

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

In the Matter of the First Amended Petition to
Revoke Probation Against:

FALAH H. KHALIFA
1133 Celis Street
San Fernando, CA 91340

Pharmacist License No. RPH 31694

Respondent.

Case No. 3985

OAH No. 2012020057

DECISION AND ORDER

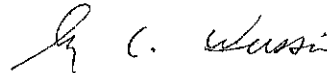
The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 5, 2013.

It is so ORDERED on March 6, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the First Amended Petition to
Revoke Probation Against:

FALAH H. KHALIFA

Pharmacist License No. RPH 31694
Respondent

Case No. 3985

OAH No. 2012020057

PROPOSED DECISION

This matter was heard by Glynda B. Gomez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on July 3, 2012¹ and October 2, 2012, in Los Angeles, California. Complainant was represented by Kevin J. Rigley, Deputy Attorney General. Respondent Falah H. Khalifa (Respondent) was present and represented by Ronald Marks, attorney at law.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 2, 2012.

FACTUAL FINDINGS

1. On November 9, 2011, Complainant Virginia K. Herold (Complainant) filed a Petition to Revoke Probation while acting in her official capacity as Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs. On August 2, 2012, Complainant filed the First Amended Petition to Revoke Probation also while acting in her official capacity as Execution Officer of the Board.

2. Respondent filed a Notice of Defense and Request for Hearing.

¹ On July 3, 2012, after direct examination of Inspector Joan Coyne, Complainant requested leave to amend the Petition to Revoke Probation and a continuance of the hearing. Complainant's motions were granted for good cause and without objection from Respondent.

3. Respondent was timely served with all Notices of Hearing and jurisdictional documents as required by Government Code sections 11505 and 11509.

4. On December 19, 1977, the Board issued Pharmacist License No. RPH 31694 to Respondent. The Pharmacist License is in effect and will expire on April 30, 2014.

5. Effective February 26, 2003, in Case No. 2288, entitled *In the Matter of the Accusation against Falah H. Khalifa dba Califa Pharmacy and Falah H. Khalifa* (Probation Order), the Board adopted a Stipulated Settlement and Disciplinary Order which revoked Respondent's Pharmacy Permit and Pharmacist License. However, the revocation was stayed as to Respondent's Pharmacist license and the license was suspended for 120 days and placed on probation for three years under terms and conditions which included the following:

[¶] . . . [¶]

[Condition] 14. **Tolling of Probation.** Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of times shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

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

[Condition] 17. **Supervised Practice.** Respondent KHALIFA 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 KHALIFA shall not practice pharmacy and his license shall be automatically suspended until a supervisor is approved by the Board. The supervision shall be, as required by the Board: Substantial-Atleast 50% of a work week

Within thirty (30) days of the effective Date of this decision, Respondent KHALIFA shall have his supervisor submit notification to the Board in writing stating the direct supervisor and pharmacists-in-charge have read the decision in case number 2288 and is familiar with the level of supervision as determined by the Board.

Within ten (10) days of leaving employment, Respondent KHALIFA shall notify the Board in writing. Respondent KHALIFA'S level of supervision shall be reevaluated by the Board after the completion of one year of probation to determine whether or not a lower level of supervision is appropriate.

(Exhibits 1 and 7.)

6. In 2003, Respondent met with Board Supervising Inspector/ Probation Monitor Joan Coyne (Coyne) and reviewed all the terms and conditions of his probation. The purpose of placing Respondent on probation and having him work in a supervised location is to allow the Board the opportunity to observe him working as a pharmacist and to ensure that he can safely practice without presenting a danger to the public.

7. From 2003 to 2007, Respondent completed all of his probation conditions except conditions 14 and 17 which together required that he obtain Board approval of a supervisor and work as a pharmacist under a specified supervision level for an average of 40 hours per month over a six month period of time during his last year of probation. Despite Respondent's good faith efforts to obtain the required employment and supervision, he was not able to find an appropriate position to complete his probation terms.

8. In 2007, Coyne held an office conference with Respondent to discuss his noncompliance with conditions 14 and 17 of his probation. Respondent advised Coyne of his attempts to obtain employment as a pharmacist which included attending local pharmacy association meetings to solicit employment, visiting individual pharmacies to apply for work and soliciting volunteer opportunities.

9. In July of 2009, enforcement analyst Tina Thomas (Thomas) became Respondent's probation monitor. She was transferred to the probation monitor position from an administrative position with the Board and is based in the Board's Sacramento Office. When Thomas first started the position as probation monitor, she was somewhat overwhelmed with the volume of cases and paperwork. Thomas reviewed the monthly reports that Respondent filed from August of 2009 forward, but due to the press of business and backlog, she did not review his entire file or ascertain the status of his compliance with probation until July of 2010. At that time, she noticed that Respondent had been on

probation since 2003 and had not obtained pharmacy employment. After reviewing Respondent's file, Thomas contacted the Board's enforcement manager and assistant executive officer to discuss revoking Respondent's probation.

10. As a result of Thomas' meeting with the enforcement manager and assistant executive officer, Coyne who is based in Southern California, was dispatched to hold an office conference with Respondent about his non-compliance with probation terms 14 and 17 in August of 2010. Coyne met with Respondent some time in August of 2010 at which time he advised her that he had not yet obtained employment as a pharmacist, but had some prospects for employment. Coyne reported the results of the office conference and status of Respondent's employment search to Thomas.

11. After further consultation with the enforcement manager, on December 20, 2010, Thomas sent documentation and a request for preparation and filing of petition to revoke Respondent's probation to the Attorney General's Office. From Thomas' perspective, her handling of Respondent's probation was finished at that time.

12. In accordance with her understanding of the Board's policy, Thomas did not inform Respondent that she had requested that a petition to revoke his probation be filed or that she was no longer monitoring his probation. For all Respondent knew, his case continued to be monitored by Thomas. Respondent continued to file quarterly reports with Thomas as he always had. He did not know that Thomas was no longer reviewing his monthly reports.

13. Respondent contacted Thomas in March of 2011 and advised her that he was seeking a position with Jay Scott Drugs and others. On September 14 and 19, 2011, Respondent advised Thomas in a telephone conversation, that he had found a volunteer pharmacist position and asked her if he could take the position. He did not specifically state that the position was with Jay Scott Drugs and Thomas did not inquire where Respondent proposed to work. Thomas advised Respondent that his license was valid and that there was nothing to stop him from working as a pharmacist. Thomas did not discuss the board's supervision requirements with Respondent or requirements that the Board approve his employer. From her perspective, she had completed her work on Respondent's case on December 20, 2010 when she forwarded the request for preparation of a petition to revoke Respondent's probation.

14. Respondent began working as a volunteer pharmacist for Jay Scott Drugs, under pharmacist in charge and owner Albert Daher on October 21, 2011. On November 16, 2011, Thomas received a verification of employment dated November 1, 2011 signed by Albert Dahr verifying that he was Respondent's immediate supervisor as well as the pharmacist in charge and owner of Jay Scott Drugs. The verification of employment indicated that Respondent was hired on October 21, 2011 to work a full time 9 hour shift of 9 a.m. to 6 p.m. On Respondent's fourth quarter report dated December 24, 2011, he stated

that he was working full time from 9 a.m. to 6 p.m. Monday through Friday and from 9 a.m. to 3 p.m. on Saturdays filing prescriptions and consulting patients. He also noted that for the next quarter he would be working part time from 9:00 a.m. to 1 p.m. every other day.

15. On November 9, 2011, Complainant signed the original Petition to Revoke Probation which was later served on Respondent by certified mail on November 18, 2011.

16. Respondent submitted a letter dated June 6, 2012 from pharmacist Albert Daher indicating that Respondent worked at Jay Scott Drugs for 70 hours in October of 2011, 202.5 hours in November of 2011, 74 hours in December of 2011, 28 hours in January of 2012, 27.5 hours in February of 2012, 21.5 hours in March of 2012, 22 hours in April of 2011, 21 hours in May of 2012 and 22 hours in June as of June 6, 2012. Respondent credibly testified at the administrative hearing that he worked the hours set forth in the letter. He explained that he had worked 202.5 hours in November of 2011 because he mistakenly thought that he was required to work a total of 240 hours and did not understand that he had to work a minimum number of 20 hours per month totaling 240 hours over a course of the year. After realizing that he was required to work a minimum number of hours each month, he adjusted his schedule to a part-time basis.

17. As of the first day of hearing on July 3, 2012, Coyne was not aware of Respondent's telephone conversations with Thomas. Coyne opined that such employment should have been a problem, because an accusation was filed on August 4, 2010 and was pending before the Board against Jay Scott Drugs and Pharmacist in Charge Albert Dahr in Case Number 3482.

18. During the break between the first day of hearing on July 3, 2012 and the second day on October 2, 2012, Coyne visited Jay Scott Drugs with the purpose of verifying Respondent's employment and supervision level. Coyne determined that although Respondent was not on the premises the day she visited Jay Scott Drugs, he had been working there under very informal supervision.

19. Complainant did not submit any evidence establishing that the Board had incurred costs for the prosecution of this matter.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 4011 provides that the Board shall administer the Pharmacy Law and the Uniform Controlled Substances Act.

2. Code section 4300 provides that the Board may revoke a licensee's probation, if he violates a probation order.

3. Cause exists to revoke Respondent's probation and impose the stayed order of revocation, in that Respondent failed to timely comply with Probation Condition Number 14 (Secure and Maintain Employment as Pharmacist), as set forth in Factual Findings 1 through 18.

4. Cause exists to revoke Respondent's probation and impose the stayed order of revocation, in that Respondent failed to comply with Probation Condition Number 17 (Supervised Practice), as set forth in Factual Findings 1 through 18 when he failed to obtain Board approval of his supervisor before commencing work with Jay Scott Drugs.

5. Although cause exists to revoke respondent's probation for violation of conditions 14 and 17 of the terms and conditions of his probation and institute the stayed order of revocation, it is not appropriate in this instance. Respondent has been on probation for an extraordinary amount of time and has been given several chances to comply with his probation order yet failed to comply with conditions 14 and 17. However, it is significant that Respondent obtained employment, notified the probation monitor of the employment and worked many more hours than he was required to under the terms of his probation. The purpose of placing Respondent on probation and having him work in a supervised location is to allow the Board the opportunity to observe him working as a pharmacist and to ensure that he can safely practice without presenting a danger to the public. Respondent's probation monitor was aware of the employment before the Petition to Revoke Probation was filed and could have easily made arrangements for an inspector to visit Jay Scott Drugs and observe Respondent's employment or she could have advised him that his efforts would be futile and the employer he had chosen was unacceptable. She did neither. Under these circumstances, revocation of Respondent's pharmacist license would be unfair and unduly punitive. For the reasons set forth above, Respondent deserves another opportunity to comply with the probation terms and demonstrate that his continued pharmacy practice does not present a danger to the public.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

Pharmacist License, Number RPH 31694, issued to Falah H. Khalifa, is hereby revoked. However, the revocation of Pharmacist License Number RPH 32694 is stayed and Respondent Falah H. Khalifa is placed on probation for one (1) year 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 contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- 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 2288 and 3985 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 or 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 numbers 2288 and 3985, 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.

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 numbers 2288 and 3985 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 the supervisor has read the decisions in case numbers 2288 and 3985 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, act as 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. 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.

9. 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.

10. License Surrender While on Probation

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.

11. 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.

12. 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 20 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 20 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 20 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 20 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

Respondent is required to practice as a pharmacist in a licensed pharmacy setting that dispenses medication for a minimum of six months prior to the completion of probation. After the first six months of probation, the board or its designee may consider a modification of this requirement. If respondent fails to comply with this requirement or a subsequent modification thereto, such failure shall be considered a violation of probation.

13. Violation of Probation

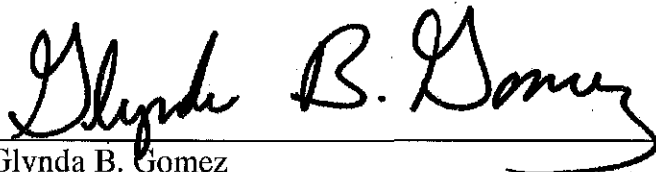
If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat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

14. Completion of Probation

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

DATED: February 1, 2013



Glynda B. Gomez
Administrative Law Judge
Office of Administrative Hearings

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Attorney General of California
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7

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

11 In the Matter of the Petition to Revoke
Probation Against:

12 **FALAH H. KHALIFA**
13 1133 Celis Street
14 San Fernando, CA 91340

15 Original Pharmacist License No. RPH 31694

16 Respondent.
17

Case No. 3985

FIRST AMENDED
PETITION TO REVOKE PROBATION

18 Complainant alleges:

19 PARTIES

20 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about December 19, 1977, the Board of Pharmacy issued Original Pharmacist
24 License Number RPH 31694 to Falah H. Khalifa (Respondent). The Original Pharmacist License
25 was in effect at all times relevant to the charges brought herein and will expire on April 30, 2014,
26 unless renewed.

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1 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
2 Civil Procedure."

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

7 **FIRST CAUSE TO REVOKE PROBATION**

8 (Failure to Secure and Maintain Employment as Pharmacist)

9 8. At all times after the effective date (February 26, 2003) of the Decision and Order
10 imposing probation on Respondent's Original Pharmacist License No. RPH 31694, Condition 14
11 of that Order required, in pertinent part:

12 "Tolling of Probation. Respondent must notify the Board in writing within 10 days
13 of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such
14 periods of time shall not apply to the reduction of the probation period. It is a violation of
15 probation for Respondent's probation to remain tolled pursuant to the provisions of this condition
16 for a period exceeding three years.

17 "Cessation of practice" means any period of time exceeding 30 days in which Respondent is
18 not engaged in the practice of pharmacy as defined in Section 4052 of the Business and
19 professions Code."

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

28 ///

1 "Within ten (10) days of leaving employment, Respondent KHALIFA shall notify the
2 Board in writing. Respondent KHALIFA'S level of supervision shall be reevaluated by the
3 Board after the completion of one year of probation to determine whether or not a lower level of
4 supervision is appropriate."


5 11. Respondent's probation is subject to revocation because he failed to comply with
6 Condition 17 of probation referenced above, in that Respondent failed to obtain the Board's
7 approval of the only supervisor under whom Respondent has worked as a pharmacist during his
8 entire probationary period, when he finally secured such employment as a pharmacist in or
9 around October of 2011. Respondent is also in violation of Condition 17 because the only
10 supervisor under whom Respondent has worked as a pharmacist during his entire probationary
11 period failed to submit written notification to the Board within thirty (30) days stating that he (the
12 supervisor) had read the decision in case number 2288 and was familiar with the level of
13 supervision required as determined by the Board in regard to Respondent.

14 PRAYER

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

- 17 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2288
18 and imposing the disciplinary order that was stayed, thereby revoking Original Pharmacist
19 License No. RPH 31694 issued to Falah H. Khalifa;
20 2. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: 8/2/12


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

LA2011600493
pet revoke prob.rtf

Exhibit A

Decision and Order

Board of Pharmacy Case No. 2288

1 BILL LOCKYER, Attorney General
of the State of California
2 GREGORY J. SALUTE, State Bar No. 164015
Deputy Attorney General
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2288

12 FALAH H. KHALIFA,
dba CALIFA PHARMACY
1133 Celis Street
San Fernando, CA 91340
13 FALAH H. KHALIFA, Owner
and Pharmacist-in-Charge

OAH No. L2002030117

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO ALL
RESPONDENTS**

14 Original Pharmacy Permit No. PHY 30196

15 and

16 FALAH H. KHALIFA
1133 Celis Street
San Fernando, CA 91340

17 Original Pharmacist License No. RPH 31694

18 Respondents.
19
20
21

22 In the interest of a prompt and speedy settlement of this matter, consistent with the public
23 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
24 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
25 be submitted to the Board for approval and adoption as the final disposition of the Accusation
26 with respect to Respondents FALAH H. KHALIFA, dba CALIFA PHARMACY and FALAH H.
27 KHALIFA ("Respondents").

28 ///

1 the right to a hearing on the charges and allegations in the Accusation; the right to be represented
2 by counsel at their own expense; the right to confront and cross-examine the witnesses against
3 them; the right to present evidence and to testify on their own behalf; the right to the issuance of
4 subpoenas to compel the attendance of witnesses and the production of documents; the right to
5 reconsideration and court review of an adverse decision; and all other rights accorded by the
6 California Administrative Procedure Act and other applicable laws.

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

9 CULPABILITY

10 9. Respondents understand that although they are not making personal
11 admissions to the alleged violations of the items of the Accusation #2288, their signature and
12 agreement herein will allow the Board or its duly authorized representative to deem the
13 violations of the Accusation affirmed and sustained as if true and proven for the purpose of
14 imposing discipline or civil penalties. Respondents further understand that the sustained
15 violations of the Accusation herein may be considered for any future administrative or
16 disciplinary matter by the Board.

17 10. Respondents agree that their license(s) and/or pharmacy permit(s) are
18 subject to discipline and they agree to be bound by the Board of Pharmacy (Board) 's imposition
19 of discipline as set forth in the Disciplinary Order below.

20 CIRCUMSTANCES IN MITIGATION

21 11. Respondents have never been the subject of any disciplinary action. They
22 are admitting responsibility at an early stage in the proceedings.

23 CONTINGENCY

24 12. This stipulation shall be subject to approval by the Board of Pharmacy.
25 Respondents understand and agree that counsel for Complainant and the staff of the Board of
26 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
27 without notice to or participation by Respondents or their counsel. By signing the stipulation,
28 Respondents understand and agree that they may not withdraw their agreement or seek to rescind

1 KHALIFA manage, administer, or be a consultant to any licensee of the Board, or have access to
2 or control the ordering, manufacturing or dispensing of dangerous drugs and devices or
3 controlled substances.

4 Respondent KHALIFA shall not engage in any activity that requires the
5 professional judgment of a pharmacist. Respondent KHALIFA shall not direct or control any
6 aspect of the practice of pharmacy. Respondent KHALIFA shall not perform the duties of a
7 pharmacy technician or an exemptee for any entity licensed by the Board.

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

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

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

22 3. **Reporting to the Board.** Respondent KHALIFA shall report to the
23 Board quarterly. The report shall be made either in person or in writing, as directed.

24 Respondent KHALIFA shall state under penalty of perjury whether there has been compliance
25 with all the terms and conditions of probation. If the final probation report is **not** made as
26 directed, probation shall be extended automatically until such time as the final report is made
27 and accepted by the Board.

28 4. **Interview with the Board.** Upon receipt of reasonable notice,

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

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

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

11 **7. Notice to Employers.** Respondent KHALIFA shall notify all present
12 and prospective employers of the decision in case number 2288 and the terms, conditions and
13 restrictions imposed on Respondent KHALIFA by the decision. Within 30 days of the
14 effective date of this decision, and within 15 days of Respondent KHALIFA undertaking new
15 employment, Respondent KHALIFA shall cause his direct supervisor, pharmacist-in-charge
16 and/or owner to report to the Board in writing acknowledging the employer has read the
17 decision in case number 2288.

18 If Respondent KHALIFA works for or is employed by or through a pharmacy
19 employment service, Respondent KHALIFA must notify the direct supervisor, pharmacist-in-
20 charge, and/or owner at every pharmacy of the and terms conditions of the decision in case
21 number 2288 in advance of the Respondent KHALIFA commencing work at each pharmacy.

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

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

1 this order.

2 9. **Reimbursement of Board Costs.** Respondent KHALIFA shall pay to
3 the Board its costs of investigation and prosecution in the amount of \$15,000.00. Respondent
4 KHALIFA shall make said payments as follows: Said payments shall be made in equal
5 monthly installments over the three year period of probation with the final payment being
6 made to the Board no later than 90 days prior to the completion of the three (3) year
7 probationary term.

8 The filing of bankruptcy by Respondent KHALIFA shall not relieve
9 Respondent KHALIFA of his responsibility to reimburse the Board its costs of investigation
10 and prosecution.

11 10. **Probation Monitoring Costs.** Respondent KHALIFA shall pay the
12 costs associated with probation monitoring as determined by the Board each and every year of
13 probation. Such costs shall be payable to the Board at the end of each year of probation.
14 Failure to pay such costs shall be considered a violation of probation.

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

18 If Respondent KHALIFA's license expires or is cancelled by operation of law
19 or otherwise, upon renewal or reapplication, Respondent KHALIFA's license shall be subject
20 to all terms and conditions of this probation not previously satisfied.

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

28 Upon acceptance of the surrender, Respondent KHALIFA shall relinquish his

1 pocket license to the Board within 10 days of notification by the Board that the surrender is
2 accepted. Respondent KHALIFA may not reapply for any license from the Board for three
3 years from the effective date of the surrender. Respondent KHALIFA shall meet all
4 requirements applicable to the license sought as of the date the application for that license is
5 submitted to the Board.

6 **13. Notification of Employment/Mailing Address Change.** Respondent
7 KHALIFA shall notify the Board in writing within 10 days of any change of employment.
8 Said notification shall include the reasons for leaving and/or the address of the new employer,
9 supervisor or owner and work schedule if known. Respondent KHALIFA shall notify the
10 Board in writing within 10 days of a change in name, mailing address or phone number.

11 **14. Tolling of Probation.** Respondent must notify the board in writing
12 within 10 days of cessation of the practice of pharmacy or the resumption of the practice of
13 pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is
14 a violation of probation for respondent's probation to remain tolled pursuant to the provisions
15 of this condition for a period exceeding three years.

16 "Cessation of practice" means any period of time exceeding 30 days in which
17 respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the
18 Business and Professions Code.

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

27 **15. Violation of Probation.** If Respondent KHALIFA violates probation in any
28 respect, the Board, after giving Respondent KHALIFA notice and an opportunity to be heard,

1 may revoke probation and carry out the disciplinary order which was stayed. If a petition to
2 revoke probation or an accusation is filed against Respondent KHALIFA during probation, the
3 Board shall have continuing jurisdiction and the period of probation shall be extended, until
4 the petition to revoke probation or accusation is heard and decided.

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

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

12 **17. Supervised Practice.** Respondent KHALIFA shall practice only under
13 the supervision of a pharmacist not on probation with the Board. Respondent KHALIFA shall
14 not practice until the supervisor is approved by the Board. The supervision shall be, as
15 required by the Board:

16 Substantial - At least 50% of a work week

17 Within 30 days of the effective date of this decision, Respondent KHALIFA shall have
18 his supervisor submit notification to the Board in writing stating the supervisor has read the
19 decision in case number 2288 and is familiar with the level of supervision as determined by
20 the Board.

21 If Respondent KHALIFA changes employment, Respondent KHALIFA shall
22 have his new supervisor, within 15 days after employment commences, submit notification to
23 the Board in writing stating the direct supervisor and pharmacist-in-charge have read the
24 decision in case number 2288 and is familiar with the level of supervision as determined by
25 the Board.

26 Within 10 days of leaving employment, Respondent KHALIFA shall notify the Board
27 in writing. Respondent KHALIFA's level of supervision shall be reevaluated by the Board
28 after the completion of one year of probation to determine whether or not a lower level of

1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
2 fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation and the
3 effect it will have on my Pharmacist License Number RPH 31694. I enter into this Stipulated
4 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
5 bound by the Decision and Order of the Board of Pharmacy.

6 DATED: 12/20/02

7
8 
9 FALAH H. KHALIFA
Respondent

10
11 I have read and fully discussed with Respondents FALAH H. KHALIFA and FALAH
12 KHALIFA dba CALIFA PHARMACY the terms and conditions and other matters contained
13 in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

14 DATED: 12/20/02

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17 RONALD S. MARKS
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: 12/28/02

BILL LOCKYER, Attorney General
of the State of California


GREGORY J. SALUTE
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03585110-LA2000AD0541

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

In the Matter of the Accusation Against:

FALAH H. KHALIFA,
dba CALIFA PHARMACY
1133 Celis Street
San Fernando, CA 91340
FALAH H. KHALIFA, Owner
and Pharmacist-in-Charge

Original Pharmacy Permit No. PHY 30196

and

FALAH H. KHALIFA
1133 Celis Street
San Fernando, CA 91340

Original Pharmacist License No. RPH
31694

Respondents.

Case No. 2288

OAH No. L2002030117

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 26, 2003.

It is so ORDERED January 27, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 GREGORY J. SALUTE, State Bar No. 164015
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-2520
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7

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9

10

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

11

In the Matter of the Accusation Against:

FALAH H. KHALIFA,
dba CALIFA PHARMACY
1133 Celis Street
San Fernando, CA 91340
FALAH H. KHALIFA, Owner
and Pharmacist-in-Charge

Original Pharmacy Permit No. PHY 30196

and

FALAH H. KHALIFA
1133 Celis Street
San Fernando, CA 91340

Original Pharmacist License No. RPH 31694

Respondents.

Case No. 2288

ACCUSATION

22

Complainant alleges:

23

PARTIES

24

1. Patricia F. Harris ("Complainant") brings this accusation solely in her
25 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
26 Affairs.

27

2. On or about September 1, 1983, the Board of Pharmacy issued Original
28 Pharmacy Permit Number PHY 30196 to FALAH H. KHALIFA, Individual License Owner, to

1 do business as CALIFA PHARMACY ("Respondent CALIFA PHARMACY"). The Original
2 Pharmacy Permit Number was in full force and effect at all times relevant to the charges brought
3 herein and will expire on August,1, 2002, unless renewed.

4 3. On or about December 19, 1977, the Board of Pharmacy issued Original
5 Pharmacist License Number RPH 31694 to FALAH H. KHALIFA ("Respondent KHALIFA").
6 The Original Pharmacist License Number was in full force and effect at all times relevant to the
7 charges brought herein and will expire on April 30, 2002, unless renewed.

8 JURISDICTION

9 4. This Accusation is brought before the Board of Pharmacy ("Board"),
10 under the authority of the following sections of the Business and Professions Code ("Code").

11 5. Business and Professions Code Section 118(b) provides that the
12 suspension, expiration, or forfeiture by operation of law of a certificate does not deprive the
13 Board of authority or jurisdiction to institute or continue with disciplinary action against the
14 certificate or to order suspension or revocation of the certificate, during the period within which
15 the certificate may be renewed, restored, reissued or reinstated.

16 6. Section 4300 of the Code permits the Board to take disciplinary action to
17 suspend or revoke a license.

18 7. Section 4301 of the Code states:

19 The Board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
21 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
22 following:

23 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
24 deceit, or corruption, whether the act is committed in the course of relations as a licensee
25 or otherwise, and whether the act is a felony or misdemeanor or not.

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

28 (m) The cash compromise of a charge of violation of Chapter 13 (commencing

1 with Section 801) of Title 21 of the United States Code regulating controlled substances.
2 The record of the compromise is conclusive evidence of unprofessional conduct.

3 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
4 abetting the violation of or conspiring to violate any provision or term of Chapter 9
5 (commencing with Section 4000) of the Business and Professions Code or of the
6 applicable federal and state laws and regulations governing pharmacy, including
7 regulations established by the board.

8 (p) Actions or conduct that would have warranted denial of a license.

9 6. **CONTROLLED SUBSTANCE**

10 A. "Atridol" is a dangerous drug manufactured in Mexico. It is a
11 combination of Indomethacin, Methocarbamol and Bethamethasone and is not authorized for use
12 in the United States.

13 B. "Cyclobenzaprine" is a trade name for Flexeril, which is designated by
14 Business and Professions Code 4022 as a dangerous drug.

15 C. "Lodine" is a trade name for Estodolac, which is designated by Business
16 and Professions Code 4022 as a dangerous drug.

17 D. "Miltrate 10" is a combination of Meprobamate and Peritrate, which has
18 been discontinued by the manufacturer and is designated by Health and Safety Code section
19 11057(d)(15) as a Schedule IV controlled substance and by Business and Professions Code 4022
20 as a dangerous drug.

21 E. "Vicodin" is a trade name for Hydrocodone 5mg and Acetaminophen
22 500mg, which is designated by Health and Safety Code section 11055(j) as a Schedule II
23 controlled substance and by Business and Professions Code 4022 as a dangerous drug.

24 F. "Vicodin" is a trade name for Hydrocodone 7.5mg and Acetaminophen
25 750mg, which is designated by Health and Safety Code section 11055(j) as a Schedule II
26 controlled substance and by Business and Professions Code 4022 as a dangerous drug.

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1 G. "Phentermine" is a trade name for Adipex P, Fastin, which is designated
2 by Health and Safety Code section 11057(f)(2) as a Schedule IV controlled substance and by
3 Business and Professions Code 4022 as a dangerous drug.

4 H. "Otilin eardrops" is a dangerous drug manufactured in Mexico. It is a
5 combination of Neomycin Sulfate, Tetracaine and Chlorbutanol and is not authorized for use in
6 the United States.

7 I. "Dispan Doble" is a dangerous drug manufactured in Mexico. It contains
8 Belladonna and is not authorized for use in the United States.

9 J. "Incremin" is an iron supplement manufactured in Mexico and is not
10 authorized for use in the United States.

11 K. "Lomotil" is a combination of diphenoxylate and atropine. It is a
12 Schedule V controlled substance and not authorized for use in the United States.

13 L. "Neomycin" is an ointment manufactured in Mexico and is not authorized
14 for use in the United States.

15 M. "Homatropine drops" is manufactured in Mexico and is not authorized for
16 use in the United States.

17 N. "Bonadoxin" is manufactured in Mexico and is not authorized for use in
18 the United States.

19 O. "Lidocaine" is manufactured in Mexico and is not authorized for use in
20 the United States.

21 P. "Salsalate" is a trade name for Disalcid, which is designated by Business
22 and Professions Code 4022 as a dangerous drug.

23 6. Section 4059 of the Code states, in pertinent part, that no person shall
24 furnish any dangerous drug upon the prescription of a physician, dentist, podiatrist, optometrist,
25 or veterinarian. No person shall furnish any dangerous device, except upon the prescription of a
26 physician, dentist, podiatrist, optometrist, or veterinarian.

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1 7. Section 4081(a) of the Code states:

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

12 8. Section 4332 of the Code provides that any person who fails, neglects, or
13 refuses to maintain the records required by Section 4081 or who, when called upon by an
14 authorized officer or a member of the Board, fails, neglects, or refuses to produce or provide the
15 records within a reasonable time, or who willfully produces or furnishes records that are false, is
16 guilty of a misdemeanor.

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

22 10. Section 4342(a) of the Code states, in pertinent part, that the Board may
23 institute any action or actions necessary as may be provided by law and that, in its discretion, are
24 necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to
25 the standard tests as to quality strength, provided in the latest edition of the United States
26 Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food,
27 Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the
28 Health and Safety Code).

1 11. Title 16, California Code of Regulations, section 1717(a) states:
2 No medication shall be dispensed on prescription except in a new container which
3 conforms with standards established in the official compendia.

4 12. Title 16, California Code of Regulations, section 1718 states:
5 "Current Inventory" as used in Section 4232 of the Business and Professions
6 Code shall be considered to include complete accountability for all dangerous drugs handled by
7 every licensee enumerated in Section 4232. The controlled substances inventories required by
8 Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years
9 after the date of the inventory.

10 13. Section 125.3 of the Code states, in pertinent part, that the Board may
11 request the administrative law judge to direct a licentiate found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(FAILURE TO MAINTAIN RECORDS)**

16 14. Respondents CALIFA PHARMACY and KHALIFA are subject to
17 disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), (m) and (p) of the
18 Code for unprofessional conduct for violating Code sections 4081(a), 4332, 4333, Title 16,
19 California Code of Regulations, section 1718, and Health and Safety Code section 111208, in
20 that Respondents failed to keep a complete, accurate and current inventory or complete
21 accountability of dangerous drugs by reason of the following:

22 a. On March 18, 1999, Inspector Venegas requested all the acquisition
23 records for May 30, 1997 to March 18, 1999. Respondent KHALIFA informed the Inspector that
24 these records were not on the premises. A request was made by the Inspector that Respondent
25 bring all the records back to the pharmacy within 72 hours and to call once available. The
26 Inspector issued a violation notice for unprofessional conduct.

27 b. On or about May, 1999, a review of records was conducted of the invoices
28 received from Respondents and that of the wholesalers, which revealed that Respondents failed

1 to provide 11 invoices. Respondents failed to account for 1500 Vicodin tablets, 500 Vicodin Es
2 tablets and 10,000 Phentermine 37.5. Additionally, inspectors conducted a Selected Drug Audit
3 Summary, using the May 30, 1997 DEA Biennial Inventory as a starting point, on Tylenol #3,
4 Vicodin, Vicodin ES and Didrex, which revealed that Respondents were short 8,585 tablets of
5 Tylenol #3, 6,376 tablets of Vicodin, and 264 tablets of Didrex.

6 c. On or about September 20, 1999, inspectors from the Board performed an
7 additional audit on Phentermine. Inspectors requested an inspection report of all acquisitions and
8 dispositions from May 30, 1997 to September 20, 1999, which was to include all purchases of
9 Adipex P, Fastin, Phentermine 37.5, Phentermine 30mg and all prescriptions filled during that
10 time period. Additionally, inspectors requested all sales to doctors, other pharmacies and
11 wholesalers, prescription documents from December 1, 1996, which would include the
12 prescription refills for said time period.

13 d. The September 20, 1999 audit revealed that Respondents had purchased
14 3000 capsules of Phentermine 30mg and returned 2000 and purchased 11,000 capsules of
15 Phentermine 37.5. Respondents failed to provide any invoices for the purchase of 3000 capsules
16 of Phentermine 30mg and invoices for 10,000 Phentermine 37.5. Additionally, inspectors
17 conducted a Selected Drug Audit Summary, using the May 30, 1997 DEA Biennial Inventory as
18 a starting point on Phentermine 30mg and Phentermine 37.5mg, which revealed that
19 Respondents were short 1,140 of Phentermine 30mg and 11,076 of Phentermine 37.5mg.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(DISPENSING WITHOUT A PRESCRIPTION)**

22 15. Respondents CALIFA PHARMACY and KHALIFA are subject to
23 disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), and (p) of the Code
24 for unprofessional conduct for violating Code sections 4059, 4342(a), Health and Safety Code
25 section 11158 and Title 16, California Code of Regulations, section 1717(a) in that Respondents
26 dispensed dangerous drugs without a prescription by reason of the following:

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1 a. From on or about May 12, 1998 to on or about March 18, 1999, the Board
2 conducted an undercover operation for the purchase of dangerous drugs without a prescription
3 from Respondents.

4 b. The undercover operation revealed that on five separate visits, Respondents
5 sold dangerous drugs without a prescription to Inspector, Venegas as follows:

6 1. On or about May 12, 1998, Inspector Venegas went to CALIFA
7 PHARMACY and explained to Respondent that he needed ear drops for his child who had a
8 fever and an earache and that he also needed something for his back pain. Respondent gave him
9 some eardrops called "Otilin" and instructed him in the use of the medication. Respondents also
10 gave him a pink suspension in a "Prominicol Cough Syrup" bottle (generic for Triaminicol-OTC
11 medication). Respondent informed him that it was an antibiotic, penicillin and instructed him in
12 the proper storage. Additionally, he received some "Motrin" suspension for children.
13 Respondent then gave him some yellow tablets (scored and printed with 257/10) and said that
14 they were muscle relaxants and some white and green capsules called "Atridol," for pain.
15 Respondent then charged Inspector Venegas \$49.00 for the medication.

16 2. On or about May 19, 1998, Inspector Venegas returned to CALIFA
17 PHARMACY and asked Respondent for some stronger medication than "Atridol" that he gave
18 him last time. Respondent gave him some red and gray capsules in a white box and said that
19 they were for pain. The capsules were marked "Lodine 300". Respondent then charged
20 Inspector Venegas \$20.00 for the medication.

21 3. On or about August 24, 1998, Inspector Venegas returned to
22 CALIFA PHARMACY and asked for something for his pain. Respondent KHALIFA examined
23 him physically and asked him to extend his arms and questioned him on his physical being.
24 Respondent gave him a pack of Atridol and 6 round white tablets with "Dan" imprinted on one
25 side and the number "5658" on the other. Respondent placed the while tablets in an "Otilin" box.
26 Respondent then charged Inspector Venegas \$16.00 for the medication. The white tablets were
27 later identified as generic for Flexeril, a muscle relaxant.

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1 4. On or about October 19, 1998, Inspector Venegas returned to
2 CALIFA PHARMACY and asked Respondent for something for pain. Respondent KHALIFA
3 gave him some more Atridol and some white tablets with the name "Wallace" and "37" on top
4 and "5201" underneath and were placed in a "QuadriDerm" box. Respondent then charged
5 Inspector Venegas \$17.00 for the medication and gave him instructions to lose weight and avoid
6 stress. The white tablets were later identified as Miltrate 10, which had been discontinued for
7 many years and is a Schedule IV controlled substance per Health and Safety Code section
8 11057(d)(15).

9 5. On March 18, 1999, Inspector Venegas returned to CALIFA
10 PHARMACY and asked Respondent for something for pain. Respondent KHALIFA gave the
11 Inspector some yellow tablets which had SL391 imprinted on them and put them in a
12 "Dermicort" box. Respondent then charged Inspector Venegas \$10.00 for the medication. The
13 yellow tablets were later identified as Salsalate, the generic for Disalcid, which is a dangerous
14 drug used in the treatment of arthritis.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(STORING DRUGS IN MISLABELED CONTAINERS)**

17 15. Respondents CALIFA PHARMACY and KHALIFA are subject to
18 disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), and (p) of the Code
19 for unprofessional conduct for violating Code sections 4342(a), Health and Safety Code sections
20 111320 and 111255, and 21 U.S.C. 353 in that Respondents stored dangerous drugs in
21 mislabeled containers by reason of the following (see attached copy of Ex. "7"):

22 a. The Board conducted a physical inspection of the premises on March 18,
23 1999 and revealed that 125 containers contained dangerous drugs. The drugs were secured and
24 later summarized.

25 b. During the summary of the audit, items 7, 12, 18-21, 25, 27-29, 39, 41-43,
26 45-47, 49, 50, and 54 were dangerous drugs that were stored in containers of another product.

27 c. During the summary of the audit, items 2, 5, 10, 14, 15, 22, 23, 34-36, 38,
28 51-53, 56-59, 63, 4, 67, and 68 were dangerous drugs that were mis-labeled or not labeled at all.

1 d. During the summary of the audit, items 1, 17, 24, 31, 32, 37, 61, 62, 65,
2 and 66 were foreign drugs not authorized for use in the United States.

3 e. Item number 44 was Miltrate 10, expiration date of 5/87 was found in a
4 large box of expires drugs. This was the only bottle of Miltrate 10 in stock.

5 f. Items 35, 50, and 59 were samples of legend drugs that were in stock.

6 **PRAYER**

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

9 1. Revoking or suspending Original Pharmacy Permit Number PHY 30196,
10 issued to FALAH H. KHALIFA, Individual License Owner, doing business as, CALIFA
11 PHARMACY.

12 2. Revoking or suspending Original Pharmacist License Number RPH
13 31694, issued to FALAH H. KHALIFA;

14 3. Ordering CALIFA PHARMACY and FALAH H. KHALIFA to pay the
15 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3;

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

18
19 DATED: 1/17/02

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21
22 P. J. Harris
23 PATRICIA F. HARRIS
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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27 2Accusation.wp
(GJS-10/22/01)