
25 posted, it shall be posted in a prominent place and shall remain posted throughout the probation
26 period. Respondent shall ensure that any employees hired or used after the effective date of this
27 decision are made aware of the terms and conditions of probation by posting a notice, circulating
28 a notice, or both. Additionally, respondent shall submit written notification to the board, within

1 fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to
2 submit such notification to the board shall be considered a violation of probation.

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

5 **9. Owners and Officers: Knowledge of the Law**

6 Respondent shall provide, within thirty (30) days after the effective date of this decision,
7 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
8 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty
9 of perjury that said individuals have read and are familiar with state and federal laws and
10 regulations governing the practice of pharmacy. The failure to timely provide said statements
11 under penalty of perjury shall be considered a violation of probation.

12 **10. Posted Notice of Probation**

13 Respondent shall prominently post a probation notice provided by the board in a place
14 conspicuous and readable to the public. The probation notice shall remain posted during the
15 entire period of probation.

16 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
17 ~~which is intended to mislead or is likely to have the effect of misleading any patient, customer,~~
18 member of the public, or other person(s) as to the nature of and reason for the probation of the
19 licensed entity. Failure to post such notice shall be considered a violation of probation.

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

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

28 ///

1 Upon acceptance of the surrender, respondent shall relinquish its pharmacy license to the
2 board within ten (10) days of notification by the board that the surrender is accepted. Respondent
3 may not reapply for any license, permit, or registration from the board for three (3) years from the
4 effective date of the surrender. Respondent shall meet all requirements applicable to the license
5 sought as of the date the application for that license is submitted to the board.

6 **12. Violation of Probation**

7 If 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. If a petition to revoke probation or an accusation is filed against respondent during
15 probation, the board shall have continuing jurisdiction, and the period of probation shall be
16 automatically extended, until the petition to revoke probation or accusation is heard and decided.

17 **13. Completion of Probation**

18 Upon written notice by the board indicating successful completion of probation,
19 respondent's pharmacy license will be fully restored.

20
21 **DISCIPLINARY ORDER AS TO RESPONDENT PATEL**

22 IT IS HEREBY ORDERED that Pharmacist License No. RPH 49421, issued to Respondent
23 Patel, is revoked. However, revocation is stayed and Respondent Patel is placed on probation for
24 three (3) years on the following terms and conditions.

25 **14. Suspension**

26 As part of probation, License Number RPH 49421, issued to Respondent Patel, is
27 suspended for thirty (30) days beginning the effective date of this decision.

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1 During suspension, respondent shall not enter any pharmacy area or any portion of the
2 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
3 drugs which is licensed by the board, or any manufacturer, or any other place where dangerous
4 drugs and devices or controlled substances are maintained. Respondent shall not practice
5 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
6 compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be
7 a consultant to any licensee of the board, or have access to or control the ordering, manufacturing
8 or dispensing of dangerous drugs and devices or controlled substances.

9 During suspension, respondent shall not engage in any activity requiring the professional
10 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
11 pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated
12 representative for any entity licensed by the board.

13 Subject to the above restrictions, respondent may continue to own or hold an interest in any
14 licensed premises in which she holds an interest at the time this decision becomes effective unless
15 otherwise specified in this order.

16 Failure to comply with this suspension shall be considered a violation of probation.

17 **15. Tolling of Suspension**

18 During the period of suspension, respondent shall not leave California for any period
19 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
20 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
21 absence from California during the period of suspension exceeding ten (10) days shall toll the
22 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
23 respondent is absent from California. During any such period of tolling of suspension,
24 respondent must nonetheless comply with all terms and conditions of probation.

25 Respondent must notify the board in writing within ten (10) days of departure, and within
26 ten (10) days of return. Failure to provide such notification(s) shall constitute a violation of
27 probation. Upon such departure and return, respondent shall not resume the practice of pharmacy
28 until notified by the board that the period of suspension has been satisfactorily completed.

1 **16. Obey All Laws**

2 Respondent shall obey all state and federal laws and regulations. Respondent shall report
3 any of the following occurrences to the board, in writing, within seventy-two (72) hours:

- 4 an arrest or issuance of a criminal complaint for violation of any provision of the
5 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
6 substances laws
7 an arrest or issuance of a criminal complaint for violation of any state or federal law
8 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
9 criminal complaint, information or indictment
10 a conviction of any crime
11 discipline, citation, or other administrative action filed by any state or federal agency
12 which involves respondent's pharmacist license or which is related to the practice of
13 pharmacy or the manufacturing, obtaining, handling or distribution or billing or
14 charging for of any drug, device or controlled substance.

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

16 **17. Report to the Board**

17 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
18 designee. The report shall be made either in person or in writing, as directed. Among other
19 requirements, respondent shall state in each report under penalty of perjury whether there has
20 been compliance with all the terms and conditions of probation. Failure to submit timely reports
21 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
22 in submission of reports as directed may be added to the total period of probation. Moreover, if
23 the final probation report is not made as directed, probation shall be automatically extended until
24 such time as the final report is made and accepted by the board.

25 **18. Interview with the Board**

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

19. Cooperate with Board Staff

 Respondent shall cooperate with the board's inspection program and with the board's

1 monitoring and investigation of respondent's compliance with the terms and conditions of her
2 probation. Failure to cooperate shall be considered a violation of probation.

3 **20. Continuing Education**

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

6 **21. Notice to Employers**

7 During the period of probation, respondent shall notify all present and prospective
8 employers of the decision in case number 3515 and the terms, conditions and restrictions imposed
9 on respondent by the decision, as follows:

10 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
11 respondent undertaking any new employment, respondent shall cause her direct supervisor,
12 designated representative-in-charge (including each new designated representative-in-charge
13 employed during respondent's tenure of employment) and owner to report to the board in writing
14 acknowledging that the listed individual(s) has/have read the decision in case number 3515 and
15 terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her
16 employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

17 If respondent works for or is employed by or through an employment service, respondent
18 must notify her direct supervisor, designated representative-in-charge and owner at each entity
19 licensed by the board of the terms and conditions of the decision in case number 3515 in advance
20 of the respondent commencing work at each licensed entity. A record of this notification must be
21 provided to the board upon request.

22 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
23 (15) days of respondent undertaking any new employment by or through a pharmacy employment
24 service, respondent shall cause her direct supervisor with the employment service to report to the
25 board in writing acknowledging that he or she has read the decision in case number 3515 and the
26 terms and conditions imposed thereby. It shall be the respondent's responsibility to ensure that
27 her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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1 Failure to timely notify present or prospective employer(s) or to cause such employer(s) to
2 submit timely acknowledgements to the board shall be considered a violation of probation.

3 "Employment" within the meaning of this provision shall include any full-time,
4 part-time, temporary or relief service or pharmacy management service as a
5 designated representative or in any position for which a designated representative
6 license is a requirement or criterion for employment, whether the respondent is
7 considered an employee or independent contractor or volunteer.

6 22. Reimbursement of Board Costs

7 Respondent Elmhurst and Respondent Patel shall be jointly and severally liable for payment
8 to the board of its costs of investigation and prosecution in case number 3515 of \$6,578.50.

9 Absent prior written approval by the board or its designee, neither Respondent Elmhurst nor
10 Respondent Patel may successfully complete the terms of their respective probations until this
11 amount is paid in full. Each respondent shall be responsible for payment of the full amount and
12 neither may claim to owe only a portion or a share thereof.

13 Respondents shall be permitted to pay these costs in a payment plan approved by the board
14 or its designee, so long as full payment is completed no later than thirty-three (33) months after
15 the effective date of this decision. There shall be no deviation from this schedule absent prior
16 written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed
17 shall be considered a violation of probation.

18 The filing of bankruptcy by either or both respondents shall not relieve either respondent of
19 its or her responsibility to reimburse the board its costs of investigation and prosecution.

20 23. Probation Monitoring Costs

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

25 24. Community Services Program

26 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
27 board or its designee, for prior approval, a community service program in which respondent shall
28 provide free health-care related services on a regular basis to a community or charitable facility or

1 agency for a total of at least two hundred (200) hours during the first two (2) years of probation.
2 Within thirty (30) days of board approval thereof, respondent shall submit documentation to the
3 board demonstrating commencement of the community service program. A record of this
4 notification must be provided to the board upon request. Respondent shall report on progress
5 with the community service program in her quarterly reports. Failure to timely submit,
6 commence, or comply with the program shall be considered a violation of probation.

7 **25. Remedial Education**

8 Within ninety (90) days of the effective date of this decision, respondent shall submit to the
9 board or its designee, for prior approval, an appropriate program of remedial education related to
10 Pharmacy Law. The program of remedial education shall consist of at least thirty (30) hours,
11 which shall be completed within twenty-four (24) months at respondent's expense. All remedial
12 education shall be in addition to, and shall not be credited toward, continuing education (CE)
13 courses used for license renewal purposes.

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

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

23 **26. No New Ownership of Licensed Premises**

24 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
25 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
26 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
27 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
28 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently

1 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
2 that interest, but only to the extent of that position or interest as of the effective date of this
3 decision. Violation of this restriction shall be considered a violation of probation.

4 **27. Consultant for Owner or Pharmacist-In-Charge**

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

17 **28. Status of License**

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

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

25 **29. Notification of Change in Employment, Name, Address or Phone**

26 Respondent shall notify the board in writing within ten (10) days of any change of
27 employment. Said notification shall include the reasons for leaving and the address of the new
28 employer, supervisor and owner and work schedule, if known. Respondent shall further notify

1 the board in writing within ten (10) days of a change in name, residence address and mailing
2 address, or phone number. Failure to timely notify the board of any change in employer(s),
3 name(s), address(es), or phone number(s) shall be considered a violation of probation.

4 **30. License Surrender While on Probation/Suspension**

5 Following the effective date of this decision, should respondent cease work due to
6 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
7 respondent may tender her pharmacist license to the board for surrender. The board or its
8 designee shall have the discretion whether to grant the request for surrender or take any other
9 action it deems appropriate. Upon formal acceptance of the surrender, respondent will no longer
10 be subject to the terms and conditions of probation. This surrender constitutes a record of
11 discipline and shall become a part of the respondent's license history with the board.

12 Upon acceptance of the surrender, respondent shall relinquish her pharmacist license to the
13 board within ten (10) days of notification by the board that surrender is accepted. Respondent
14 may not reapply for any license, permit, or registration from the board for three (3) years from the
15 effective date of the surrender. Respondent shall meet all requirements applicable to the license
16 sought as of the date the application for that license is submitted to the board.

17 **31. Tolling of Probation**

18 Except during periods of suspension, respondent shall, at all times while on probation, be
19 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
20 Any month during which this minimum is not met shall toll the period of probation, i.e., the
21 period of probation shall be extended by one month for each month during which this minimum is
22 not met. During any such period of tolling of probation, respondent must nonetheless comply
23 with all terms and conditions of probation. Should respondent, regardless of residency, for any
24 reason (including vacation) cease working as a pharmacist for a minimum of forty (40) hours in
25 California, respondent must notify the board in writing within ten (10) days of cessation of work
26 and must further notify the board in writing within ten (10) days of the resumption of work. Any
27 failure to provide such notification(s) shall be considered a violation of probation.

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

4 "Cessation of work" means any calendar month during which respondent is not working as
5 a pharmacist as defined by Business and Professions Code section 4000 et seq. for at least
6 forty (40) hours. "Resumption of work" means any calendar month during which
7 respondent is working as a pharmacist as defined by Business and Professions Code section
8 4000 et seq. for at least forty (40) hours.

9 **32. Violation of Probation**

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

15 If respondent violates probation in any respect, the board, after giving respondent notice
16 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
17 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
18 probation, the board shall have continuing jurisdiction, and the period of probation shall be
19 automatically extended, until the petition to revoke probation or accusation is heard and decided.

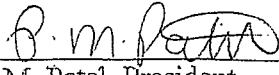
20 **33. Completion of Probation**

21 Upon written notice by the board indicating successful completion of probation,
22 respondent's pharmacist license will be fully restored.
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ACCEPTANCE

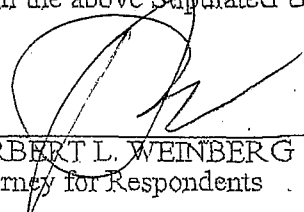
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg. I understand the stipulation and the effect it will have on my Pharmacy License. I enter into this stipulation voluntarily, knowingly, and intelligently, and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

DATED: 9/25/10 
Paragi M. Patel; President,
Medical Supply Corporation of America dba
ELMHURST PHARMACY
Respondent

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

DATED: 9/25/10 
PARAGI M. PATEL
Respondent

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

DATED: 10/18/10 
HERBERT L. WEINBERG
Attorney for Respondents


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: 10/29/10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3515

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3515

11 **ELMHURST PHARMACY**
12 **7400 MacArthur Boulevard**
13 **Oakland, CA 94605**

A C C U S A T I O N

14 **Pharmacy License No. PHY 45683**

15 **and**

16 **PARAGI M. PATEL**
17 **16897 Robey Drive**
San Leandro, CA 94578

18 **Pharmacist License No. RPH 49421**

19 Respondents.

20 Complainant alleges:

21 PARTIES

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

24 2. On or about February 7, 2002, the Board of Pharmacy issued Pharmacy License No.
25 PHY 45683 to Medical Supply Corporation of America dba Elmhurst Pharmacy (Respondent
26 Elmhurst), Paragi M. Patel, President, Manjula I. Patel, Treasurer/CFO. The Pharmacy License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 February 1, 2011, unless renewed.

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

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

7 9. Section 4115 of the Code states, in pertinent part:

8 “(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other
9 nondiscretionary tasks, only while assisting, and while under the direct supervision and control of
10 a pharmacist.”

11 “(e) No person shall act as a pharmacy technician without first being licensed by the board
12 as a pharmacy technician”

13 “(f)(1) A pharmacy with only one pharmacist shall have no more than one pharmacy
14 technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians
15 performing the tasks specified in subdivision (a) to any additional pharmacist shall not exceed
16 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to
17 section 4116 or 4117. This ratio is applicable to all practice settings, except [for certain practice
18 settings not at issue in this case and therefore not relevant to this matter].”

19 10. Section 4116, subdivision (a) of the Code provides, in pertinent part, that no person
20 other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person
21 authorized to prescribe shall be permitted in that area, place, or premises described in the license
22 issued by the board wherein controlled substances or dangerous drugs or dangerous devices are
23 stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged.

24 11. Section 4081, subdivision (a) of the Code provides, in pertinent part, that all records
25 of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices
26 shall be at all times during business hours open to inspection by authorized officers of the law,
27 and shall be preserved for at least three years from the date of making. A current inventory shall
28 be kept by every licensed pharmacy that maintains a stock of dangerous drugs or devices.

1 12. Section 4332 of the Code makes it unlawful for any person to fail, neglect, or refuse
2 to maintain the records required by section 4081 or, when called upon by an authorized officer or
3 a member of the board, to refuse to produce or provide the records within a reasonable time, or to
4 willfully produce or furnish records that are false.

5 13. Section 4113, subdivision (b) of the Code states:

6 “The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state
7 and federal laws and regulations pertaining to the practice of pharmacy.”

8 14. California Code of Regulations, title 16, section 1714, subdivision (b) provides that
9 each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment
10 so that drugs are safely and properly prepared, maintained, secured and distributed.

11 15. California Code of Regulations, title 16, section 1718, defines “current inventory” as
12 used in sections 4081 and 4332 to include complete accountability for all dangerous drugs
13 handled by every licensee enumerated in sections 4081 and 4332. It further requires that the
14 controlled substances inventories required by the Title 21, Code of Federal Regulations, section
15 1304, shall be available for inspection upon request for at least 3 years.

16 16. California Code of Regulations, title 16, section 1793.2, defines “nondiscretionary
17 tasks” as used in section 4115 to include (a) removing drug(s) from stock, (b) counting, pouring,
18 or mixing pharmaceuticals, (c) placing product(s) into container(s), (d) affixing label(s) to the
19 container(s), and/or (e) packaging and repackaging.

20 17. Title 21, Code of Federal Regulations, section 1301.11, subdivision (a) requires that
21 any person who manufactures, distributes, dispenses, imports, or exports any controlled substance
22 or who proposes to do so shall obtain a Drug Enforcement Administration (DEA) registration.

23 18. Title 21, Code of Federal Regulations, section 1304.11, subdivision (c) requires that
24 any registrant of the DEA take a new inventory of all stocks of controlled substances on hand at
25 least every two years, on any date within two years of the previous biennial inventory date.

26 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation of the licensing
28 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 20. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 21. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
7 except veterinary drugs that are labeled as such, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
9 prescription,’ ‘Rx only,’ or words of similar import.

10 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
11 prescription or furnished pursuant to Section 4006.”

12
13 **CAUSES FOR DISCIPLINE, AS TO BOTH RESPONDENTS**

14 FIRST CAUSE FOR DISCIPLINE

15 (Exceeding Pharmacist to Technician Ratio)

16 22. Respondent Elmhurst and Respondent Patel are each and severally subject to
17 discipline under section 4301(j) and/or (o), section 4115(f)(1), and/or section 4113(b) of the
18 Code, as further defined by California Code of Regulations, title 16, section 1793.2, in that on or
19 about May 12, 2009, three pharmacy technicians (S.P., D.G., H.B.)¹ performed nondiscretionary
20 tasks while only a single pharmacist (S.B.)¹ was on duty to supervise these technicians.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unlicensed Technician Activities)

23 23. Respondent Elmhurst and Respondent Patel are each and severally subject to
24 discipline under section 4301(j) and/or (o), section 4115(e), and/or section 4113(b) of the Code,
25 in that prior to and/or on or about May 12, 2009, a person not licensed as a pharmacy technician
26 (H.B.)¹ was engaged in activities constituting nondiscretionary activities requiring such licensure.

27 _____
28 ¹ The full names of these individuals will be provided during discovery.

DISCIPLINE CONSIDERATIONS

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2 26. To determine the level of discipline, if any, to be imposed on Respondent Elmhurst
3 and/or Respondent Patel (collectively, "Respondents"), Complainant alleges that on or about July
4 20, 2005, in a prior disciplinary action titled *In the Matter of the Accusation Against Elmhurst*
5 *Pharmacy, Paragi Patel, and Michael Hall*, Case No. 2686 before the Board of Pharmacy,
6 Respondents' Licenses were subjected to prior discipline. By way of a Decision and Order of the
7 Board adopting a Stipulated Settlement effective July 20, 2005, Respondents admitted to eight of
8 nine causes for discipline alleged in Accusation No. 2686, including that on multiple occasions on
9 and between April 1, 2002 and June 30, 2002, Respondent engaged in dishonest conduct and/or
10 created or signed documents falsely representing the facts, by re-billing, and therefore overbilling,
11 Medi-Cal in the amount of \$23,878.40 for prescriptions of the dangerous drug Seroquel that had
12 been returned to the pharmacy by a physician to whom they had been delivered, and which were
13 reused and sold again to the same physician without credit to Medi-Cal. The Accusation further
14 alleged, and Respondents further admitted, that this redelivery of used Seroquel constituted the
15 delivery of drugs under conditions where it may have been contaminated with filth, or where it
16 may have been rendered injurious to health. Finally, the Accusation alleged, and Respondents
17 admitted, that they were unable to produce copies of invoices for at least five drug orders, that
18 they maintained inadequate supervision over pharmacy technicians, that they had an improper
19 pharmacist to technician ratio, that non-professional staff were permitted in the dispensing area
20 without a pharmacist being present, and that Respondents had failed to notify the Board when
21 Respondent Patel stopped being the Pharmacist in Charge, and then when he resumed that duty.
22 In the stipulated Decision and Order, both (Elmhurst) Pharmacy License No. PHY 45683 and
23 Pharmacist (Patel) License No. RPH 49421 were revoked, with revocation stayed and both of the
24 Respondents placed on probation for three (3) years with terms and conditions including payment
25 of \$6,000.00 in cost recovery, a prohibition on preceptorships, supervision, and ownership of any
26 licensed premises other than those (e.g., Respondent Elmhurst) already owned, and other standard
27 terms. That decision is now final and is incorporated by reference as if fully set forth herein.

28 ///

1 32. To determine the level of discipline, if any, to be imposed on Respondent Elmhurst
2 and/or Respondent Patel (collectively, "Respondents"), Complainant further alleges that:

3 a. On or about July 27, 2004, Citation No. CI 2002 24778 was issued to Respondent
4 Elmhurst for a violation of California Code of Regulations, title 16, sections 1716 and/or 1761: a
5 prescription prescribed for one patient was dispensed to another patient with a similar name. That
6 citation is now final and is incorporated by reference as if fully set forth herein.

7 b. On or about July 27, 2004, Citation No. CI 2003 27898 was issued to Respondent
8 Patel for a violation of California Code of Regulations, title 16, sections 1716 and/or 1761: a
9 prescription prescribed for one patient was dispensed to another patient with a similar name. That
10 citation is now final and is incorporated by reference as if fully set forth herein.

11 c. On or about December 1, 2009, Citation No. CI 2007 36113 with a fine of \$3,500.00
12 was issued to Respondent Elmhurst for violations of Business and Professions Code section 4037,
13 subdivision (a), section 4105, subdivision (a) and section 4333, section 4116, subdivision (a), and
14 California Code of Regulations, title 16, sections 1714, subdivision (b) and 1793.1: Respondent
15 operated an unlicensed pharmacy, stored prescription documents and drug records at unlicensed
16 premises, allowed a non-pharmacist access and a key to the drug dispensing area, and allowed a
17 non-pharmacist to fill and interpret dangerous device prescriptions, consult with nurses, package
18 and prepare dangerous devices for delivery, and perform acts requiring professional judgment.
19 That citation is now final and is incorporated by reference as if fully set forth herein.

20 d. On or about December 1, 2009, Citation No. CI 2008 40638 with a fine of \$1,750.00
21 was issued to Respondent Patel for violations of Business and Professions Code sections 4037,
22 subdivision (a), 4105, subdivision (a), 4333, 4116, subdivision (a), 4306.5, subdivision (b), and
23 California Code of Regulations, title 16, sections 1714, subdivision (b) and 1793.1: Respondent
24 operated an unlicensed pharmacy, stored prescription and drug records at an unlicensed premises,
25 allowed a non-pharmacist access to the drug dispensing area, allowed a non-pharmacist to fill and
26 interpret dangerous device prescriptions, consult with nurses, package/prepare dangerous devices
27 for delivery, and exercise professional judgment, all while failing to exercise his own professional
28 judgment. That citation is now final and is incorporated by reference as if fully set forth herein.

1 e. On or about February 2, 2010, Citation No. CI 2009 42059 with a fine of \$3,500.00
2 was issued to Respondent Elmhurst for violations of Business and Professions Code section 4076,
3 subdivision (a) and (11)(A), section 4077, and California Code of Regulations, title 16, section
4 1717, subdivision (b)(2): Respondent dispensed five prescriptions in unit dose packages that
5 were labeled with the incorrect manufacturers and/or the incorrect physical descriptions of the
6 dispensed medications, and for those same five prescriptions failed to maintain the distributors'
7 names that appeared on the commercial package labels of the drugs dispensed. That citation is
8 now final and is incorporated by reference as if fully set forth herein.

9 f. On or about February 2, 2010, Citation No. CI 2009 43319 with a fine of \$3,500.00
10 was issued to Respondent Patel for violations of Business and Professions Code section 4076,
11 subdivision (a) and (11)(A), section 4077, and California Code of Regulations, title 16, section
12 1717, subdivision (b)(2): Respondent dispensed five prescriptions in unit dose packages that
13 were labeled with the incorrect manufacturers and/or the incorrect physical descriptions of the
14 dispensed medications, and for those same five prescriptions failed to maintain the distributors'
15 names that appeared on the commercial package labels of the drugs dispensed. That citation is
16 now final and is incorporated by reference as if fully set forth herein.

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19 **PRAYER**

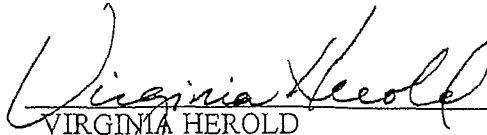
20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Pharmacy issue a decision:

- 22 1. Revoking or suspending Pharmacy License Number PHY 45683, issued to
23 Medical Supply Corporation of America dba Elmhurst Pharmacy (Respondent Elmhurst);
- 24 2. Revoking or suspending Pharmacist License Number RPH 49421, issued to Paragi M.
25 Patel (Respondent Patel);
- 26 3. Ordering Respondent Elmhurst and Respondent Patel (Respondents) to pay the Board
27 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
28 Business and Professions Code section 125.3;

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

DATED: 5/28/10



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

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