

**California State Board of Pharmacy**

1625 N. Market Blvd, N219, Sacramento, CA 95834

Phone: (916) 574-7900

Fax: (916) 574-8618

www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

2016 MAR 30 AM 11:28

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>KERR'S PHARMACY</u>	Case No. <u>AC 5106</u>
Address of Record: <u>12142 SANTA MONICA BLVD</u> <u>LOS-ANGELES, CA 90025</u>	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. AC 5106, I hereby request to surrender my premises license, License No. PHY 35423. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Applicant's Signature

Date

Executive Officer's Approval

Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

ALL THE PROPER DOCUMENTS HAVE ALREADY BEEN
MAILED VIA CERTIFIED MAIL RE: THE SALE
OF THE BUSINESS TO CVS

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>HARRY PETERS</u>	Case No. <u>AC5106</u>
Address of Record: <u>12142 SANTA MONICA BLVD</u> <u>LOS-ANGELES, CA 90025</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC5106, I hereby request to surrender my license.

License No. RPH 28331. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Applicant's Signature

Date

Executive Officer's Approval

Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 18, California Code of Regulations section 1780. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

KERR'S PHARMACY
12142 Santa Monica Blvd.
Los Angeles, CA 90025
Original Permit No. PHY 35423,

HARRY PETERS
12142 Santa Monica Blvd.
Los Angeles, CA 90025
Original Pharmacist License No. RPH 28331,

and

JOHN WILLIAM SHAFFER
151 Ventura Way
Chatsworth, CA 91311
Original Pharmacist License No. RPH 36106

Respondents.

Case No. 5106

OAH No. 2015030714

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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 at 5:00 p.m. on April 1, 2016.

It is so ORDERED on March 2, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
Deputy Attorney General
4 State Bar No. 274129
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2562
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

11 **KERR'S PHARMACY,**
12 12142 Santa Monica Blvd.
Los Angeles, CA 90025
13 HARRY PETERS, Pharmacist-In-Charge

14 Original Permit No. PHY 35423,

15 **HARRY PETERS**
12142 Santa Monica Blvd
16 Los Angeles, CA 90025

17 Original Pharmacist License No. RPH 28331,

18 **and**

19 **JOHN WILLIAM SHAFER**
151 Ventura Way
20 Chatsworth, CA 91311

21 Original Pharmacist License No. RPH 36106

22 Respondents.
23

Case No. 4998 and 5106

OAH No. 2015030714

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENTS KERR'S PHARMACY
AND HARRY PETERS ONLY**

24 IT IS HEREBY STIPULATED AND AGREED by and between the parties¹ to the above-
25 entitled proceedings that the following matters are true:
26

27 ¹ The Parties to this Stipulation are the Board of Pharmacy, Kerr's Pharmacy and Harry
28 Peters. John William Shafer is not a party to this stipulation.

1 **PARTIES**

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

6 2. Respondent Kerr's Pharmacy with Harry Peters, Pharmacist-In-Charge and
7 Respondent Harry Peters are represented in this proceeding by attorney Armond Marcarian, Esq.,
8 whose address is: 31111 West Agoura Road, Suite 260, Westlake Village, CA 91361.

9 3. On or about February 24, 1989, the Board of Pharmacy issued Original Permit No.
10 PHY 35423 to Kerr's Pharmacy, Harry Peters, Pharmacist-In-Charge ("Respondent Pharmacy").
11 The Original Permit was in full force and effect at all times relevant to the charges brought in the
12 Accusation in Case Nos. 4998 and 5106 and will expire on February 1, 2016, unless renewed.

13 4. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist
14 License No. RPH 28331 to Harry Peters ("Respondent Peters"). The Original Pharmacist License
15 was in full force and effect at all times relevant to the charges brought in the Accusation in Case
16 Nps. 4998 and 5106 and will expire on April 30, 2016, unless renewed.

17 **JURISDICTION**

18 5. The Accusation in Case Nos. 4998 and 5106 was filed before the Board of Pharmacy
19 ("Board"), Department of Consumer Affairs, and is currently pending against Respondent
20 Pharmacy and Respondent Peters (collectively, "Respondents"). The Accusation and all other
21 statutorily required documents were properly served on Respondents on February 17, 2015.
22 Respondents timely filed their Notices of Defense contesting the Accusation.

23 6. A copy of the Accusation in Case Nos. 4998 and 5106 is attached as Exhibit A and
24 incorporated herein by reference.

25 **ADVISEMENT AND WAIVERS**

26 7. Respondents have carefully read, fully discussed with counsel, and understand the
27 charges and allegations in the Accusation in Case Nos. 4998 and 5106. Respondents have also
28

1 carefully read, fully discussed with counsel, and understand the effects of this Stipulated
2 Settlement and Disciplinary Order.

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

10 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
11 every right set forth above.

12 CULPABILITY

13 10. Respondent Pharmacy understands and agrees that the charges and allegations in
14 Accusation in Case Nos. 4998 and 5106, if proven at a hearing, constitute cause for imposing
15 discipline upon its Original Permit.

16 11. Respondent Peters understands and agrees that the charges and allegations in
17 Accusation in Case Nos. 4998 and 5106, if proven at a hearing, constitute cause for imposing
18 discipline upon his Original Pharmacist License.

19 12. For the purpose of resolving the Accusation without the expense and uncertainty of
20 further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual
21 basis for the charges in the Accusation, and that Respondents hereby give up their right to contest
22 those charges.

23 13. Respondent Pharmacy agrees that its Original Permit No. PHY 35423 is subject to
24 discipline and it agrees to be bound by the Board's probationary terms as set forth in the
25 Disciplinary Order below.

26 14. Respondent Peters agrees that his Original Pharmacist License No. RPH 28331 is
27 subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in
28 the Disciplinary Order below.

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

18. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Orders:

IT IS HEREBY ORDERED that Original Permit No. PHY 35423 issued to Respondent Pharmacy is revoked. However, the revocation is stayed and Respondent Pharmacy is placed on probation for four (4) years on the following terms and conditions.

4

1 Respondent Pharmacy's owner shall obey all state and federal laws and regulations.

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

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

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

15 **2. Report to the Board**

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

25 **3. Interview with the Board**

26 Upon receipt of reasonable prior notice, Respondent Pharmacy's owner shall appear in
27 person for interviews with the board or its designee, at such intervals and locations as are
28 determined by the board or its designee. Failure to appear for any scheduled interview without

1 prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with
2 the board or its designee during the period of probation, shall be considered a violation of
3 probation.

4 **4. Cooperate with Board Staff**

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

8 **5. Reimbursement of Board Costs**

9 As a condition precedent to successful completion of probation, Respondent Pharmacy's
10 owner shall pay to the board its costs of investigation and prosecution in the amount of \$8,900.00.
11 Respondent Pharmacy's owner shall make payments on a payment plan approved by the Board.
12 Respondent Pharmacy and Respondent Peters shall be jointly and severally liable for the
13 reimbursement of Board costs.

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 owner shall not relieve Respondent Pharmacy of its
18 responsibility to reimburse the board its costs of investigation and prosecution.

19 **6. Probation Monitoring Costs**

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

24 **7. Status of License**

25 Respondent Pharmacy's owner shall, at all times while on probation, maintain current
26 licensure with the board. If Respondent Pharmacy's owner submits an application to the board,
27 and the application is approved, for a change of location, change of permit or change of
28 ownership, the board shall retain continuing jurisdiction over the license, and the respondent shall

1 remain on probation as determined by the board. Failure to maintain current licensure shall be
2 considered a violation of probation.

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

7 **8. License Surrender While on Probation/Suspension**

8 Following the effective date of this decision, should Respondent Pharmacy's owner
9 discontinue business, Respondent Pharmacy's owner may tender the premises license to the board
10 for surrender. The board or its designee shall have the discretion whether to grant the request for
11 surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance
12 of the surrender of the license, Respondent Pharmacy will no longer be subject to the terms and
13 conditions of probation.

14 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
15 renewal license to the board within ten (10) days of notification by the board that the surrender is
16 accepted. Respondent Pharmacy's owner shall further submit a completed Discontinuance of
17 Business form according to board guidelines and shall notify the board of the records inventory
18 transfer.

19 Respondent Pharmacy's owner shall also, by the effective date of this decision, arrange for
20 the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
21 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
22 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
23 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
24 days of its provision to the pharmacy's ongoing patients, Respondent Pharmacy's owner shall
25 provide a copy of the written notice to the board. For the purposes of this provision, "ongoing
26 patients" means those patients for whom the pharmacy has on file a prescription with one or more
27 refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty
28 (60) days.

Respondent Pharmacy's owner may not apply for any new licensure from the board for three (3) years from the effective date of the surrender. Respondent Pharmacy's owner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

Respondent Pharmacy's owner further stipulates that he or she shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

9. Notice to Employees

Respondent Pharmacy's owner shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent Pharmacy's owner shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, Respondent Pharmacy's owner shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the board shall be considered a violation of probation.

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

10. Owners and Officers: Knowledge of the Law

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

11. Posted Notice of Probation

1 Respondent Pharmacy's owner shall prominently post a probation notice provided by the
2 board in a place conspicuous and readable to the public. The probation notice shall remain posted
3 during the entire period of probation.

4 Respondent Pharmacy's owner shall not, directly or indirectly, engage in any conduct or
5 make any statement which is intended to mislead or is likely to have the effect of misleading any
6 patient, customer, member of the public, or other person(s) as to the nature of and reason for the
7 probation of the licensed entity.

8 Failure to post such notice shall be considered a violation of probation.

9 **12. Violation of Probation**

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

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

24 **13. Completion of Probation**

25 Upon written notice by the board or its designee indicating successful completion of
26 probation, Respondent Pharmacy's Original Permit No. PHY 35423 will be fully restored.

27 **14. Separate File of Records**

28 Respondent Pharmacy's owner shall maintain and make available for inspection a separate

1 file of all records pertaining to the acquisition or disposition of all controlled substances. Failure
2 to maintain such file or make it available for inspection shall be considered a violation of
3 probation.

4 **DISCIPLINARY ORDER AS TO RESPONDENT PETERS**

5 IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 28331 issued to
6 Respondent Peters is revoked. However, the revocation is stayed and Respondent Peters is placed
7 on probation for five (5) years on the following terms and conditions.

8 **15. Suspension**

9 As part of probation, Respondent Peters is suspended from the practice of pharmacy up to
10 and until six (6) hours of in-person remedial education on pharmacy management and securing
11 drugs in a pharmacy is completed.

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

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

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

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

28 **16. Obey All Laws**

1 Respondent Peters shall obey all state and federal laws and regulations.

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

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

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

15 **17. Report to the Board**

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

24 **18. Interview with the Board**

25 Upon receipt of reasonable prior notice, Respondent Peters shall appear in person for
26 interviews with the board or its designee, at such intervals and locations as are determined by the
27 board or its designee. Failure to appear for any scheduled interview without prior notification to
28

board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

19. Cooperate with Board Staff

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

20. Continuing Education

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

21. Notice to Employers

During the period of probation, Respondent Peters shall notify all present and prospective employers of the decision in case numbers 4998 and 5106 and the terms, conditions and restrictions imposed on Respondent Peters by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, Respondent Peters shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case numbers 4998 and 5106, and terms and conditions imposed thereby. It shall be Respondent Peters' responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If Respondent Peters works for or is employed by or through a pharmacy employment service, Respondent Peters must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5106 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent Peters undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment

1 service to report to the board in writing acknowledging that he has read the decision in case
2 number 5106 and the terms and conditions imposed thereby. It shall be Respondent Peters'
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
4 acknowledgment(s) to the board.

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

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

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

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

19 **23. Reimbursement of Board Costs**

20 As a condition precedent to successful completion of probation, Respondent Peters shall
21 pay to the board its costs of investigation and prosecution in the amount of \$8,900.00 Respondent
22 Peters shall make said payments on a payment plan approved by the Board. Respondent Peters
23 and Respondent Pharmacy shall be jointly and severally liable for the reimbursement of Board
24 costs.

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

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

3 **24. Probation Monitoring Costs**

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

8 **25. Status of License**

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

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

16 **26. License Surrender While on Probation/Suspension**

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

25 Upon acceptance of the surrender, Respondent Peters shall relinquish his pocket and wall
26 license to the board within ten (10) days of notification by the board that the surrender is
27 accepted. Respondent Peters may not reapply for any license from the board for three (3) years
28 from the effective date of the surrender. Respondent Peters shall meet all requirements applicable

1 to the license sought as of the date the application for that license is submitted to the board,
2 including any outstanding costs.

3 **27. Notification of a Change in Name, Residence Address, Mailing Address or**
4 **Employment**

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

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

12 **28. Tolling of Probation**

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

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

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

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

6 **29. Violation of Probation**

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

12 If Respondent Peters violates probation in any respect, the board, after giving Respondent
13 Peters notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
14 order that was stayed. Notice and opportunity to be heard are not required for those provisions
15 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of
16 the license. If a petition to revoke probation or an accusation is filed against Respondent Peters
17 during probation, the board shall have continuing jurisdiction and the period of probation shall be
18 automatically extended until the petition to revoke probation or accusation is heard and decided,
19 and the charges and allegations in the Accusation shall be deemed true and correct.

20 **30. Completion of Probation**

21 Upon written notice by the board or its designee indicating successful completion of
22 probation, Respondent Peters' license will be fully restored.

23 **31. Community Services Program**

24 Within sixty (60) days of the effective date of this decision, Respondent Peters shall submit
25 to the board or its designee, for prior approval, a community service program in which respondent
26 shall provide free health-care related services on a regular basis to a community or charitable
27 facility or agency for at least twenty-five hours per year for the first three years of probation.
28 Within thirty (30) days of board approval thereof, Respondent Peters shall submit documentation

1 to the board demonstrating commencement of the community service program. A record of this
2 notification must be provided to the board upon request. Respondent Peters shall report on
3 progress with the community service program in the quarterly reports. Failure to timely submit,
4 commence, or comply with the program shall be considered a violation of probation.

5 32. **Remedial Education**

6 Within sixty (60) days of the effective date of this decision, Respondent Peters shall submit
7 to the board or its designee, for prior approval, an appropriate program of remedial education
8 related to pharmacy management and securing drugs in a pharmacy. The program of remedial
9 education shall consist of at least ten (10) hours, which shall be completed within three years at
10 Respondent Peters' own expense. All remedial education shall be in addition to, and shall not be
11 credited toward, continuing education (CE) courses used for license renewal purposes.

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

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

22 33. **Supervised Practice**

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

28 Continuous – At least 75% of a work week

1 Substantial - At least 50% of a work week

2 Partial - At least 25% of a work week

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

4 Within thirty (30) days of the effective date of this decision, Respondent Peters shall have
5 his supervisor submit notification to the board in writing stating that the supervisor has read the
6 decision in case number 5106 and is familiar with the required level of supervision as determined
7 by the board or its designee. It shall be Respondent Peters' responsibility to ensure that his
8 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
9 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
10 acknowledgements to the board shall be considered a violation of probation.

11 If Respondent Peters changes employment, it shall be Respondent Peters' responsibility to
12 ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
13 acknowledgement(s) to the board. Respondent Peters shall have his new supervisor, within
14 fifteen (15) days after employment commences, submit notification to the board in writing stating
15 the direct supervisor and pharmacist-in-charge have read the decision in case numbers 4998 and
16 5106 and is familiar with the level of supervision as determined by the board. Respondent Peters
17 shall not practice pharmacy and his license shall be automatically suspended until the board or its
18 designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-
19 charge to submit timely acknowledgements to the board shall be considered a violation of
20 probation.

21 Within ten (10) days of leaving employment, Respondent Peters shall notify the board in
22 writing.

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

1 any licensee of the board, or have access to or control the ordering, manufacturing or dispensing
2 of dangerous drugs and controlled substances. Respondent Peters shall not resume practice until
3 notified by the board.

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

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

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

12 **34. No New Ownership of Licensed Premises**

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

22 **35. Consultant for Owner or Pharmacist-In-Charge**

23 During the period of probation, Respondent Peters shall not supervise any intern pharmacist
24 or serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
25 charge. However, if during the period of probation Respondent Peters serves as a pharmacist-in-
26 charge, respondent shall retain an independent consultant at his own expense who shall be
27 responsible for reviewing pharmacy operations on a quarterly basis for compliance by
28 Respondent Peters with state and federal laws and regulations governing the practice of pharmacy

1 and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant
2 shall be a pharmacist licensed by and not on probation with the board and whose name shall be
3 submitted to the board or its designee, for prior approval, within thirty (30) days of the effective
4 date of this decision. Respondent Peters shall not be a pharmacist-in-charge at more than one
5 pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely retain, seek
6 approval of, or ensure timely reporting by the consultant shall be considered a violation of
7 probation.

8 **36. Tolling of Suspension**

9 During the period of suspension, Respondent Peters shall not leave California for any
10 period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in
11 excess of the (10) days during suspension shall be considered a violation of probation. Moreover,
12 any absence from California during the period of suspension exceeding ten (10) days shall toll the
13 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
14 Respondent Peters is absent from California. During any such period of tolling of suspension,
15 Respondent Peters must nonetheless comply with all terms and conditions of probation.

16 Respondent Peters must notify the board in writing within ten (10) days of departure, and
17 must further notify the board in writing within ten (10) days of return. The failure to provide such
18 notification(s) shall constitute a violation of probation. Upon such departure and return,
19 Respondent Peters shall not resume the practice of pharmacy until notified by the board that the
20 period of suspension has been satisfactorily completed.

21 **37. Ethics Course**

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


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

28 ///

1 ACCEPTANCE

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

7
8 DATED: 10/23/15


KERR'S PHARMACY, HARRY PETERS,
PHARMACIST-IN-CHARGE
Respondent Pharmacy

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Armond Marcarian, Esq.. I understand the stipulation and the
13 effect it will have on my Original Pharmacist License. I enter into this Stipulated Settlement and
14 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
15 Decision and Order of the Board of Pharmacy.

16
17 DATED: 10/23/15


HARRY PETERS
Respondent Peters

20 I have read and fully discussed with Respondent Kerr's Pharmacy with Harry Peters as the
21 Pharmacist-In-Charge and Respondent Peters the terms and conditions and other matters
22 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
23 content.

24
25 DATED: 10/23/15


Armond Marcarian, Esq.
Attorney for Respondent

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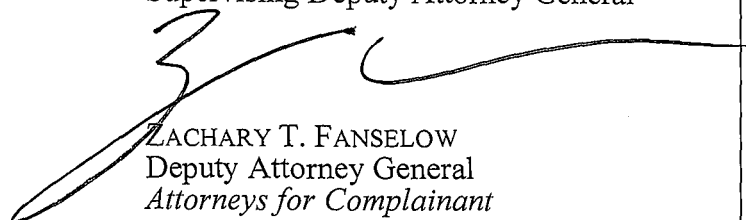
ENDORSEMENT

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

Dated: 10/23/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General


ZACHARY T. FANSELOW
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4998 and 5106

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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case Nos. 4998 and 5106

12 **KERR'S PHARMACY,**
12142 Santa Monica Blvd.
13 Los Angeles, CA 90025
14 **HARRY PETERS, Pharmacist-In-Charge**

ACCUSATION

15 Original Permit No. PHY 35423,

16 **HARRY PETERS**
12142 Santa Monica Blvd
17 Los Angeles, CA 90025

18 Original Pharmacist License No. RPH 28331,

19 **and**

20 **JOHN WILLIAM SHAFER**
151 Ventura Way
21 Chatsworth, CA 91311

22 Original Pharmacist License No. RPH 36106

23 Respondents.

24
25 Complainant alleges:

26 **PARTIES**

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

2. On or about February 24, 1989, the Board of Pharmacy issued Original Permit No. PHY 35423 to Kerr's Pharmacy, Harry Peters, Pharmacist-In-Charge ("Respondent Pharmacy"). The Original Permit was in full force and effect at all times relevant to the charges brought herein and will expire on February 1, 2015, unless renewed.

3. On or about July 31, 1973, the Board of Pharmacy issued Original Pharmacist License No. RPH 28331 to Harry Peters ("Respondent Peters"). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2016, unless renewed.

4. On or about December 19, 1980, the Board of Pharmacy issued Original Pharmacist License Number RPH 36106 to John William Shafer ("Respondent Shafer"). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

JURISDICTION

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

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4300.1 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 PROVISIONS

8. Section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

1 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
2 prescription," "Rx only," or words of similar import.

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

6 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
7 prescription or furnished pursuant to Section 4006."

8 9. Section 4036.5 states: "Pharmacist-in-charge" means a pharmacist proposed by a
9 pharmacy and approved by the board as the supervisor or manager responsible for ensuring the
10 pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of
11 pharmacy."

12 10. Section 4059, subdivision (a), states:

13 "A person may not furnish any dangerous drug, except upon the prescription of a physician,
14 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A
15 person may not furnish any dangerous device, except upon the prescription of a physician, dentist,
16 podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

17 11. Section 4060 states, in pertinent part:

18 "A person shall not possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
21 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
22 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
24 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
25 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
26 midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with
27 the name and address of the supplier or producer."

28 ///

1 12. Section 4113, subdivision (c), states: "The pharmacist-in-charge shall be responsible
2 for a pharmacy's compliance with all state and federal laws and regulations pertaining to the
3 practice of pharmacy."

4 13. Section 4301 states: "The board shall take action against any holder of a license who is
5 guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation
6 or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
7 following:

8

9 "(b) Incompetence.

10 "(c) Gross negligence.

11

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

15

16 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
17 administering, or offering to sell, furnish, give away, or administer, any controlled substance to an
18 addict.

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

21

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

26 14. Section 4342, subdivision (a), states:

27 "The board may institute any action or actions as may be provided by law and that, in its
28 discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not

1 conform to the standard and tests as to quality and strength, provided in the latest edition of the
2 United States Pharmacopoeia or the National Formulary, or that violate any provision of the
3 Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875 of Division
4 104 of the Health and Safety Code)."

5 15. Health and Safety Code section 11170 states: "No person shall prescribe, administer,
6 or furnish a controlled substance for himself."

7 16. Health and Safety Code section 11217 states, in pertinent part:

8 "Except as provided in Section 11223, no person shall treat an addict for addiction to a
9 narcotic drug except in one of the following:

10 "(a) An institution approved by the State Department of Health Care Services, and where
11 the patient is at all times kept under restraint and control.

12 "(b) A city or county jail.

13 "(c) A state prison.

14 "(d) A facility designated by a county and approved by the State Department of Health Care
15 Services pursuant to Division 5 (commencing with Section 5000) of the Welfare and Institutions
16 Code.

17 "(e) A state hospital.

18 "(f) A county hospital.

19 "(g) A facility licensed by the State Department of Health Care Services pursuant to Division
20 10.5 (commencing with Section 11750).

21 "(h) A facility as defined in subdivision (a) or (b) of Section 1250 and Section 1250.3."

22 17. Health and Safety Code section 11350, subdivision (a), states:

23 "Except as otherwise provided in this division, every person who possesses (1) any
24 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
25 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
26 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
27 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
28 unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to

1 practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section
2 1170 of the Penal Code.”

3 18. Health and Safety Code section 11550, subdivision (a), states, in pertinent part:

4 “No person shall use, or be under the influence of any controlled substance which is (1)
5 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
6 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
7 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or
8 in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule
9 III, IV, or V, except when administered by or under the direction of a person licensed by the state
10 to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to
11 show that it comes within the exception.”

12 **REGULATORY PROVISIONS**

13 19. California Code of Regulations, title 16, section 1709.1, subdivision (a), states: “The
14 pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility
15 for the daily operation of the pharmacy.”

16 20. California Code of Regulations, title 16, section 1714 states, in pertinent part:

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

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

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

1 21. Code of Federal Regulations, title 21, section 1304.11 states, in pertinent part:

2 "(a) General requirements. Each inventory shall contain a complete and accurate record of
3 all controlled substances on hand on the date the inventory is taken, and shall be maintained in
4 written, typewritten, or printed form at the registered location. An inventory taken by use of an
5 oral recording device must be promptly transcribed. Controlled substances shall be deemed to be
6 "on hand" if they are in the possession of or under the control of the registrant, including
7 substances returned by a customer, ordered by a customer but not yet invoiced, stored in a
8 warehouse on behalf of the registrant, and substances in the possession of employees of the
9 registrant and intended for distribution as complimentary samples. A separate inventory shall be
10 made for each registered location and each independent activity registered, except as provided in
11 paragraph (e)(4) of this section. In the event controlled substances in the possession or under the
12 control of the registrant are stored at a location for which he/she is not registered, the substances
13 shall be included in the inventory of the registered location to which they are subject to control or
14 to which the person possessing the substance is responsible. The inventory may be taken either as
15 of opening of business or as of the close of business on the inventory date and it shall be indicated
16 on the inventory.

17

18 "(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a
19 new inventory of all stocks of controlled substances on hand at least every two years. The biennial
20 inventory may be taken on any date which is within two years of the previous biennial inventory
21 date."

22 COST RECOVERY

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

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 23. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (f),
4 for unprofessional conduct, in that Respondent Shafer admittedly took controlled substances from
5 Respondent Pharmacy without a prescription. The circumstances are as follows:

6 a. On or about April 30, 2013, officers from the Ventura County Sheriff's Department
7 searched the home of Respondent Shafer. Officers found a large supply of prescription medication
8 during their search and some of the controlled substances featured labels from Respondent
9 Pharmacy. Examples of controlled substances found at Respondent Shafer's home include:
10 Fentanyl Patches, Meprobamate, Hydrocodone/APAP, Desoxyn, Preludin, Qualude, Tylenol with
11 Codeine, Diethylprodin, Phenobarbital, Temazepam, Zolpidem, Flurazepam, Propoxyphene/APAP,
12 Alprazolam, Chloral Hydrate, Lorazepam, Tranxene and Marijuana. Examples of non controlled
13 dangerous drugs found were: Lisinopril, Cimetidine, Naltrexone and Levoxyl.

14 b. During an interview with Ventura County Sheriff's Department officers, Respondent
15 Shafer stated that, while he was working at Respondent Pharmacy, he became friendly with A.S.,
16 the care taker of a terminal cancer patient. Respondent Shafer stated that he suspected that A.S.
17 was using illegal drugs and after discussing A.S.' use of controlled substances, Respondent Shafer
18 offered to let her stay at his home and help her detox from heroin. While A.S. was staying at his
19 home, Respondent Shafer provided her with controlled substances he had stored in his home to
20 allegedly assist her detoxification.

21 c. During the interview with Ventura County Sheriff's Department officers, Respondent
22 Shafer admitted that he took hydrocodone pills from Respondent Pharmacy to keep at his home
23 for his own consumption. Respondent Shafer stated that he took the hydrocodone recreationally
24 and analogized it to drinking beer.

25 d. On or about May 13, 2013, during an interview with a Board inspector, Respondent
26 Shafer admitted that he had taken some expired zolpidem 10mg tablets and a dozen ibuprofen 600
27 mg tablets from Respondent Pharmacy.

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unlawful Possession of Controlled Substances)**

3 24. Respondent Shafer is subject to disciplinary action under section 4060, and section
4 4301, subdivision (j), in conjunction with Health and Safety Code section 11170, and Health and
5 Safety Code section 11350, subdivision (a), in that Respondent Shafer took controlled substances
6 and other dangerous drugs from Respondent Pharmacy without a prescription and was found to be
7 in possession of large quantities of controlled substances in his home. The conduct is described in
8 additional detail in paragraph 23, subparagraphs (a) through (d) inclusive, which is hereby
9 incorporated by reference as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unlawful Use of Controlled Substances)**

12 25. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (j),
13 in conjunction with Health and Safety Code section 11550, subdivision (a), in that Respondent
14 Shafer admittedly used marijuana, admitted to testing positive for marijuana after a police field
15 urinalysis and admitted to using hydrocodone recreationally. The conduct is described in
16 additional detail in paragraph 23, subparagraph (c), which is hereby incorporated by reference as
17 though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Furnishing Dangerous Drugs to an Addict without a Prescription)**

20 26. Respondent Shafer is subject to disciplinary action under section 4301, subdivision (i)
21 for furnishing controlled substances to an addict and section 4059, subdivision (a), for furnishing
22 those controlled substances without a prescription. The conduct is described in additional detail in
23 paragraph 23, subparagraphs (a) and (b), which is hereby incorporated by reference as though set
24 forth fully.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Treating an Addict Outside of an Authorized Treatment Facility)**

27 27. Respondent Shafer is subject to disciplinary action under Health and Safety Code
28 section 11217, subdivision (a), for admittedly treating an addict in his home, which is not an

1 authorized treatment facility. The conduct is described in additional detail in paragraph 23,
2 subparagraphs (a) and (b), which is hereby incorporated by reference as though set forth fully.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(Diversion of Controlled Substances from Respondent Pharmacy by Employee)**

5 28. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
6 section 4113, subdivision (c), and California Code of Regulations, title 16, section 1709.1,
7 subdivision (a), for the possession and diversion of controlled substances from Respondent
8 Pharmacy by employee Respondent Shafer in violation of section 4301, subdivisions (j) and (o), in
9 conjunction with section 4060 and Health and Safety Code section 11350, subdivision (a). The
10 circumstances are as follows:

11 a. On or about May 13, 2013, an inspector for the Board interviewed Respondent Peters.
12 Respondent Peters stated that Respondent Shafer has worked for him since the 1980's, that he
13 knew Respondent Shafer used marijuana and that Respondent Shafer also used other prescription
14 drugs. Respondent Peters further admitted that he knew Respondent Shafer kept large quantities
15 of controlled substances at his home and described Respondent Shafer as a "hoarder."

16 b. The conduct is described in additional detail in paragraph 23, subparagraphs (a)
17 through (d) inclusive, which is hereby incorporated by reference as though set forth fully.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Inventory Controlled Substances)**

20 29. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
21 section 4301, subdivision (o), in that Respondent Pharmacy and Respondent Peters violated Code
22 of Federal Regulations, title 21, section 1304.11, by failing to inventory all controlled substances in
23 stock at least every two years as required by the Drug Enforcement Administration ("DEA")
24 Controlled Substances Inventory. The circumstances are as follows:

25 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an
26 inspector for the Board asked Respondent Peters for the pharmacy's bi-annual inventory.
27 Respondent Peters gave the Board inspector an inventory dated May 1, 2013, but admitted that
28 the inventory was incomplete.

1 b. During the Board's inspection on or about May 13, 2013, the Board inspector also
2 asked to review Respondent Pharmacy's prior bi-annual inventory. Respondent Peters provided
3 an inventory dated March 31, 2011. However, the March 31, 2011, inventory only listed schedule
4 II narcotics and did not contain any inventory for schedule III through schedule V narcotics.
5 Respondent Peters admitted that the pharmacy did not complete an inventory for schedule III
6 through schedule V drugs in 2011.

7 **EIGHTH CAUSE FOR DISCIPLINE**

8 **(Drugs Lacking Quality or Strength)**

9 30. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
10 section 4342 for the willful sale of drugs lacking quality or strength. The circumstances are as
11 follows:

12 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an
13 inspector for the Board found numerous expired medications kept for sale throughout the
14 pharmacy's shelves.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)**

17 31. Respondent Pharmacy is subject to disciplinary action under section 4301, subdivision
18 (o), in that Respondent Pharmacy violated California Code of Regulations, title 16, section 1714,
19 subdivision (b), for failing to maintain its dangerous drugs in a safe and secure manner. During the
20 Board's inspection on or about May 13, 2013, the Board requested records of drug purchases and
21 disposition. A review of Respondent Pharmacy's DEA inventory,¹ purchase orders, disposition
22 records, and drugs on the pharmacy's shelves identified the following variances:

- 23 a. Over one hundred unaccounted for tablets of Acetaminophen/Codeine 300/30 mg.
24 b. Over five hundred unaccounted for tablets of Alprazolam 0.5 mg.
25 c. Over fifty unaccounted for tablets of Diazepam 2mg.
26 d. Over five hundred unaccounted for tablets of Oxycodone/APAP 5/325.

27 _____
28 ¹ Only Schedule II controlled substances had been inventoried as detailed in paragraph 19.

- e. Over one thousand unaccounted for tablets of Oxycodone/APAP 10/325.
- f. Five unaccounted for 75 mcg Fentanyl patches.
- g. Nine unaccounted for tablets of Flurazepam 30 mg.
- h. Over five hundred unaccounted for tablets of Hydrocodone/APAP 10/325.
- i. Over two hundred unaccounted for tablets of Hydrocodone/APAP 7.5/325.
- j. Over three hundred unaccounted for tablets of Hydrocodone/APAP 5/325.
- k. Over one hundred unaccounted for tablets of Hydrocodone/APAP 7.5/750.
- l. Over four hundred unaccounted for tablets of Hydrocodone/APAP 5/500.
- m. Over two hundred unaccounted for tablets of Methylphenidate ER 10 mg.
- n. Over one hundred unaccounted for tablets of Methylphenidate 10 mg.
- o. Over four hundred unaccounted for of Methylphenidate 20 mg.
- p. Two unaccounted for tablets of Methylphenidate ER 36mg.
- q. Over fifty unaccounted for tablets of Oxycodone/APAP 7.5/325.
- r. Over five hundred unaccounted for tablets of Temazepam 15 mg.
- s. Over one thousand unaccounted for tablets of Temazepam 30 mg.
- t. Over one hundred unaccounted for tablets of Zolpidem 5 mg.
- u. Over one thousand unaccounted for tablets of Zolpidem 10 mg.

TENTH CAUSE FOR DISCIPLINE

(Failure to Maintain Dangerous Drugs in a Safe and Secure Manner)

32. Respondent Peters is subject to disciplinary action under section 4301, subdivision (o), in that Respondent Peters violated California Code of Regulations, title 16, section 1714, subdivision (d), for failing to maintain the security and safety of dangerous drugs while on duty at Respondent Pharmacy. Following the Board's May 13, 2013, inspection and review of Respondent Pharmacy's bi-annual DEA inventory, purchase orders, disposition records, and drugs on the pharmacy shelves, the Board identified dangerous drug variances numbering in the thousands. The conduct and specific variances are detailed in paragraph 31, subparagraphs (a) through (u) inclusive, which is hereby incorporated by reference as though set forth fully.

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1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Incompetence and/or Gross Negligence)**

3 33. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
4 section 4301, subdivisions (b) and/or (c), in that Respondent Pharmacy and Respondent Peters'
5 failure to identify and record the number of dangerous drugs stored at Respondent Pharmacy, as
6 well as Respondent Pharmacy and Respondent Peters' failure to properly maintain and secure
7 those drugs, amounts to incompetence and/or gross negligence. The conduct and specific
8 dangerous drug variances, numbering in the thousands, are described in paragraph 31,
9 subparagraphs (a) through (u) inclusive, and paragraph 32, which are hereby incorporated by
10 reference as though set forth fully.

11 **TWELFTH CAUSE FOR DISCIPLINE**

12 **(Failure to Keep the Pharmacy in a Clean and Orderly Condition)**

13 34. Respondent Pharmacy and Respondent Peters are subject to disciplinary action under
14 section 4301, subdivision (o), in that Respondent Pharmacy and Respondent Peters violated
15 California Code of Regulations, title 16, section 1714, subdivision (c), by failing to keep the
16 pharmacy in a clean and orderly condition. The circumstances are as follows:

17 a. On or about May 13, 2013, during an inspection of Respondent Pharmacy, an inspector for
18 the Board found that the pharmacy's drug shelves, drawers and cabinets were extremely dirty, with
19 a thick layer of dust and grim throughout the pharmacy storage areas. In addition, the sink in the
20 bathroom did not have running water.

21 **DISCIPLINARY CONSIDERATIONS**

22 35. To determine the degree of discipline, if any, to be imposed on Respondent Pharmacy
23 and Respondent Peters, Complainant alleges the following:

24 a. On or about November 25, 1991, the California State Board of Pharmacy brought a
25 disciplinary action against Respondent Peters and Respondent Pharmacy entitled *In the Matter of*
26 *the Accusation Against Harry Peters, Kerr's Pharmacy*, Board Case No. AC 1988 1581. On or
27 about June 10, 1994, a stipulation became effective whereby Respondent Peters' Original License
28 Certificate No. PGO28331 was placed on probation for three years and Respondent Pharmacy's

1 Original Permit No. ZBO18241 was placed on probation for three years. That decision is now
2 final and is incorporated by reference as if set forth fully.

3 36. To determine the degree of discipline, if any, to be imposed on Respondent John
4 William Shafer, Complainant alleges the following:

5 a. On or about December 21, 1984, the California State Board of Pharmacy brought a
6 disciplinary action against Respondent Shafer entitled *In the Matter of the Accusation Against The*
7 *Pharmacy; John Shafer; Richard Foster; Amos Cranford*, Board Case No. 1222. On or about
8 December 6, 1985, the Board adopted the Administrative Law Judge's Proposed Decision
9 suspending Respondent Shafer's license for one year. The suspension was stayed and Respondent
10 Shafer was placed on probation for one year. That decision is now final and is incorporated by
11 reference as if set forth fully.

12 **PRAYER**

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

15 1. Revoking or suspending Pharmacy Permit Number PHY 35423, issued to Kerr's
16 Pharmacy, Harry Peters, Pharmacist-In-Charge;

17 2. Revoking or suspending Pharmacist License Number RPH 28331, issued to Harry
18 Peters;

19 3. Revoking or suspending Pharmacist License Number RPH 36106, issued to John
20 William Shafer;

21 4. Ordering Harry Peters, Harry Peters and John William Shafer to pay the Board of
22 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
23 Business and Professions Code section 125.3; and,

24 ///

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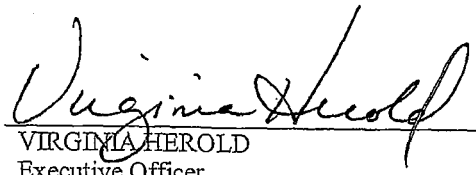
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5. Taking such other and further action as deemed necessary and proper.

DATED: 2/2/15



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

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