

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

In the Matter of the Accusation Against:

Case No. 4614

GLESENER PHARMACY
321 n. Citrus Street
Covina, CA 91723
Pharmacy License No. PHY 45665

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
ANTONY M. BRADLEY ONLY**

JOSEPH L. D'ANGELO
321 N. Citrus Street
Covina, CA 91723
Pharmacist License No. RPH 22883

ANTONY M. BRADLEY
321 N. Citrus street
Covina, CA 91723
Pharmacist License No. RPH 36740

and

DOUGLAS JAY AUSTIN
22702 Eaglespur Road
Diamond Bar, CA 91765
Pharmacist License No. RPH 40244

Respondents.

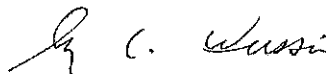
DECISION AND ORDER

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 December 9, 2014.

It is so ORDERED on December 3, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER, Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
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E-mail: Cristina.Felix@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4614

12 **GLESENER PHARMACY**
13 **321 N. Citrus Street**
Covina, CA 91723
14 **Pharmacy License No. PHY 45665**

OAH No. 2013110777

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
ANTONY M. BRADLEY ONLY**

15 **JOSEPH L. D'ANGELO**
16 **321 N. Citrus Street**
Covina, CA 91723
17 **Pharmacist License No. 22883**

18 **ANTONY M. BRADLEY**
19 **321 N. Citrus Street**
Covina, CA 91723
20 **Pharmacist License No. 36740**

21 and

22 **DOUGLAS JAY AUSTIN**
23 **22702 Eaglespur Road**
Diamond Bar, CA 91765
24 **Pharmacist License No. 40244**

25 Respondents.

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

3 PARTIES

4 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
5 She brought this action solely in her official capacity and is represented in this matter by Kamala
6 D. Harris, Attorney General of the State of California, by Cristina Felix, Deputy Attorney
7 General.

8 2. Respondent Antony M. Bradley ("Respondent") is represented in this proceeding by
9 attorney Richard A. Moss, Esq., whose address is: Law Offices of Richard A. Moss,
10 255 South Marengo Avenue, Pasadena, CA 91101.

11 3. On or about October 19, 1981, the Board of Pharmacy issued Pharmacist Number
12 36740 to Antony M. Bradley. The Pharmacist License was in full force and effect at all times
13 relevant to the charges brought herein and will expire on May 31, 2015, unless renewed.

14 JURISDICTION

15 4. Accusation No. 4614 was filed before the Board of Pharmacy (Board), Department of
16 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
17 statutorily required documents were properly served on Respondent on September 18, 2013.
18 Respondent timely filed his Notice of Defense contesting the Accusation.

19 5. A copy of Accusation No. 4614 is attached as exhibit A and incorporated herein by
20 reference.

21 ADVISEMENT AND WAIVERS

22 6. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in Accusation No. 4614. Respondent has also carefully read, fully
24 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
25 Order.

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

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

10 CULPABILITY

11 9. Respondent admits that at hearing Complainant could establish a factual basis for the
12 charges and allegations in Accusation No. 4614, and that those charges and allegations are cause
13 for discipline. Respondent hereby give up his right to contest those charges and allegations.

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

16 CONTINGENCY

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

26 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
27 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
28 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

1 **2. Report to the Board**

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

10 **3. Interview with the Board**

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

16 **4. Cooperate with Board Staff**

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

20 **5. Continuing Education**

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

23 **6. Notice to Employers**

24 During the period of probation, respondent shall notify all present and prospective
25 employers of the decision in case number 4614 and the terms, conditions and restrictions imposed
26 on respondent by the decision, as follows:

27 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
28 respondent undertaking any new employment, respondent shall cause his direct supervisor,

1 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
2 tenure of employment) and owner to report to the board in writing acknowledging that the listed
3 individual(s) has/have read the decision in case number 4614, and terms and conditions imposed
4 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
5 submit timely acknowledgment(s) to the board.

6 If respondent works for or is employed by or through a pharmacy employment service,
7 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
8 licensed by the board of the terms and conditions of the decision in case number 4614 in advance
9 of the respondent commencing work at each licensed entity. A record of this notification must be
10 provided to the board upon request.

11 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
12 (15) days of respondent undertaking any new employment by or through a pharmacy employment
13 service, respondent shall cause his direct supervisor with the pharmacy employment service to
14 report to the board in writing acknowledging that he has read the decision in case number 4614
15 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
16 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

26 During the period of probation, respondent shall not supervise any intern pharmacist, be the
27 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
28

1 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
2 unauthorized supervision responsibilities shall be considered a violation of probation.

3 **8. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, respondent shall pay to the
5 board its costs of investigation and prosecution in the amount of \$5,000.00 within one year of the
6 effective date of this order. Respondent shall make payment by cashier check or money order
7 payable to "Board of Pharmacy." Payment shall be mailed to Board of Pharmacy, 1625 North
8 Market Boulevard, Suite N219, Sacramento, CA 95834-1924 and indicate the citation number for
9 which payment is being made.

10 Respondent further agrees that he will be individually, and jointly and severally, liable with
11 Respondents Joseph L. D' Angelo and Glesener Pharmacy for payment in full of the board's costs
12 of investigation and prosecution totaling \$15,000.00, with regard to Accusation No. 4614, within
13 one year of the effective date of this order.

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

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

19 **9. Probation Monitoring Costs**

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

24 **10. Status of License**

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

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

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

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

13 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
14 the board within ten (10) days of notification by the board that the surrender is accepted.
15 Respondent may not reapply for any license from the board for three (3) years from the effective
16 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
17 of the date the application for that license is submitted to the board, including any outstanding
18 costs.

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

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

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

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1 **13. Tolling of Probation**

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

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

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

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

21 **14. Violation of Probation**

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

27 If respondent violates probation in any respect, the board, after giving respondent notice
28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that

1 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
2 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
3 a petition to revoke probation or an accusation is filed against respondent during probation, the
4 board shall have continuing jurisdiction and the period of probation shall be automatically
5 extended until the petition to revoke probation or accusation is heard and decided.

6 **15. Completion of Probation**

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

9 **16. Community Services Program**

10 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
11 board or its designee, for prior approval, a community service program in which respondent shall
12 provide free health-care related services on a regular basis to a community or charitable facility or
13 agency for at least forty eight (48) hours per year for the first two years of probation. Within
14 thirty (30) days of board approval thereof, respondent shall submit documentation to the board
15 demonstrating commencement of the community service program. A record of this notification
16 must be provided to the board upon request. Respondent shall report on progress with the
17 community service program in the quarterly reports. Failure to timely submit, commence, or
18 comply with the program shall be considered a violation of probation.

19 **17. Remedial Education**

20 Within ninety (90) days of the effective date of this decision, respondent shall submit to the
21 board or its designee, for prior approval, an appropriate program of remedial education related to
22 drug security, and maintaining accountability of pharmacy operations. The program of remedial
23 education shall consist of at least twenty (20) hours, which shall be completed within two years
24 at respondent's own expense. All remedial education shall be in addition to, and shall not be
25 credited toward, continuing education (CE) courses used for license renewal purposes.

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

1 is provided to the board or its designee.

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

7 **18. Supervised Practice**

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

13 Continuous – At least 75% of a work week

14 Substantial - At least 50% of a work week

15 Partial - At least 25% of a work week

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

17 Within thirty (30) days of the effective date of this decision, respondent shall have his
18 supervisor submit notification to the board in writing stating that the supervisor has read the
19 decision in case number 4614 and is familiar with the required level of supervision as determined
20 by the board or its designee. It shall be the respondent's responsibility to ensure that his
21 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
22 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
23 acknowledgements to the board shall be considered a violation of probation.

24 If respondent changes employment, it shall be the respondent's responsibility to ensure that
25 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
26 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
27 commences, submit notification to the board in writing stating the direct supervisor and
28 pharmacist-in-charge have read the decision in case number 4614 and is familiar with the level of

1 supervision as determined by the board. Respondent shall not practice pharmacy and his license
2 shall be automatically suspended until the board or its designee approves a new supervisor.
3 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
4 acknowledgements to the board shall be considered a violation of probation.

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

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

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

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

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

22 **19. No New Ownership of Licensed Premises**

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

1 that interest, but only to the extent of that position or interest as of the effective date of this
2 decision. Violation of this restriction shall be considered a violation of probation.

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

4 During the period of probation, respondent shall not supervise any intern pharmacist
5 or serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
6 charge. However, if during the period of probation respondent serves as a pharmacist-in-charge,
7 respondent shall retain an independent consultant at his or her own expense who shall be
8 responsible for reviewing pharmacy operations on a monthly basis for the first three (3) years of
9 probation and quarterly for the last two (2) years of probation, for compliance by respondent with
10 state and federal laws and regulations governing the practice of pharmacy and for compliance by
11 respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist
12 licensed by and not on probation with the board and whose name shall be submitted to the board
13 or its designee, for prior approval, within thirty (30) days of the effective date of this decision.
14 Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of
15 which he or she is not the sole owner. Failure to timely retain, seek approval of, or ensure timely
16 reporting by the consultant shall be considered a violation of probation.

17 **21. Ethics Course**

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

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

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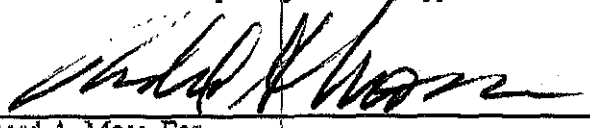
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ACCEPTANCE

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

DATED: 6/3/14 
ANTONY M. BRADLEY
Respondent

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

DATED: 6/4/14 
Richard A. Moss, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: _____ Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

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DATED: _____
ANTONY M. BRADLEY
Respondent

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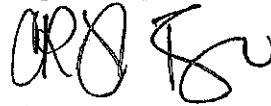
DATED: _____
Richard A. Moss, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 06/05/2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4614

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804
7 *Attorneys for Complainant*

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A C C U S A T I O N

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17 Pharmacist No. 22883

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22 **DOUGLAS JAY AUSTIN**
22702 Eaglespur Road
23 Diamond Bar, CA 91765
24 Pharmacist No. 40244

25 Respondents.

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1 Complainant alleges:

2 PARTIES

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

5 2. On or about July 9, 2003, the Board of Pharmacy issued Pharmacy License Number
6 PHY 45665 to Glesener Pharmacy. The Pharmacy License was in full force and effect at all
7 times relevant to the charges brought herein and will expire on July 1, 2014, unless renewed.

8 3. On or about April 8, 1963, the Board of Pharmacy issued Pharmacist Number 22883
9 to Joseph D'Angelo (Respondent D'Angelo). The Pharmacist License was in full force and effect
10 at all times relevant to the charges brought herein and will expire on July 31, 2014, unless
11 renewed.

12 4. On or about October 19, 1981, the Board of Pharmacy issued Pharmacist Number
13 36740 to Anthony M. Bradley (Respondent Bradley). The Pharmacist License was in full force
14 and effect at all times relevant to the charges brought herein and will expire on May 31, 2015,
15 unless renewed.

16 5. On or about August 21, 1986, the Board of Pharmacy issued Pharmacist Number
17 40244 to Douglas Jay Austin (Respondent Austin). The Pharmacist License was in full force and
18 effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless
19 renewed.

20 JURISDICTION

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

24 7. Section 118, subdivision (b), of the Code provides that the
25 suspension/expiration/surrender/cancellation of a license shall not deprive the
26 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
27 within which the license may be renewed, restored, reissued or reinstated.
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8. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding on year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

9. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY AUTHORITY

10. Section 4301 of the Code states:

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:

(a) Gross immorality.

(b) Incompetence.

(c) Gross negligence.

1 (d) The clearly excessive furnishing of controlled substances in violation of
2 subdivision (a) of Section 11153 of the Health and Safety Code.

3 (e) The clearly excessive furnishing of controlled substances in violation of
4 subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be
5 considered in determining whether the furnishing of controlled substances is clearly
6 excessive shall include, but not be limited to, the amount of controlled substances
7 furnished, the previous ordering pattern of the customer (including size and frequency
8 of orders), the type and size of the customer, and where and to whom the customer
9 distributes its product.

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

13 (g) Knowingly making or signing any certificate or other document that falsely
14 represents the existence or nonexistence of a state of facts.

15 ...

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

18 ...

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

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

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

27 ...

28 11. Section 4022 of the Code states

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.

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12. Section 4051 of the Code states:

(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription, pursuant to Section 4052, and otherwise provide clinical advice or information or patient consultation if all of the following conditions are met:

(1) The clinical advice or information or patient consultation is provided to a health care professional or to a patient.

(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

(3) Access to the information described in paragraph (2) is secure from unauthorized access and use."

13. Section 4077 of the Code states, in pertinent part, that except as provided in subdivisions (b) and (c), of this section, no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Section 4076.

14. Section 4081 of the Code states:

(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.

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15. Code section 4126.5, subdivision (a), provides:

(a) A pharmacy may furnish dangerous drugs only to the following:

...

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

...

(7) To another pharmacy under common control.

16. Section 4328 of the Code states:

Except as otherwise provided in this chapter, any person who permits the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs in his or her pharmacy, except by a pharmacist, is guilty of a misdemeanor.

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

18. Section 4105 of the Code states:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the designated representative on duty, shall, at all times during which the licensed

1 premises are open for business, be able to produce a hard copy and electronic copy of
2 all records of acquisition or disposition or other drug or dispensing-related records
maintained electronically.

3 (e)(1) Notwithstanding subdivisions (a), (b), and (c), the board, may upon written
4 request, grant to a licensee a waiver of the requirements that the records described in
subdivisions (a), (b), and (c) be kept on the licensed premises.

5 (2) A waiver granted pursuant to this subdivision shall not affect the board's
6 authority under this section or any other provision of this chapter.

7 **STATE REGULATORY AUTHORITY**

8 19. California Code of Regulations, title 16, section 1714, states:

9 (a) All pharmacies (except hospital inpatient pharmacies as defined by Business
10 and Professions Code section 4029 which solely or predominantly furnish drugs to
inpatients of the hospital) shall contain an area which is suitable for confidential
patient counseling.

11 (b) Each pharmacy licensed by the board shall maintain its facilities, space,
12 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
secured and distributed. The pharmacy shall be of sufficient size and unobstructed
13 area to accommodate the safe practice of pharmacy.

14 (c) The pharmacy and fixtures and equipment shall be maintained in a clean and
15 orderly condition. The pharmacy shall be dry, well-ventilated, free from rodents and
insects, and properly lighted. The pharmacy shall be equipped with a sink with hot
and cold running water for pharmaceutical purposes.

16 (d) Each pharmacist while on duty shall be responsible for the security of the
17 prescription department, including provisions for effective control against theft or
diversion of dangerous drugs and devices, and records for such drugs and devices.
18 Possession of a key to the pharmacy where dangerous drugs and controlled
substances are stored shall be restricted to a pharmacist.

19 (e) The pharmacy owner, the building owner or manager, or a family member of
20 a pharmacist owner (but not more than one of the aforementioned) may possess a key
to the pharmacy that is maintained in a tamper evident container for the purpose of 1)
21 delivering the key to a pharmacist or 2) providing access in case of emergency. An
emergency would include fire, flood or earthquake. The signature of the pharmacist-
22 in-charge shall be present in such a way that the pharmacist may readily determine
whether the key has been removed from the container.

23 (f) The board shall require an applicant for a licensed premise or for renewal of
24 that license to certify that it meets the requirements of this section at the time of
licensure or renewal.

25 (g) A pharmacy shall maintain a readily accessible restroom. The restroom shall
26 contain a toilet and washbasin supplied with running water.

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1 20. California Code of Regulations, title 16, section 1718, states:

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

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

6 **FEDERAL REGULATORY AUTHORITY**

7
8 21. Code of Federal Regulations 1311.30, subdivision (c),

9 (a) Only the certificate holder may access or use his or her digital certificate and
private key.

10 (b) The certificate holder must provide FIPS-approved secure storage for the
11 private key, as discussed by FIPS 140-2, 180-2, 186-2, and accompanying change
12 notices and annexes, as incorporated by reference in § 1311.08.

12 (c) A certificate holder must ensure that no one else uses the private key. While
13 the private key is activated, the certificate holder must prevent unauthorized use of
14 that private key.

14 (d) A certificate holder must not make back-up copies of the private key.

15 (e) The certificate holder must report the loss, theft, or compromise of the
16 private key or the password, via a revocation request, to the Certification Authority
17 within 24 hours of substantiation of the loss, theft, or compromise. Upon receipt and
18 verification of a signed revocation request, the Certification Authority will revoke the
19 certificate. The certificate holder must apply for a new certificate under the
20 requirements of § 1311.25.

19 22. Code of Federal Regulations 1311.60, subdivision (a),

20 (a) A supplier and purchaser must maintain records of CSOS electronic orders
21 and any linked records for two years. Records may be maintained electronically.
22 Records regarding controlled substances that are maintained electronically must be
23 readily retrievable from all other records.

22 (b) Electronic records must be easily readable or easily rendered into a format
23 that a person can read. They must be made available to the Administration upon
24 request.

24 (c) CSOS certificate holders must maintain a copy of the subscriber agreement
25 that the Certification Authority provides for the life of the certificate.

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1 COSTS

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

6 DRUGS

7 24. Oxycontin, a brand name formation of oxycodone hydrochloride, is an opioid agonist
8 and a Schedule II controlled substance with an abuse liability similar to morphine. OxyContin is
9 for use in opioid tolerant patients only. It is a Schedule II controlled substance pursuant to Health
10 and Safety Code section 11055, subdivision (b)(1), and a dangerous drug pursuant to Business
11 and Professions Code section 4022.

12 FACTS

13 Respondent Glesener Pharmacy, Respondent Bradley, and Respondent D'Angelo.

14 25. Respondent Glesner Pharmacy fills approximately 2200 prescriptions per week. In
15 addition to filling outpatient prescriptions, the pharmacy contracts with approximately 45 board
16 and care homes, dialysis centers and the Los Angeles County Department of Mental Health.
17 Medications filled for the board and care homes are delivered by employees of Glesener
18 Pharmacy.

19 26. Respondent Bradley and Respondent D'Angelo are each 50% owners of Respondent
20 Glesener Pharmacy. Usually four pharmacists work Monday through Friday and one on
21 Saturday. Each pharmacist is assigned a designated area and task within the pharmacy.

22 27. Respondent Bradley oversaw the sales of durable medical equipment in the front end
23 of the pharmacy and oversaw the overall operations of the pharmacy.

24 28. Respondent D'Angelo oversaw the paperwork, including drug purchase and delivery,
25 and human resources.

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1 **Pharmacy Technicians JH, CR and XC**

2 29. Pharmacist Technician JH¹ worked at Glesener Pharmacy from 2008 until she
3 resigned on November 10, 2011. She worked in the dispensing area of the pharmacy where the
4 Schedule II controlled drugs were kept.

5 30. Pharmacist Technician CR began working at Glesener Pharmacy in 2001 and assisted
6 with durable equipment. CR became a licensed technician in 2010. In or about March of 2011,
7 she began working in the dispensing area of the pharmacy where the Schedule II controlled drugs
8 were kept.

9 31. Pharmacist Technician XC worked for Glesener Pharmacy for approximately 14
10 years and was assigned to data entry. Pharmacy Technician TH also worked for Glesener
11 Pharmacy in 2011.

12 **Operational Standards and Security**

13 **Respondent Austin and the CSOS System Password**

14 32. Respondent Austin worked as a pharmacist at Glesener Pharmacy from 2005 until
15 November 14, 2011, when he was terminated as a result of missing medication from the
16 pharmacy. Respondent Austin was responsible for ordering Schedule II controlled drugs. He
17 ordered drugs under the Drug Enforcement Administration's (DEA) Controlled Substance
18 Ordering System (CSOS) program² through the use of his CSOS password, also known as a
19 private key. Respondent Austin also checked in and signed the delivery of the Schedule II
20 controlled drugs. Respondent Austin was assigned to fill and dispense outpatient prescriptions
21

22 ¹ Initials are used to protect the identity of individuals. Identities will be disclosed during
23 discovery.

24 ² This system allows for secure electronic ordering of controlled substances through a
25 protected CSOS password. A CSOS Certificate is a digital identity issued by the DEA's CSOS
26 Certification Authority that allows for electronic ordering for Schedule I and II (as well as III-V)
27 controlled substances. Each CSOS certificate is issued to only one individual person. This
28 person, called a CSOS Subscriber, is an individual who enrolled in the CSOS program with the
DEA and whose name appears in the digital certificate. A digital signature using a CSOS
certificate is required when submitting an electronic order for controlled substances. Only the
individual subscriber whose name appears in the certificate is authorized to perform this digital
signature. While the paper DEA Form-222 ordering process is still allowed, CSOS is the only
method for ordering Schedule I and II controlled substances electronically.

1 Monday through Friday, 40 hours per week, with one hour lunch break. Respondent Austin
2 maintained a personal monthly log that documented what Schedule II controlled drugs were
3 dispensed. He maintained this record at home but it was not maintained accurately each month.
4 However, he was aware that the pharmacy dispensed an average of 300 pills per month of
5 Oxycontin 80 mg.

6 33. Respondent Austin's CSOS password was not secure and was located in a folder,
7 with instructions how to order drugs, accessible to others in the pharmacy. Anyone could log into
8 his account and electronically order Schedule II controlled drugs for the pharmacy. From May 1,
9 2011 to November 14, 2011, Respondent Glesener Pharmacy, Respondent Bradley and
10 Respondent Austin failed to maintain records for the CSOS electronic orders.

11 34. From May 1, 2011 to November 14, 2011, Respondent Glesener Pharmacy,
12 Respondent Bradley and Respondent Austin knowingly allowed pharmacy staff to use a CSOS
13 password registered to Respondent Austin to order Schedule II controlled drugs, including
14 Pharmacist Technicians XC and TH. From September 7, 2011 through September 23, 2011,
15 Respondent Austin was on vacation and not at the pharmacy. Respondent Austin's password
16 was used on September 15, 2011 and September 22, 2011 by staff other than Respondent Austin
17 to order Schedule II controlled drugs. Pharmacist Technician XC placed drug orders in
18 Respondent Austin's absence.

19 **Acquisition, Disposition and Storage of Drugs**

20 35. From May 1, 2011 to November 14, 2011, typically each morning, drugs were
21 delivered to the pharmacy by AmerisourceBergen's delivery driver into the back room of the
22 pharmacy. Respondent D'Angelo, Respondent Bradley or Respondent Austin would sign for the
23 drug delivery and then the drugs were "stickered." Schedule II controlled drugs were placed in a
24 locked cabinet located in the dispensing area or left on the dispensing counter. There was no log
25 book or any record keeping of any Schedule II narcotics for receipt or dispensing. Employees
26 worked in the backroom bubble packing 30 day dispensing cards for board and care homes. The
27 employees would come to the dispensing counter and, without telling a pharmacist or showing
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1 them prescription labels, would take whatever Schedule II controlled drugs they needed to bubble
2 pack.

3 36. A pharmacist had a key to the locked drawer which contained Schedule II controlled
4 drugs were kept in the locked drawer, except Percocet. However, the drawer was unlocked at the
5 start of the day and left open until a pharmacist locked it at the end of the day. The drawer was
6 not secure and was accessible to others in the pharmacy.

7 Loss of Controlled Substances

8 37. In early October of 2011, Respondent D'Angelo was considering changing the
9 wholesaler from whom they purchased drugs and, therefore, examined the recent Schedule II
10 controlled drug purchases. He noticed an escalation in purchases of Schedule II controlled drugs
11 and advised Respondent Bradley of same.

12 38. Respondent Bradley then noticed a larger amount of Oxycodone was ordered by the
13 pharmacy. He held a staff meeting and reminded staff that they should not accept any
14 prescriptions for Oxycodone and Oxycontin from customers outside the immediate area. He also
15 instructed staff to check to see if the prescribing physician had any disciplinary actions prior to
16 accepting the prescription.

17 39. On November 7, 2011, Respondent Austin approached Respondent Bradley and
18 stated that he ordered three bottles of Oxycontin 80 mg on November 4, 2011 and two bottles
19 were missing. There were no prescriptions for Oxycontin 80 mg dispensed. Respondent Bradley
20 reviewed the Schedule II controlled drug delivery receipt and noticed Respondent Austin had
21 failed to mention he had also ordered 4 bottles of Oxycodone 10 mg and 4 bottles of Oxycodone
22 30 mg.

23 40. A review of 8 months of purchase, usage and inventory showed a loss of Schedule II
24 controlled drugs for a six month period beginning in May 1, 2011 to November 2011. An
25 analysis of the Schedule II controlled drug invoices revealed the pharmacy was missing tablets of
26 Oxycodone and Oxycontin.

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1 41. From May 1, 2011 through November 14, 2011, Respondent Austin, while working at
2 Glesener Pharmacy, was aware that the pharmacy was ordering excessive amounts of Oxycontin
3 80 mg tablets without reason. Further, while he was responsible for ordering the Schedule II
4 controlled substances, 7, 200 tablets of Oxycontin 80 mg, 3,450 tablets of Oxycontin 60 mg and
5 7, 520 tablets of Oxycodone 30 mg were unaccounted for and he could not provide disposition
6 records for that medication.

7 42. On November 14, 2011, Respondent Austin was terminated from his employment
8 with Respondent Glesener Pharmacy.

9 43. On or about the November 15, 2011, Respondent D'Angelo, as partner of Respondent
10 Glesener Pharmacy, filed a U.S. Department of Justice Drug Enforcement Administration (DEA)
11 Report of Theft or Loss of Controlled Substances. The report stated that Respondent Austin,
12 using his CSOS password, purchased "all" Schedule II controlled drugs. The report stated that,
13 Respondent Austin, when confronted by Respondent D'Angelo, admitted to purchasing several
14 times more Oxycodone than was going to be dispensed. The report also stated that Respondent
15 Austin's purchases included the following, for example, for Oxycontin 80 mg:

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<u>Month</u>	<u>Usage</u>	<u>Purchased</u>
June 2011	300	800
July 2011	300	1300
August 2011	300	1600
September 2011	300	1900
November 2011	300	1600

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1 44. The report further stated that a loss of Schedule II controlled drugs occurred between
2 May 2011 and November 7, 2011 as follows:

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<u>Type of Drugs Missing</u>	<u>Amount of Drug</u>
Oxycodone 30 mg tablets	2806 tablets
Oxycontin 60 mg tablets	2950 tablets
Oxycontin 80 mg tablets	5766 tablets

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8 45. The report also stated that a theft report had been made with the Covina Police
9 Department.

10 46. A further review of the purchase records of AmerisourceBergen, the dispensing
11 records, and Respondent Glesener Pharmacy's annual inventory, indicates that the actual loss of
12 controlled substance is as follows:

13

<u>Type of Drugs Missing</u>	<u>Amount of Drug</u>
Oxycodone 30 mg tablets	7520 tablets
Oxycontin 60 mg tablets	3450 tablets
Oxycontin 80 mg tablets	7200 tablets

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18 47. Respondent Glesener Pharmacy, Respondent Bradley, Respondent D'Angelo, from
19 May 1, 2011 through November 14, 2011, did not maintain disposition records for and could not
20 account for these missing drugs.

21 48. On November 23, 2011, the Board received a copy of the report filed with the DEA
22 by Respondent D'Angelo.

23 49. When questioned by a Board Inspector regarding why he ordered large amounts of
24 three different strengths of Oxycodone days apart, Respondent Austin replied "I don't know."
25 When asked why he ordered an average of 1300 tablets of Oxycotin a month, after he confirmed
26 that the pharmacy dispensed an average of 300 Oxycontin 80 mg tablets per month, Respondent
27 Austin again replied "I don't know."
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1 FIRST CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Lack of Operational Standards and Security- Pharmacy**
3 **(Against Respondent Glesener Pharmacy)**

4 50. Respondent Glesener Pharmacy is subject to discipline under section 4301,
5 subsection (o) of the Code, and/or California Code of Regulations, title 16, section 1714,
6 subsection (b), for failure to maintain its facilities, space, fixtures, and equipment so that drugs
7 are safely and properly prepared, maintained, secured and distributed. The circumstances are as
8 follows:

9 a. From May 1, 2011 through November 14, 2011, Respondent Glesener Pharmacy
10 could not account for the following drugs: 7, 200 tablets of Oxycontin 80 mg, 3,450 tablets of
11 Oxycontin 60 mg and 7, 520 tablets of Oxycodone 30 mg. Complainant hereby incorporates
12 paragraphs 32 through 49 inclusive, as though fully set forth herein.

13 b. From May 1, 2011 through November 14, 2011, Schedule II controlled drugs were
14 placed in a locked cabinet located in the dispensing area or left on the dispensing counter. There
15 was no log book or any record keeping of any Schedule II narcotics for receipt or dispensing.
16 Employees worked in the backroom bubble packing 30 day dispensing card for board and care.
17 homes. The employees would come to the dispensing counter and, without telling a pharmacist
18 or showing them prescription labels, would take whatever Schedule II controlled drugs they
19 needed to bubble pack. A pharmacist had a key to the locked drawer which contained Schedule II
20 controlled drugs, except Percocet. However, the drawer was unlocked at the start of the day and
21 left open until a pharmacist locked it at the end of the day. The drawer was not secure and was
22 accessible to others in the pharmacy. Complainant hereby incorporates paragraphs 35 through 36
23 inclusive, as though fully set forth herein.

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1 SECOND CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Lack of Operational Standards and Security- Pharmacists**
3 **(Against Respondent D'Angelo, Respondent Bradley, and Respondent Austin)**

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5 51. Respondent D' Angelo, Respondent Bradley, and Respondent Austin are each and
6 severally subject to discipline under section 4301, subdivision (o), of the Code, and California
7 Code of Regulations, title 16, section 1714, subdivision (d), for failure to maintain the security of
8 the prescription department, including provisions for effective control against theft or diversion of
9 dangerous drugs and devices, and records for such drugs and devices and to ensure that
10 possession of a key to the pharmacy where dangerous drugs and controlled substances are stored
11 is restricted to pharmacists. The circumstances are as follows:

12 a. From May 1, 2011 through November 14, 2011, Respondent D'Angelo and
13 Respondent Bradley failed to maintain the security of the prescription department and allowed
14 and/or were aware the pharmacy was ordering excessive amounts of Schedule II controlled drugs
15 without reason. A total of 7,200 tablets of Oxycontin 80 mg, 3,450 tablets of Oxycontin 60 mg
16 and 7,520 tablets of Oxycodone 30 mg were unaccounted for. Complainant hereby incorporates
17 paragraphs 32 through 49 inclusive, as though fully set forth herein.

18 b. From May 1, 2011 through November 14, 2011, Respondent D'Angelo and
19 Respondent Bradley failed to maintain the security of the prescription department and allowed
20 Schedule II controlled drugs to be placed in a locked cabinet located in the dispensing area or left
21 on the dispensing counter. There was no log book or any record keeping of any Schedule II
22 narcotics for receipt or dispensing. Employees worked in the backroom bubble packing 30 day
23 dispensing card for board and care homes. The employees would come to the dispensing counter
24 and, without telling a pharmacist or showing them prescription labels, would take whatever
25 Schedule II controlled drugs they needed to bubble pack. A pharmacist had a key to the locked
26 drawer which contained all Schedule II controlled drugs, except Percocet. However, the drawer
27 was unlocked at the start of the day and left open until a pharmacist locked it at the end of the
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1 day. The drawer was not secure and was accessible to others in the pharmacy. Complainant
2 hereby incorporates paragraphs 35 through 36 inclusive, as though fully set forth herein.

3 c. From May 1, 2011 through November 14, 2011, Respondent D'Angelo, and
4 Respondent Bradley knowingly allowed pharmacy technicians to order Schedule II controlled
5 drugs electronically using a CSOS password/account assigned to Respondent Austin.
6 Complainant hereby incorporates paragraphs 32 through 34, inclusive, as though fully set forth
7 herein.

8 d. From May 1, 2011 to November 14, 2011, Respondent Austin knowingly left his
9 CSOS password to electronically order Schedule II controlled rugs available for any staff to
10 access. Using his encrypted password, 1,200 Oxycontin 80 mg tablets were ordered by someone
11 other than himself between September 15, 2011 and September 23, 2011 and could not be
12 accounted for. Complainant hereby incorporates paragraphs 32 through 34, inclusive, as though
13 fully set forth herein.

14 e. From May 1, 2011 through November 14, 2011 while working at Respondent
15 Glesener Pharmacy and Respondent Austin ordered an excessive amount of Oxycontin 80 mg
16 tablets, although he was aware the pharmacy dispensed on average 300 tablets of Oxycontin 80
17 mg per month, and could not explain why. 7, 200 tablets of Oxycontin 80 mg, 3,450 tablets of
18 Oxycontin 60 mg and 7, 520 tablets of Oxycodone 30 mg were unaccounted for. Complainant
19 hereby incorporates paragraphs 32 through 49 inclusive, as though fully set forth herein.

20 THIRD CAUSE FOR DISCIPLINE

21 **Failure to Maintain Records of Acquisition and Disposition of Dangerous Drugs** 22 **(Against Respondent Glesener Pharmacy, Respondent D'Angelo and Respondent Bradley)**

23 52. Respondent Glesener Pharmacy, Respondent D'Angelo, and Respondent Bradley, are
24 each and severally subject to disciplinary action under section 4081, subdivision (a), and section
25 4105, of the Code, for failure to maintain all records of acquisition or disposition of dangerous
26 drugs at all times open to inspection and preserved for at least three years from the date of
27 making. The circumstances are as follows:
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1 a. From May 1, 2011 through November 14, 2011, Glesener Pharmacy, Respondent
2 Bradley, and Respondent D' Angelo, did not maintain disposition records for 7,200 tablets of
3 Oxycontin 80 mg, 3,450 tablets of Oxycontin 60 mg and 7,520 tablets of Oxycodone 30 mg.
4 Complainant hereby incorporates paragraphs 40 through 47 inclusive, as though fully set forth
5 herein.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **Unprofessional Conduct: Failure to Maintain Records for CSOS Electronic Orders**
8 **Against Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley**
9 **and Respondent Austin)**

10 53. Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley, and
11 Respondent Austin are each and severally subject to disciplinary action under section 4301,
12 subdivision (o), of the Code and under Code of Federal Regulations section 1311.60, subdivision
13 (a), for unprofessional conduct in that they violated or attempted to violate, directly or indirectly,
14 any provision of the applicable federal and state laws and regulations governing pharmacy when
15 they failed to maintain records of CSOS electronic orders and any linked orders for two years.
16 The circumstances are as follows:

17 a. From May 1, 2011 through November 14, 2011, Respondent Glesener Pharmacy,
18 Respondent D'Angelo, Respondent Bradley and Respondent Austin failed to maintain records of
19 CSOS electronic orders as required by law. They knowingly allowed pharmacy staff to use a
20 CSOS password registered to Respondent Austin to order Schedule II controlled drugs. The
21 password was located in a folder accessible by all staff and was used on at least September 15,
22 2011 and September 22, 2011 by staff other than Respondent Austin to order Schedule II
23 controlled drugs. Complainant hereby incorporates paragraphs 32 through 34, inclusive, as
24 though fully set forth herein.

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1 FIFTH CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Failure to Prevent Unauthorized Use of CSOS Password**
3 **(Against Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley, and**
4 **Respondent Austin)**

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6 54. Respondent Glesener Pharmacy, Respondent D'Angelo, Respondent Bradley, and
7 Respondent Austin are each and severally subject to disciplinary action under section 4301,
8 subdivision (o), of the Code, and under Code of Federal Regulations section 1311.30, subdivision
9 (c), for unprofessional conduct in that they violated or attempted to violate, directly or indirectly,
10 any provision of the applicable federal and state laws and regulations governing pharmacy when
11 they failed to prevent unauthorized use of CSOS password for digitally signing orders. The
12 circumstances are as follows:

13 a. From May 1, 2011 through November 14, 2011, Respondent Glesener Pharmacy,
14 Respondent D'Angelo, and Respondent Bradley encouraged Respondent Austin to provide his
15 CSOS password to the pharmacy staff so they could order Schedule II controlled drugs when he
16 was not present. The private password assigned to Respondent Austin was located in a folder
17 accessible by all staff and was used on September 15, 2011 and September 22, 2011 by staff other
18 than Respondent Austin to order Schedule II controlled drugs. Complainant hereby incorporates
19 paragraphs 32 through 34, inclusive, as though fully set forth herein.

20 b. From May 1, 2011 through November 14, 2011, Respondent Austin failed to prevent
21 the unauthorized use of his CSOS password. He willingly left his CSOS password in a folder for
22 any staff to access in his absence and it was used on September 15, 2011 and September 22, 2011
23 by someone other than himself. Complainant hereby incorporates paragraphs 32 through 34,
24 inclusive, as though fully set forth herein.

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1 SIXTH CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Dishonesty**

3 **(Against Respondent D'Angelo, Respondent Bradley and Respondent Austin)**

4 55. Respondent D'Angelo, Respondent Bradley, and Respondent Austin are each and
5 severally subject to discipline under section 4301, subdivisions (f) and (p), of the Code, for
6 unprofessional conduct in that they were dishonest and knowingly allowed pharmacy technicians
7 to represent Respondent Austin and use a CSOS password registered to Respondent Austin to
8 electronically order Schedule II controlled drugs from a drug wholesaler. Complainant hereby
9 incorporates paragraphs 32 through 34, inclusive, as though fully set forth herein.

10 SEVENTH CAUSE FOR DISCIPLINE

11 **Unprofessional Conduct: Falsely Representing Facts**

12 **(Against Respondent D'Angelo and Respondent Bradley)**

13 56. Respondent D'Angelo and Respondent Bradley are each and severally subject to
14 discipline under section 4301, subdivision (g), of the Code, for unprofessional conduct in that
15 they knowingly made or signed a certificate or other document that falsely represented the
16 existence of the fact that only Respondent Austin used his CSOS password to order all Schedule
17 II controlled drugs, when they knowingly allowed pharmacy technicians to use a CSOS password
18 registered to Respondent Austin to electronically order Schedule II controlled drugs from a drug
19 wholesaler. Complainant hereby incorporates paragraphs 32 through 34, and 43, inclusive, as
20 though fully set forth herein.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 **Unprofessional Conduct: Failure to Report Loss, Theft or Compromise of Private Key or**
3 **Password to Certification Authority Within 24 Hours**
4 **(Against Respondent Austin)**

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6 57. Respondent Austin is subject to disciplinary action under section 4301, subdivision
7 (o), of the Code, and under Code of Federal regulations 1311.30, subdivision (e), for
8 unprofessional conduct in that he violated or attempted to violate, directly or indirectly, any
9 provision of the applicable federal and state laws and regulations governing pharmacy when he
10 failed to report the loss, theft or compromise of his CSOS password within 24 hours of the loss,
11 theft or compromise to the Drug Enforcement Administration's Certification Authority³. From
12 May 1, 2011 through November 14, 2011, Respondent Austin, while working at Respondent
13 Glesener Pharmacy, knew his CSOS password had been used by staff other than himself,
14 including on September 15, 2011 and September 22, 2011, and did not report the compromise to
15 the Drug Enforcement Administration's Certification Authority. Complainant hereby
16 incorporates paragraphs 32 through 34, inclusive, as though fully set forth herein:

17 PRAYER

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

- 20 1. Revoking or suspending Pharmacy License Number PHY 45665, issued to
21 GLESENER PHARMACY;
- 22 2. Revoking or suspending Pharmacist Number 22883, issued to JOSEPH D'ANGELO;
- 23 3. Revoking or suspending Pharmacist Number 36740, issued to ANTONY M.
24 BRADLEY;

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27 ³ As set forth above, the CSOS Certification Authority is operated by the DEA and issues
28 CSOS Certificates for the electronic ordering of controlled substances.

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4. Revoking or suspending Pharmacist Number 40244, issued to DOUGLAS JAY AUSTIN;

5. Ordering GLESENER PHARMACY, JOSEPH D'ANGELO, ANTONY M. BRADLEY and DOUGLAS JAY AUSTIN to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

6. Taking such other and further action as deemed necessary and proper.

DATED: 9/7/13

Virginia Herold

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

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