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

In the Matter of the Accusation Against:

Case No. 3969

JOHN WAITO NG 43857 Cameron Hills Drive Fremont, CA 94539 OAH No. 2011070122

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 April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

STANLEY C. WEISSER Board President

1	KAMALA D. HARRIS
2	Attorney General of California FRANK H. PACOE
3	Supervising Deputy Attorney General CHAR SACHSON
4	Deputy Attorney General State Bar No. 161032
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
6	Telephone: (415) 703-5558 Facsimile: (415) 703-5480
7	Attorneys for Complainant
8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. 3969
12	JOHN WAITO NG 43857 Cameron Hills Drive OAH No. 2011070122
13	Fremont, CA 94539 STIPULATED SETTLEMENT AND
14	Pharmacist License No. RPH 33438 DISCIPLINARY ORDER
15	Respondent.
16	
17	In the interest of a propert and appealing out of this matter, as without with the well is
	In the interest of a prompt and speedy settlement of this matter, consistent with the public
18	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
19	the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
20	be submitted to the Board for approval and adoption as the final disposition of the Accusation.
21	<u>PARTIES</u>
22	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
23	She brought this action solely in her official capacity and is represented in this matter by Kamala
24	D. Harris, Attorney General of the State of California, by Char Sachson, Deputy Attorney
25	General.
26	2. Respondent John Waito Ng (Respondent) is represented in this proceeding by
27	attorney Timothy D. Clancy, whose address is: 1290 B Street, Suite 307, Hayward, CA 94541.
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3. On or about October 10, 1979, the Board of Pharmacy issued Pharmacist License No. RPH 33438 to Respondent John Waito Ng. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3969 and will expire on October 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3969 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 10, 2011.

Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3969 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3969. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3969.

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9. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

10. Respondent John Waito Ng has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 33438 issued to Respondent John Waito Ng (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by 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.

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. **Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3969 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3969, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 3969 in advance

of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3969 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2803.75. Respondent shall make said payments as follows: 46 (forty-six) monthly payments in the amount of \$60.00, and a 48th (forty-eighth) payment in the amount of \$43.75.

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

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

9. **Probation Monitoring Costs**

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

10. Status of License

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

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

11. License Surrender While on Probation/Suspension

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

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

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

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

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

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

13. Tolling of Probation

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

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

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

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

14. Violation of Probation

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

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

15. Completion of Probation

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

16. Suspension

As part of probation, respondent is suspended from the practice of pharmacy for 7 (seven) days beginning the effective date of this decision.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act

involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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

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

17. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least fifty (50) hours per year during the course of probation (a total of 250 hours). Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

18. Remedial Education

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education. The program of remedial education shall consist of at least 15 hours, which shall be completed within one year at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

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

19. Supervised Practice

During the period of probation, respondent shall practice only under the supervision of a licensed pharmacist not on probation with the board. Upon and after the effective date of this decision, respondent shall not practice pharmacy and his license shall be automatically suspended until a supervisor is approved by the board or its designee. The supervision shall be, as required by the board or its designee, either:

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within thirty (30) days of the effective date of this decision, respondent shall have his
supervisor submit notification to the board in writing stating that the supervisor has read the
decision in case number 3969 and is familiar with the required level of supervision as determined
by the board or its designee. It shall be the respondent's responsibility to ensure that his
employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
acknowledgements to the board shall be considered a violation of probation.

If respondent changes employment, it shall be the respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to

the board. Respondent shall have his new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 3969 and is familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and his license shall be automatically suspended until the board or its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

Within ten (10) days of leaving employment, respondent shall notify the board in writing.

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

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

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

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

20. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell

27 28 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Pailure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

21. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Timothy D. Clancy. 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: 12/1/2011

JOHN WATTO NG Respondent

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

DATED: Dec. 1,2011

Timothy D. Claney Attorney for Respondent

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ENDORSEMENT The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs. Dated: November , 2011 Respectfully submitted, KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General CHAR SACHSON Deputy Attorney General Attorneys for Complainant SF2011200549 20514851.doc

Exhibit A

Accusation No. 3969

1 2 3 4 5 6 7	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General CHAR SACHSON Deputy Attorney General State Bar No. 161032 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-5558 Facsimile: (415) 703-5480 Attorneys for Complainant
8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. 3969
12	JOHN WAITO NG 43857 Cameron Hills Drive ACCUSATION
13	Fremont, CA 94539 Pharmacist License No. RPH 33438
14	Respondent.
15	<u> </u>
16	Complainant alleges:
17	<u>PARTIES</u>
18	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20	2. On or about October 10, 1979, the Board of Pharmacy issued Pharmacist License
21	Number RPH 33438 to John Waito Ng (Respondent). The Pharmacist License was in full force
22	and effect at all times relevant to the charges brought herein and will expire on October 31, 2012.
23	unless renewed.
24	<u>JURISDICTION</u>
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26	Consumer Affairs, under the authority of the following laws. All references are to the Business
27	and Professions Code (Code) unless otherwise indicated.
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 7. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

STATUTORY PROVISIONS

- 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
- (j) The violation of any of the statutes of this state, of 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.

- 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
- 10. Section 4060 of the Code, in pertinent part, prohibits possession of any controlled substance, except that furnished upon the prescription of an authorized prescriber.
- 11. Section 4063 of the Code provides, in pertinent part, that no prescription for a dangerous drug may be refilled except upon authorization of the prescriber.
 - 12. Section 4324(a) of the Code provides:

"Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year."

- 13. Health and Safety Code section 11158 provides, in pertinent part, that except under certain conditions, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of Health & Safety Code, § 11500 et seq.
- 14. Health and Safety Code section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
- 16. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess any narcotic drug listed in Schedules III-V, absent a valid prescription.
- 17. Health and Safety Code section 11352, in pertinent part, makes it unlawful to sell, transport, furnish, administer, or give away, any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon written prescription of a authorized prescriber.
 - 18. Health and Safety Code section 11368 provides:

"Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison."

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 20. Section 4021 of the Code states:
- "Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
 - 21. Section 4022 of the Code states, in pertinent part:
- "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:
- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 22. Azithromycin is a generic for Zithromax, a dangerous drug as designated by Business and Professions Code section 4022. It is an antibiotic.
- 23. Robitussin AC Syrup is a brand name for guaifenesen with codeine syrup, which is a Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a cough medication.

- 24. Promethazine/Codeine is a generic for Phenergan with codeine, which is a Schedule V controlled substance as designated by Health and Safety Code section 11058(c)(1) and a dangerous drug as designated by Business and Professions Code section 4022. It is a cough medication.
- 25. Desonide 0.05% Cream is a dangerous drug as designated by Business and Professions Code section 4022. It is used for dermatitis.
- 26. Fluorometholone 0.1% Opthalmic Suspension is a dangerous drug as designated by Business and Professions Code section 4022. It is used for eye inflammation.

FACTUAL BACKGROUND

- 27. On or about May 12, 2010, while working at Walgreens Pharmacy located on DeCoto Road in Fremont, California, Respondent complained of a cough to his co-workers. He took a bottle of over the counter Robitussin from the Walgreens stock and used it while he was working. Subsequently, Respondent wrote up a prescription for the antibiotic azithromycin for himself which he claimed had been telephoned in from his dentist, "Dr. K." The pharmacy manager, J.K., thought it odd that a dentist would phone in an antibiotic prescription for cough symptoms. J.K. called the dentist's office to confirm that the prescription was legitimate; the dentist's office told her that no prescription had been called in for Respondent.
- 28. J.K. subsequently investigated prescriptions that Respondent had filled for his wife which had allegedly been phoned in by "Dr. G." J.K. discovered that the following prescriptions filled for Respondent's wife were not authorized by Dr. G. and that Respondent had fraudulently written and filled them:
 - a. May 1, 2009 Robitussin AC Syrup, 240 mls
 - b. June 7, 2009 Promethazine/Codeine 240 mls
 - c. July 13, 2009 Desonide 0.05% Cream
 - d. November 17, 2008 Desonide 0.05% Cream
 - e. February 11, 2009 Azithromycin 250 mg, #12
 - f. March 25, 2010 Azithromycin 250 mg, #12
 - g. June 3, 2009 Fluorometholone 0.1% Opthalmic Suspension 5ml

FIFTH CAUSE FOR DISCIPLINE

(Dispensing/Administering/Furnishing Pursuant to Invalid Prescription(s))

34. Respondent is subject to discipline under section 4301 (j) and/or (o) of the Code, in that Respondent, as described in paragraphs 27, 28 and 29 above, dispensed/administered/furnished, attempted or assisted or abetted dispensing/administering/furnishing, or conspired to dispense/administer/furnish, controlled substance prescriptions not meeting requirements of the Uniform Controlled Substances Act, in violation of Health and Safety Code section(s) 11158 and/or 11171.

SIXTH CAUSE FOR DISCIPLINE

(False or Fraudulent Procurement of Controlled Substance(s)/Prescription(s))

35. Respondent is subject to discipline under section 4301 (j) and/or (o) of the Code, in that Respondent, as described in paragraphs 27, 28 and 29 above, obtained/attempted to obtain and/or assisted in or abetted and/or conspired to obtain controlled substances, procured/attempted to procure, assisted in or abetted, and/or conspired to procure administration of or prescriptions for controlled substances, by fraud, deceit, subterfuge misrepresentation, or concealment of fact, in violation of Health and Safety Code section 11173, subdivision (a).

SEVENTH CAUSE FOR DISCIPLINE

(Forgery of Prescription(s))

36. Respondent is subject to discipline under section 4301 (j) and/or (o) of the Code, in that Respondent, as described in paragraphs 27, 28 and 29 above, signed the name of another, or falsely made, altered, forged, uttered, published, passed, or attempted to pass, as genuine, a prescription for controlled substances, or obtained a narcotic drug by a forged, fictitious, or altered prescription, or had in his possession a narcotic drug secured by a forged, fictitious, or altered prescription, in violation of section 4324 and Health and Safety Code section 11168.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

37. Respondent is subject to disciplinary action under section 4301 of the Code in that Respondent, by way of the conduct described in paragraphs 27, 28 and 29 above, engaged in

"unprofessional conduct" not becoming the profession of pharmacy. . 1 **PRAYER** 2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 3 and that following the hearing, the Board of Pharmacy issue a decision: 4 Revoking or suspending Pharmacist License Number RPH 33438, issued to John 1. 5 Waito Ng; 6 2. Ordering John Waito Ng to pay the Board of Pharmacy the reasonable costs of the 7. investigation and enforcement of this case, pursuant to Business and Professions Code section 8 125.3; and 3. Taking such other and further action as deemed necessary and proper. 10 11 12 13 14 15 Board of Pharmacy Department of Consumer Affairs 16 State of California Complainant 17 18 SF2011200549 20438580.doc 19 20 21 22 23 24 25 26 27 28