

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

In the Matter of the Accusation Against:

Case No. 4022

DAVID KALEMKIARIAN
5211 Franklin Avenue
Los Angeles, CA 90027

Pharmacist License No. RPH 41864

Respondent.

DECISION AND ORDER

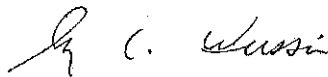
The attached Stipulated Settlement and Disciplinary and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 14, 2012.

It is so ORDERED on August 15, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4022

12 **DAVID GUSTAV KALEMKIARIAN**

OAH No. 2011100367

13 **5211 Franklin Avenue**
14 **Los Angeles, CA 90027**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 **Original Pharmacist License No. RPH 41864**

16 Respondent.

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

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Geoffrey Ward, Deputy Attorney
23 General.

24 2. Respondent David Gustav Kalemkiarian (Respondent) is represented in this
25 proceeding by attorney Wayne Miller, whose address is: 100 E. Thousand Oaks Blvd., Ste. 201
26 Thousand Oaks, CA 91360.

27 3. On or about August 2, 1988, the Board of Pharmacy issued Original Pharmacist
28 License No. RPH 41864 to David Gustav Kalemkiarian (Respondent). The Original Pharmacist

1 License was in full force and effect at all times relevant to the charges brought in Accusation No.
2 4022 and will expire on July 31, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 4022 was filed before the Board of Pharmacy (Board) , Department
5 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on June 27, 2011.
7 Respondent timely filed his Notice of Defense contesting the Accusation.

8
9 A copy of Accusation No. 4022 is attached as exhibit A and incorporated herein by
10 reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 4022. Respondent has also carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
15 Order.

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

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 CULPABILITY

26 8. Respondent understands and agrees that the charges and allegations in Accusation
27 No. 4022, if proven at a hearing, constitute cause for imposing discipline upon his Original
28 Pharmacist License.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his Original 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

11. Respondent David Gustav Kalemkiarian has never been the subject of any disciplinary action. He has expressed remorse for the alleged misconduct and has admitted responsibility at an early stage in the proceedings. He is not alleged to have diverted or dispensed controlled substances or dangerous drugs for his personal consumption or use.

CONTINGENCY

12. 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.

13. 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.

14. 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

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

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 41864 issued to
8 Respondent David Gustav Kalemkarian (Respondent) is revoked. However, the revocation is
9 stayed and Respondent is placed on probation for five (5) years on the following terms and
10 conditions.

11 **1. Obey All Laws**

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

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

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

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

26 **2. Report to the Board**

27 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
28 designee. The report shall be made either in person or in writing, as directed. Among other

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

7 **3. Interview with the Board**

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

13 **4. Cooperate with Board Staff**

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

17 **5. Continuing Education**

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

20 **6. Notice to Employers**

21 During the period of probation, respondent shall notify all present and prospective
22 employers of the decision in case number 4022 and the terms, conditions and restrictions imposed
23 on respondent by the decision, as follows:

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
25 respondent undertaking any new employment, respondent shall cause his direct supervisor,
26 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
27 tenure of employment) and owner to report to the board in writing acknowledging that the listed
28 individual(s) has/have read the decision in case number 4022, and terms and conditions imposed

1 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
2 submit timely acknowledgment(s) to the board.

3 If respondent works for or is employed by or through a pharmacy employment service,
4 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
5 licensed by the board of the terms and conditions of the decision in case number 4022 in advance
6 of the respondent commencing work at each licensed entity. A record of this notification must be
7 provided to the board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of respondent undertaking any new employment by or through a pharmacy employment
10 service, respondent shall cause his direct supervisor with the pharmacy employment service to
11 report to the board in writing acknowledging that he has read the decision in case number 4022
12 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
13 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

27 **8. Reimbursement of Board Costs**
28

1 As a condition precedent to successful completion of probation, respondent shall pay to the
2 board its costs of investigation and prosecution in the amount of \$ 12,500. Respondent shall
3 make these payments on a regular monthly basis during the period of probation and shall
4 complete payment of the full amount three months before the probationary period set forth in this
5 agreement ends.

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

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

11 9. Probation Monitoring Costs

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

16 10. Status of License

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

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

24 11. License Surrender While on Probation/Suspension

25 Following the effective date of this decision, should respondent cease practice due to
26 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
27 respondent may tender his license to the board for surrender. The board or its designee shall have
28 the discretion whether to grant the request for surrender or take any other action it deems

1 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
2 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
3 record of discipline and shall become a part of the respondent's license history with the board.

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

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

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

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

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

19 **13. Tolling of Probation**

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

26 Should respondent, regardless of residency, for any reason (including vacation) cease
27 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
28 respondent must notify the board in writing within ten (10) days of the cessation of practice, and

1 must further notify the board in writing within ten (10) days of the resumption of practice. Any
2 failure to provide such notification(s) shall be considered a violation of probation.

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

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

11 14. Violation of Probation

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

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

24 15. Completion of Probation

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

27 16. Community Services Program

28 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the

1 board or its designee, for prior approval, a community service program in which Respondent shall
2 provide free health-care related services on a regular basis to a community or charitable facility,
3 agency, or organization for at least 75 hours per year for the first two years of probation. Within
4 thirty (30) days of board approval thereof, Respondent shall submit documentation to the board
5 demonstrating commencement of the community service program. A record of this notification
6 must be provided to the board upon request. Respondent shall report on progress with the
7 community service program in the quarterly reports. Failure to timely submit, commence, or
8 comply with the program shall be considered a violation of probation.

9 **17. Supervised Practice**

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

15 Continuous – At least 75% of a work week

16 Substantial - At least 50% of a work week

17 Partial - At least 25% of a work week

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

19 Within thirty (30) days of the effective date of this decision, respondent shall have his
20 supervisor submit notification to the board in writing stating that the supervisor has read the
21 decision in case number 4022 and is familiar with the required level of supervision as determined
22 by the board or its designee. It shall be the respondent's responsibility to ensure that his
23 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
24 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
25 acknowledgements to the board shall be considered a violation of probation.

26 If respondent changes employment, it shall be the respondent's responsibility to ensure that
27 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
28 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment

1 commences, submit notification to the board in writing stating the direct supervisor and
2 pharmacist-in-charge have read the decision in case number 4022 and is familiar with the level of
3 supervision as determined by the board. Respondent shall not practice pharmacy and his license
4 shall be automatically suspended until the board or its designee approves a new supervisor.
5 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
6 acknowledgements to the board shall be considered a violation of probation.

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

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

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

12 **18. No Ownership of Licensed Premises**

13 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
14 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
15 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
16 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
17 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
18 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
19 that interest, but only to the extent of that position or interest as of the effective date of this
20 decision. Violation of this restriction shall be considered a violation of probation.

21 **19. Ethics Course**

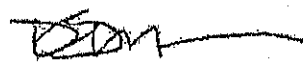
22 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
23 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
24 Failure to initiate the course during the first year of probation, and complete it within the second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

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

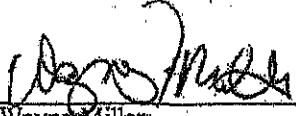
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1
2 ACCEPTANCE

3 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
4 discussed it with my attorney, Wayne Miller. I understand the stipulation and the effect it will
5 have on my Original Pharmacist License. I enter into this Stipulated Settlement and Disciplinary
6 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
7 of the Board of Pharmacy.

8
9 DATED: 3/22/2012 
10 DAVID GUSTAV KALEMKIARIAN
Respondent

11 I have read and fully discussed with Respondent David Gustav Kalemkarian the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
13 I approve its form and content.

14 DATED: 3/22/12 
15 Wayne Miller
16 Attorney for Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

20
21 Dated:

Respectfully submitted,

22 KAMALA D. HARRIS
Attorney General of California
23 KAREN B. CHAPPELLE
Supervising Deputy Attorney General

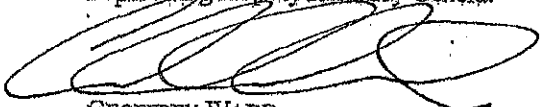
24 
25 GEOFFREY WARD
26 Deputy Attorney General
27 Attorneys for Complainant
28

Exhibit A

Accusation No. 4022

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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Attorneys for Complainant

7
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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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10 In the Matter of the Accusation Against:

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11 **DAVID GUSTAV KALEMKIARIAN**

12 **5211 Franklin Avenue**
13 **Los Angeles, CA 90027**

ACCUSATION

14 **Original Pharmacist License No. RPH 41864**

15 **Respondent.**

16
17 **Complainant alleges:**

18 **PARTIES**

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

21 2. On or about August 2, 1988, the Board of Pharmacy issued Original Pharmacist
22 License Number RPH 41864 to David Gustav Kalemkarian (Respondent). The Original
23 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on July 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

STATUTES

4. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 in relevant part provides the Board may discipline a licensee for unprofessional conduct:

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

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

6. Section 4059 in pertinent part prohibits any person from furnishing any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

7. Section 4022 defines "dangerous drug" to include any prescription drug:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, 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.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner

licensed to use or order use of the device.

(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."

8. Section 4081 provides recordkeeping rules for dangerous drugs and holds pharmacists-in-charge jointly responsible for maintaining records and current inventories of these drugs:

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

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

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

REGULATIONS

9. California Code of Regulations, title 16, section 1718 defines "current inventory" as used in Section 4081, requiring licensees to be completely accountable for all dangerous drugs they handle:

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

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

10. California Code of Regulations, title 16, section 1707.1 imposes a duty on pharmacies and pharmacists to maintain patient medication profiles or patient medication records:

"(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not continue to obtain prescription medications from that

pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;

2. The prescriber's name and where appropriate, license number, DEA registration number or other unique identifier;

3. The date on which a drug was dispensed or refilled;

4. The prescription number for each prescription; and

5. The information required by section 1717.

(C) Any of the following which may relate to drug therapy: patient allergies, idiosyncracies, current medications and relevant prior medications including nonprescription medications and relevant devices, or medical conditions which are communicated by the patient or the patient's agent.

(D) Any other information which the pharmacist, in his or her professional judgment, deems appropriate.

(2) The patient medication record shall be maintained for at least one year from the date when the last prescription was filled."

COST RECOVERY

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

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DANGEROUS DRUGS

12. Viramune is a brand name of nevirapine, a medication used to treat human immunodeficiency virus (HIV) infection. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

13. Flomax is a brand name for tamsulosin, an alpha blocker used to treat an enlarged prostate. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

14. Zovirax is a brand name for acyclovir, a medication used to speed the healing of sores or blisters in people with shingles, chicken pox or herpes. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

15. Lactulose is a synthetic sugar used to treat constipation. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

16. Epzicom is an anti-retroviral medication used to treat HIV. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

17. Wellbutrin is a brand name for bupropion, an antidepressant. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

18. Flonase is a brand name for fluticasone, an aerosol used to treat asthma. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

19. Crestor is a brand name for rosuvastatin, a statin used to lower cholesterol. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

20. Lamisil is a brand name for terbinafine an anti-fungal medication used to treat nail infections. As a prescription drug, it is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

21. Respondent is subject to disciplinary action for unprofessional conduct under Section 4301 subdivision (f) because he repeatedly falsified prescription records, patient records, and

claim forms, took dangerous drugs from a pharmacy where he was employed as the pharmacist-in-charge to distribute to a friend, and misappropriated insurance reimbursements due his employer, acts that constitute moral turpitude, dishonesty, fraud and deceit. The circumstances are as follows:

22. From 2009 to 2010, Respondent dispensed more than thirty prescriptions for a variety of dangerous drugs without a physician's authorization to C.S.¹, a friend of his. The following table shows the dates Respondent disbursed these drugs, the drugs dispensed, and the last name of the doctor who Respondent falsely claimed prescribed the listed drug:

Date	Drug Name	Doctor
7/1/2009	Viramune	Cohan
7/1/2009	Flomax	Cohan
7/1/2009	Zovirax	Cohan
7/1/2009	Lactulose	Cohan
8/1/2009	Viramune	Cohan
8/1/2009	Acyclovir	Cohan
8/1/2009	Lactulose	Cohan
8/1/2009	Epzicom	Cohan
8/1/2009	Wellbutrin	Cohan
8/1/2009	Flonase	Cohan
8/1/2009	Flomax	Cohan
9/1/2009	Viramune	Cohan
9/1/2009	Acyclovir	Cohan
9/1/2009	Lactulose	Cohan
9/1/2009	Epzicom	Cohan
9/1/2009	Wellburtin	Cohan

¹ The patient's initials are used in this accusation to protect the patient's privacy.

1	9/1/2009	Flonase	Cohan
2	9/1/2009	Flomax	Cohan
3	11/20/2009	Lamisil	Cohan
4	12/20/2009	Lamisil	Cohan
5	12/1/2009	Viramune	Skiba
6	12/1/2009	Acyclovir	Skiba
7	12/1/2009	Lactulose	Skiba
8	12/1/2009	Epzicom	Skiba
9	12/1/2009	Wellbutrin	Skiba
10	12/1/2009	Flonase	Skiba
11	12/1/2009	Flomax	Skiba
12	1/27/10	Wellbutrin	Skiba
13	1/27/10	Epzicom	Skiba
14	1/27/10	Zovirax	Skiba
15	1/27/10	Viramune	Skiba
16	3/1/10	Wellbutrin	Skiba
17	3/1/10	Epzicom	Skiba

23. Respondent took these prescription drugs from Gateways Hospital Pharmacy, where he was serving as the pharmacist-in-charge, without following statutory, regulatory, or the pharmacy's own procedures for recordkeeping for either the drugs or patient C.S.'s medical records.

24. After dispensing these drugs to C.S., Respondent falsified insurance reimbursement forms for C.S. to submit to C.S.'s insurance company, Anthem Blue Cross. On these falsified forms he claimed C.S. had obtained the drugs from another pharmacy, Skinners Pharmacy, where Respondent did not work, and from which the drugs had not come.

1 25. When C.S. received reimbursement checks from Anthem Blue Cross, Respondent
2 arranged to have C.S. endorse the checks to him, depositing the checks into his own personal
3 bank account.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct – Knowingly Making or Signing False Documents or Certificates)**

6 26. Respondent is subject to disciplinary action under Section 4301 subdivision (g) for
7 knowingly making or signing false documents or certificates by committing the following acts
8 and the acts alleged in paragraphs 22 through 25 above, realleged and incorporated herein:

9 A. When questioned by a Board investigator about the acts alleged above, Respondent
10 made a series of false statements orally and in writing. In conversation, he falsely claimed:

- 11 ▪ He had taken the drugs he gave his friend from Community Hospital, another
12 hospital where he had worked, when, in fact, he had diverted these drugs from
Gateway Hospital pharmacy;
- 13 ▪ Community Hospital was no longer in business, when, in fact, it was doing
14 business under a new name;
- 15 ▪ Dr. Cohan (or Cohen) had authorized some of his friend's prescriptions, when
16 Dr. Cohan had not authorized the prescriptions shown in the table in
17 paragraph 22 above; and
- 18 ▪ Dr. Skiba had authorized the rest of his friend's prescriptions, when, in fact,
approximately 13 of the prescription drugs given to Respondent's friend had
not been authorized by Dr. Skiba (illustrated in the table in paragraph 22
above.)

19 B. Respondent compounded his lies in a sworn statement executed on May 26, 2010. In
20 this sworn statement he reiterated the false claim that all of the prescriptions he filled for his
21 friend were authorized by physicians and also falsely claimed he had reimbursed Community
22 Hospital from the insurance reimbursement checks he received.

23 C. In short, Respondent made or signed the following false documents or certificates:

- 24 1. Prescription records claiming that doctors had authorized prescriptions they
25 never authorized.
- 26 2. Insurance reimbursement forms submitted to insurer Anthem Blue Cross that
27 also claimed that doctors had authorized the prescriptions they never authorized and claimed that
28 prescription drugs Respondent gave to his friend came from Skinners Pharmacy when they had

1 actually come from Gateways Hospital Pharmacy. The false forms were submitted on multiple
2 occasions, including July 1, 2009, August 1, 2009, September 1, 2009, and November 20, 2009.

3 3. The sworn statement given to the Board on May 26, 2010 claiming he
4 reimbursed Community Hospital for the insurance reimbursements he pocketed and claiming
5 Doctors Skiba and Cohan had authorized the unauthorized prescriptions.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Subverting Investigation)**

8 27. By committing the acts alleged in paragraphs 22 through 26, realleged and
9 incorporated herein, Respondent is subject to disciplinary action under Section 4301 subdivision
10 (c) for subverting the Board's investigation by repeatedly lying to a Board investigator who was
11 investigating his diversion of drugs and false insurance claims.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Furnishing without a Prescription)**

14 28. By committing the acts alleged in paragraphs 22 through 26, realleged and
15 incorporated herein, Respondent is subject to disciplinary action under section 4059 subdivision
16 (a) for repeatedly furnishing prescriptions for a variety of dangerous drugs without a physician's
17 authorization to C.S., a friend of his.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Failure to Maintain Drug and Patient Records)**

20 29. Respondent is subject to disciplinary action under Section 4301 subdivisions (j)
21 (violating any statute pertaining to dangerous drugs) and (o) (violating any law or regulation
22 governing pharmacy) for violating the recordkeeping requirements of Section 4081 (dangerous
23 drugs) and Title 16 of the California Code of Regulations sections 1718 (inventory of dangerous
24 drugs) and 1707.1 (patient medication records) by committing the following acts and the acts
25 alleged in paragraphs 22 through 26 above, realleged and incorporated herein:

26 A. Respondent failed to maintain records of the sale or disposition of the dangerous
27 drugs listed in the table accompanying paragraph 22 above that he took from Gateways Hospital
28

1 Pharmacy. He did not update the pharmacy's current inventory to reflect the disposition of those
2 drugs, nor did he maintain complete accountability for the handling of these dangerous drugs.

3 B. He also failed to document his giving, selling, or disposition of all of the dangerous
4 drugs he gave to patient C.S. in C.S.'s medication profile or patient medication records at
5 Gateways Hospital Pharmacy. His failure to do so was not based on a reasonable belief that C.S.
6 would not continue to obtain prescription medications from that pharmacy.

7 C. Although Respondent claimed at various times that he had obtained patient's C.S.'s
8 drugs from Skinners Pharmacy or Community Hospital, he did not document these withdrawals
9 from these pharmacies, nor could he have done so, since he was not working at those pharmacies
10 when he diverted the drugs.

11 PRAYER

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

14 1. Revoking or suspending Original Pharmacist License Number RPH 41864, issued to
15 David Gustav Kalemkarian;

16 2. Ordering David Gustaf Kalemkarian to pay the Board of Pharmacy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20
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22 DATED: 6/21/11

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

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