

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

In the Matter of the Accusation Against:

SAFEWAY PHARMACY 911¹
477 West Napa Street
Sonoma, CA 95476

Pharmacy Permit No. PHY 35032,

Respondent,

and

FRANK PETER TARANTINO, JR.

Pharmacist License No. RPH 27678,

Respondent.

Case No. 5957

OAH No. 2017100145

AS TO RESPONDENT FRANK
PETER TARANTINO, JR. ONLY

FINAL DECISION AFTER RECONSIDERATION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings (OAH), heard this matter on February 14, 2018, in Oakland, California.

Deputy Attorney General Susana A. Gonzales represented complainant Virginia Herold, Executive Officer, the Board of Pharmacy, Department of Consumer Affairs.

Attorney at Law Alissa Brice Castaneda, of Quarles and Brady, represented respondent Frank Peter Tarantino, Jr., who attended the hearing of this matter.

¹ The Accusation in this matter identifies as a party respondent Safeway Pharmacy 911 with premises located at 477 West Napa Street, Sonoma, California 95476. On an unknown date before commencement of the hearing in this matter, the corporate respondent and complainant reached a settlement of the Accusation's allegations against Safeway Pharmacy 911. Hence, Safeway Pharmacy 911 is not a respondent subject to this decision.

The record was held open to permit complainant to file with OAH, and to serve on respondent's attorney, a declaration in support of the recovery of costs of investigation as incurred by the board. On February 15, 2018, complainant filed with OAH the "Certification of Investigative Costs: Declaration of Jennifer Hall," which was marked as exhibit "7," and received into evidence. On February 21, 2018, OAH filed "Respondent Frank Tarantino's Response and Objection to [the] Certification of Investigative Costs . . . ," which was marked as exhibit "H," and received as argument.

On February 21, 2018, the parties were deemed to have submitted the matter for decision, and the record closed.

The Administrative Law Judge issued his Proposed Decision on March 22, 2018. The Proposed Decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("board"), and after due consideration thereof, the board adopted the proposed decision on May 8, 2018, to become effective on June 7, 2018. On or about May 31, 2018, Respondent filed a Petition for Reconsideration. On June 7, 2018, the board issued an Order Granting Petition for Reconsideration and Stay of Execution of the Effective Date of Decision and Order and Order Fixing Date for Submission of Argument as to Respondent Frank Tarantino, Jr. Only.

Written argument having been timely received from both parties, and the time for filing written argument in this matter having expired, and the pertinent parts of therecord having been read and considered, the board, pursuant to Government Code section 11517, hereby decides this matter as follows:

STIPULATION TO FACTUAL ALLEGATIONS

On February 12, 2018, with the advice and consent of his attorney, respondent Frank Peter Tarantino, Jr., (respondent) entered into a written stipulation and agreement with complainant regarding pertinent portions of certain allegations in the Accusation. The stipulation included the following admissions, in pertinent part as follows:

- i. Respondent admits the truth of each and every fact, charge, and allegation contained in paragraphs 1-12 and 18-19 in Accusation No. 5957
- ii. With respect to paragraph 17 of Accusation No. 5957, [r]espondent admits that he told the [b]oard investigator that the records *might have been sent* to Iron Mountain Storage.

(Emphasis added.)

At the commencement of the proceeding, respective counsel for the parties agreed that the paramount purpose of the administrative adjudication proceeding was to permit

respondent to present, in support of reduction or elimination of the board's imposed penalty, evidence in mitigation, including respondent's testimony under oath. The hearing in this matter ensued and the following factual findings were developed from the parties' stipulation, the evidence, and the arguments presented before submission of the matter.

FACTUAL FINDINGS

1. On July 1, 2017, complainant Virginia Herold (complainant), in her official capacity as the Executive Officer of the Board of Pharmacy (the board), Department of Consumer Affairs, made and issued the Accusation against respondent.

Respondent's License Information

2. On May 23, 1972, the board issued Pharmacist License Number RPH 27678 to respondent. The license issued to respondent was in full force and effect at all times relevant to the matters raised in the Accusation. Respondent's Pharmacist License will expire on February 28, 2019, unless renewed, surrendered, or revoked before that date.

License for Safeway Pharmacy 911

3. On approximately September 23, 1988, the board issued Pharmacy Permit Number PHY 35032 to Safeway Pharmacy 911. The Pharmacy Permit expired on January 30, 2015, and was cancelled on April 15, 2015.

The Investigative Report by Board Inspector Jennifer Hall

4. On September 8, 2014, Board Inspector Jennifer Hall, Pharm. D., (Inspector Hall) issued a 10-page report, which was accompanied by several attachments consisting of more than 100 pages. The inspector's report was thorough, persuasive, and compelling. The report provides necessary background information regarding respondent's acts and omissions that resulted in complainant's Accusation's charges against him as well as against Safeway Pharmacy 911. In pertinent part, the investigative report revealed the following:

On April 22, 2014, from a corporate office in Pleasanton, California, G. S., the Regional Pharmacy Manager for Safeway Inc. (Safeway) for the Northern California Division, wrote a letter to board Enforcement Analyst Raymond Flores. On May 5, 2014, the board received the Safeway regional pharmacy manager's letter stating that through a "data mining" exercise, Safeway found a "potential for substantial variance" for Norco at Safeway Pharmacy 911. The analysis by Safeway showed that between February 6, 2013, and February 6, 2014, Safeway Store Pharmacy 911 in Sonoma sustained a potential loss of 23,686 doses of Norco. Safeway concluded that 24 1,000-count bottles of Norco had been ordered in a suspicious manner because the orders had not been executed through the

automated ordering system, but rather by a manual ordering process. Importantly, the manual orders were not entered into the inventory system for the subject Safeway pharmacy. A later investigation by Safeway disclosed a manual order on March 4, 2014, of one 1,000 count bottle of Norco. And, then the corporation's personnel detected additional manual ordering on April 3, 2014, of 3,000 tablets of Norco. The internal corporate audit and corporate in-house investigation by Safeway revealed that nearly all of the manual orders for Norco were placed by a single pharmacy technician, P.T.S.

Two days after the board received the letter from Safeway Regional Pharmacy Manager G. S., the board sent, on May 7, 2017, a letter to respondent, in his capacity as pharmacist-in-charge, requesting information and additional explanation pertaining to the loss sustained at Safeway Pharmacy 911.

On June 23, 2014, Inspector Hall interviewed G. S. The Safeway Regional Pharmacy Manager rendered a detailed statement culminating in the revelations that P.T.S. had entered all, but one, of the manual orders for the missing or stolen Norco. Although the method used by P.T.S. in removing the large quantity of Norco from the premises for the subject pharmacy was never discovered, that pharmacy technician was determined to have been the most likely culprit for the loss of the large amount of missing Norco tablets. P.T.S. gave G. S. information on June 20, 2014, that his registration as the pharmacy technician was subject to revocation by the board. When P.T.S. did not report to work, on June 21 and June 22, 2014, Safeway on June 26, 2014, terminated the employment of P.T.S., on the ground of "job abandonment."

On July 9, 2014, Inspector Hall conducted an inspection and audit of Safeway Pharmacy 911. Respondent assisted with the inspection and he engaged in an interview with the board's inspector. Among other things, Inspector Hall's audit detected that the subject pharmacy, between May 7, 2012, and July 9, 2014, could not account for 49,368 tablets of Norco. And, as for time respondent held the position as pharmacist-in-charge for Safeway Pharmacy 911, over the period from April 29, 2013, to July 9, 2014, the quantity of Norco that was missing, lost, or stolen reached a total of 28,256 tablets.

During his interview with Inspector Hall, respondent made an admission that Safeway Pharmacy 911 may have sent documents and records pertaining to drugs into an off-site facility known as Iron Mountain Storage. Respondent possessed, at the subject pharmacy, no documentary proof for review by the board inspector that the board had issued an "off-site storage waiver" regarding the pharmacy's records that were absent from the premises of the subject pharmacy.

Respondent's Employment - Safeway Pharmacy 911

5. From May 5, 2013, to July 9, 2014, the board secured and analyzed definitive records establishing that respondent held the designation of the pharmacist-in-charge for Safeway Pharmacy 911, which is located at 477 West Napa Street, Sonoma, California

95476. (But, by respondent's testimony at the hearing of this matter, he held that position before May 5, 2013, and after July 9, 2014.)

Dangerous Drugs and Controlled Substances

6. The concept of "dangerous drugs" means any drug for self-use in humans or animals, including:

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

[¶] . . . [¶]

(c) Any other drug . . . that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to section 4006. (Bus. & Prof. Code, § 4022)

7. Hydrocodone with acetaminophen, also known as "Norco," was before October 2014 a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(3), and a dangerous drug pursuant to Business and Professions Code section 4022. On October 6, 2014, hydrocodone with acetaminophen (Norco) was reclassified as a Schedule II controlled substance under the Code of Federal Regulations, title 21, section 1308.12, subdivision (b)(1)(vii).

Causes for Discipline

FAILURE TO EFFECTIVELY CONTROL THEFT OR DIVERSION OF DANGEROUS DRUGS

8. For the period of at least May 5, 2013, to July 9, 2014, respondent's acts and omissions constituted a failure to effectively control theft or diversion of dangerous drugs at the Safeway Pharmacy 911 on West Napa Street in Sonoma, California. As the designated pharmacist-in-charge for Safeway Pharmacy 911 on Napa Street in Sonoma, California, for the subject period of time, respondent failed to be responsible for the security of the subject pharmacy's prescription department, including the provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs. While he acted as the pharmacist-in-charge of Safeway Pharmacy 911, for the period of May 5, 2013, and July 9, 2014, respondent failed to account for at least 28,256 tablets of Norco, which were stolen, lost, or improperly dispensed.

FAILURE TO RETAIN RECORDS ON LICENSED PREMISES

9. Through his acts or omissions, in the capacity as the pharmacist-in-charge of Safeway Pharmacy 911 for a three-year period ending in early July 2014, respondent failed

to retain records on the premises of the subject pharmacy regarding the acquisition and disposition of dangerous drugs at the pharmacy's premises in a readily retrievable form.

Respondent's Background and Matters in Mitigation

10. Respondent will reach his 71st birthday in April 2018. Respondent was born and raised in San Francisco, California. Respondent claims that he has recently received a diagnosis suggestive of a serious health-care impairment. (At the hearing, however, respondent did not provide either a copy of a medical record or articulate clear, definitive testimony regarding the precise nature and actual extent of the illness that supposedly afflicts him.)

11. In 1972, respondent graduated from the University of the Pacific (UOP) Pharmacy School, which is located in Stockton (San Joaquin County) California. He was awarded the Doctor of Pharmacy (Pharm. D.) degree that year. His undergraduate studies were fulfilled at San Francisco City College and University of San Francisco.

12. Before graduating from the UOP Pharmacy School and prior to being licensed, respondent worked as an intern pharmacist at Saint Joseph Hospital in Stockton. Upon acquiring licensure, he was hired full time as a staff pharmacist at that hospital in Stockton.

For a few years after earning the Pharm. D. degree, respondent taught classes at UOP. Then, he was offered an opportunity to work in San Francisco at Presbyterian Hospital, which later became known as the California Pacific Medical Center, and he served as the hospital's Pharmacist Coordinator. Through that position, he mentored UOP pharmacy students. In time his title became that of Assistant Director of Pharmacy for the hospital. For the final year of his employment at the hospital, that is from 1983 to 1984, respondent served as the Director of Pharmacy for the hospital. While serving at that medical facility, respondent held a role as an Adjunct Professor.

At the onset of the HIV/AIDS health crisis, respondent began work with the American Hospital Supply Company as a branch manager for the San Francisco office. He expended great energy in managing HIV patients with an array of drug therapies, which included use of pharmaceuticals, long-term nutrition programs, and short-term antibiotic treatment courses. In that role, respondent initially managed a core group of five employees, which included pharmacists. As a branch manager for American Hospital Supply Company, respondent opened company branches in Seattle and Hawaii. However, the success of the company made it a corporate acquisition target so that when the company merged with a larger corporation, respondent lost his job after holding the employment position for a span of approximately five years.

Following the approximate five years with American Hospital Supply Company, respondent joined two other pharmacists to form a business in Oakland, California. The business was called "Home Nutrition Systems." That business, in which respondent held a part ownership interest, distributed pharmaceuticals on "Pill Hall" in Oakland to focus upon

medical facilities such as Providence Hospital, Merritt Hospital, and Oakland Children's Hospital. The four to five years of success of that business resulted in the company being taken over in a merger with a larger corporation. As a consequence of the merger and acquisition of the business he had partially owned, respondent's position was eliminated.

At that point in time, respondent decided to work as an independent, relief pharmacist and he became associated with a registry-type company called "Rx Relief." That business placed pharmacists desiring to work in temporary employment assignments through "fill-in" pharmacist assignments. Because of his efficiency, Rx Relief hired respondent to supervise the placement of pharmacists throughout its network; yet, respondent continued to personally accept temporary work assignments as a pharmacist. Then, he assumed the role of Regional Manager for the Northern California area for Rx Relief. Through that job, respondent hired, trained, and placed 20 to 40 relief pharmacists.

While he worked for Rx Relief, respondent became very acquainted with the Safeway system of pharmacies. As part of his temporary employment work through Rx Relief, respondent was attached to various Safeway Pharmacy sites. In time, the Director of Pharmacy for Safeway asked respondent to work full-time for Safeway. After he had worked as a Safeway Pharmacy staff pharmacist "for about a month," the Pharmacy Director for Safeway appointed him to perform the very placement work duties and functions that he had carried out for Rx Relief. Hence, respondent accepted the offer to become the "Float Team Manager" for a network in Northern California of 70 pharmacy sites owned by Safeway. (Before he left the assignment, Safeway acquired approximately 100 pharmacies, which employed pharmacists hired and trained by respondent.) Respondent held the Float Team Manager position for approximately three years.

After performing work as the Float Team Manager for the entire Northern California area, Safeway hired respondent to work as a Regional Pharmacy Director, which entailed his supervising and placing pharmacists in 35 to 44 Safeway sites in the Bay Area, which included San Francisco, the entire East Bay (Alameda and Contra Costa counties), Modesto and the area of Santa Clara County near the City of Sunnyvale.

As part of the work as the Regional Pharmacy Director for Safeway, respondent was responsible for not only hiring but also training pharmacists. Hence, respondent hired and trained between 100 and 150 pharmacists who worked for Safeway. Also, his work required him to supervise all pharmacists-in-charge personnel at the more than 40 stores.

Respondent held the position as a Regional Pharmacy Director for Safeway for approximately 17 years.

13. After 17 years in the demanding role as Regional Pharmacy Director for Safeway, when he was older than 60 years of age, respondent sought to "step down" and to again "work with patients" as a pharmacist. Safeway enabled him to work again as a "float" pharmacist for various store sites in the North Bay. In time he secured a permanent position

at Safeway Pharmacy 911 in Sonoma. Initially, respondent worked under the supervision of Pharmacist-in-Charge Lee Tucker.

In either late April or early May 2013, Mr. Tucker retired, which resulted in respondent assuming the role of the pharmacist-in-charge for the pharmacy where the acts and omissions described in complainant's Accusation occurred.

14. Although in approximate late April 2013, respondent accepted the position as pharmacist-in-charge for Safeway Pharmacy No. 911, his wife received in May 2013 a definitive diagnosis of breast cancer and her health had been poor before the date she received the actual diagnosis of cancer. In essence, respondent took on the full-time position at the subject pharmacy in order to maintain medical insurance coverage necessary for the treatment of his wife's poor health problems.

15. Between mid- and late-2014, respondent ended his role as the pharmacist-in-charge for Safeway Pharmacy 911. In October 2014, respondent's wife fell down stairs to suffer a traumatic brain injury. At that point in October 2014, respondent took family leave to provide care and aid to his wife. (Despite the Accusation's allegation that his pharmacist-in-charge role ended in July 2014, respondent was persuasive that in October 2014, he ended his position as the pharmacist-in-charge for Safeway Pharmacy No. 911.)

16. After October 2014, respondent worked for several months as a "floater" until early 2016. In 2016, respondent was given a permanent assignment as a staff pharmacist at the Santa Rosa-Mendocino Safeway Pharmacy. Because of personnel shortages, Safeway appointed respondent as pharmacist-in-charge for the Santa Rosa-Mendocino pharmacy over a period of one year, which ended in 2017.

As of the date of the hearing (February 14, 2018), respondent was working in the "floating" pharmacist role. He adamantly testified that he has worked full-time in recent years so as to average approximately 1,700 hours per year in providing professional services as a pharmacist in the employ of Safeway Pharmacies. (But, later in this testimony at the hearing in mid-February 2018, respondent proclaimed that for approximately a month or two before the hearing date he had commenced "Family Medical" leave so as to stay home with his ill wife. Yet, he had plans to resume in the near future his full-time role as a "float" pharmacist for the network of Safeway Pharmacies.)

17. Respondent considers himself to be very proficient in pain management drug therapies and he has significant skills as an immunizing pharmacist in that he has administered "thousands of flu shots" through Safeway pharmacies. (But at the hearing of this matter, respondent presented no documentary evidence to support his elevated or enhance skill set as a pharmacist. Hence, respondent's claim cannot be verified as an accurate assessment of his current proficiency.)

18. Respondent has been very active in professional organizations that serve the pharmacy profession. He has held memberships in associations such as the San Francisco

Society of Pharmacy and the Marin County Society of Pharmacy. When he worked for various hospitals, respondent was very involved with the California Society of Hospital Pharmacists, which included him serving on several hospital committees. Also, he has delivered many scholarly presentations to groups of pharmacists. And, over the years, respondent has “mentored” or trained up to 300 pharmacists. And, as a Safeway regional manager, he hired and trained, at least 100 pharmacists, into the Safeway pharmacy network. (But, at the hearing of this matter, respondent offered no documentary evidence supporting his participation in professional organizations or his activities as a scholarly lecturer on topics pertinent to the pharmacy profession. Hence, respondent’s claim cannot be verified as an accurate assessment of his recent level of service to the pharmacy industry)

19. Other than the instant Accusation, respondent has no record of the board’s disciplinary action or any allegation against his pharmacist license for substantiated unprofessional conduct on his part. (Lawyers for respondent and complainant stipulated that the three board-issued citations against respondent are not technically past adverse administrative disciplinary actions against his license.)

Respondent’s Unpersuasive Claims of Extenuation

20. Respondent’s contention was not persuasive that he was “totally blind sided” by the theft of Norco that appeared to have been carried out by a former pharmacy technician. At the hearing of this matter, respondent asserted that the thefts occurred on days that he was absent, or at times when “relief” pharmacists acted as the managing pharmacist for the subject pharmacy. But, respondent’s positions failed to detract from complainant’s Accusation’s allegations that respondent bore ultimate responsibility as the designated pharmacist-in-charge to put in place and to execute systems and policies for effective controls that would tend to have averted theft or diversion of dangerous drugs.

Matters in Rehabilitation

21. As of the date of the hearing in this matter (February 14, 2018), respondent remained employed as a pharmacist by Safeway. He serves in the capacity as a “floating” pharmacist as he takes assignments at various store sites as a “fill-in,” or replacement pharmacist.

22. At the hearing of this matter, respondent compellingly proclaimed that the loss of Norco, in the amount stated above, will never happen again under his watch as a pharmacist-in-charge. The Safeway Pharmacy network has implemented a set of stern policies and guidelines for the safeguarding of controlled substances and dangerous drugs. He has learned from the experience as he has now fostered a heightened awareness to potential theft of dangerous drugs or controlled substances.

23. Following the end of this role as pharmacist-in-charge for Safeway Pharmacy No. 911, respondent resumed the position of “float” pharmacist, which enables him to work only as a general pharmacist at different pharmacies operated by Safeway. His practice now

dictates that he “validate what the computers” show on screens. Moreover, he “always checks all the trash cans during [his] shift” to assure that invoices are not thrown away or that medications are not secreted through the trash receptacles. He directs all workers to leave backpacks, big purses, sweatshirts or large coats outside the confines of a pharmacy. He lives by the motto, “Trust but Verify.”

Support for Respondent from Other Pharmacists

24. Respondent has the respect, admiration, and support of many pharmacists. At the hearing of this matter, respondent offered five letters² that endorse his years of service to his profession. The writers of the letters submit comments including the following:

- I have known [respondent] for more than 20 years I met [respondent] in 1994 while working for Safeway and we worked together for 14 years. I have always found him to be a dedicated and professional colleague. As the Director of Pharmacy, I . . . recognized [respondent’s] leadership qualities Working as a Pharmacy District Manager, [respondent] . . . took to the challenge and [he] delivered outstanding results. His work ethic and results exceeded . . . expectations . . . [¶] . . . As a pharmacist, [respondent] sets the bar for professionalism, honesty, compassion . . . board compliance for all to reach . . . His honesty and dedication to the profession is a standard to be recognized.
- I have known [respondent] for over 25 years [W]e worked together for 18 years [for Safeway] [Respondent] is a dedicated professional and person of compassion for others
- I have known [respondent] for 20 years I have always found [respondent] to be a person of high integrity and professionalism [Respondent] has a high regard for and dedication to the profession and practice of pharmacy.
- I have known [respondent] for over 15 years [Respondent] hired me as a pharmacy intern, and we later worked together as pharmacy managers for Safeway Pharmacy stores within Sonoma County [Respondent] has always shown to be a professional, competent, and trusted friend and pharmacist.

² A letter, dated November 27, 2017, by David Valencia, Pharm.D.; a letter, dated “11/27/2017,” by Steven Protzel, Pharm. D., Associate Clinical Professor, Dept. of Community Health Services, University of California, San Francisco; a letter, dated November 30, 2017, by Phillip Lubina, Pharm. D.; an email, dated December 5, 2017, by Kenneth Weld, Pharm. D.; an email, dated December 3, 2017, by Jennifer Kichinko, Pharmacy Manager, Safeway 2718 (Town of Mill Valley, Marin County) California.

- I have known [respondent] for 13 years . . . [Respondent] has been a role model for me, and his work ethic and relationships with his patients are . . . things I admire the most about [respondent].

Other Matters

25. Despite the sincerity of the authors of the commendation letters, which support respondent's history of good character and professionalism, the letter writers do not indicate possession of recent knowledge of the exact allegations in complainant's Accusation against respondent, and none of the letter writers has insight into respondent's present level of proficiency in the capacity of a pharmacist-in-charge or as a general pharmacist.

26. Respondent called no witness to the hearing of this matter. No person appeared on respondent's behalf to offer evidence pertaining to his current reputation in his community for exhibiting competent skills as a pharmacist-in-charge. No person came to the hearing of this matter to describe respondent's attitude towards his past acts and omissions that led to the malfeasance committed by him as revealed through the work of Inspector Jennifer Hall.

27. Respondent presented no competent, corroborating evidence that since mid-2014 he has been involved or participated in significant or conscientious community, religious, or privately-sponsored programs designed for social benefit or to ameliorate social problems.

28. Respondent's unprofessional acts for both the violation of failing to properly secure dangerous drugs and the violation of failing to retain records on licensed premises operates as a potential harm to the public.

29. The passage of time between discovery by board personnel of respondent's acts and omission that led to complainant's Accusation and the date of the hearing has not adversely impacted respondent's due process rights, especially regarding his ability to present evidence in his defense. The doctrine of laches cannot be found to be applicable to the facts developed in this matter.

Matters in Aggravation

30. Respondent has a record establishing the agency's issuance of three citations against him for unprofessional conduct on his part. Those matters include: Case No CI 2016 74543 as a citation and fine issued on March 28, 2017; Citation Case No. 2016 75356 a citation and fine issued on May 31, 2017; and, Citation Case No. CI 2017 75941 as a citation issued on July 28, 2017.

Citation Case No. CI 2016 74543 pertained to respondent's violation of the regulations prescribing self-assessment of a pharmacy by a newly appointed pharmacist-in-

charge within 30 days of a change of persons holding the role of pharmacist-in-charge, as required by California Code of Regulations, title 16, section 1715, subdivision (b)(2). In particular, in April 2016, respondent officially became the pharmacist-in-charge for the Safeway Pharmacy (No. PHY 52321) on Mendocino Avenue in Santa Rosa. By the date of a board inspection on August 10, 2016, the Self-Assessment had not been completed by respondent. For the citation a fine of \$100 was imposed. Respondent has paid the fine and the board case file has closed.

Citation Case No. CI 2016 75356 pertained to respondent's violation of the regulations prohibiting a variation from a medical doctor's prescription instruction, as required by California Code of Regulations, title 16, section 1716. In particular, on February 8, 2013, respondent permitted the incorrect dispensation of medication to a particular patient of a Safeway Pharmacy (No. PHY 35032) on West Napa Street in Sonoma, California. The prescription had been written for budesonide 3mg capsules by a physician for a patient but respondent allowed the incorrect dispensing to the patient of risperidone 3mg tablets. After the patient had ingested one dose of risperidone, the patient required admission to a hospital for treatment. For the citation a fine of \$750 was imposed for the violation of the pharmacy law. Respondent has paid the fine and the board case file has closed.

Citation Case No. CI 2017 75941 pertained to respondent's violation of the statute prohibiting acts or omissions that involve, in part or whole, the failure to exercise, or implement, a pharmacist's best professional judgment or acts or omissions involving, in part or whole, inappropriate failure to fully maintain and retain appropriate patient-specific information, as required by Business and Professions Code section 4306.5 subdivisions (b) and (d). In particular, at the Safeway Pharmacy (No. PHY 27678) on Mendocino Avenue in Santa Rosa, respondent failed to dispense clozapine correctly to a particular patient as required by the Clozapine Risk Evaluation and Mitigation Strategy (REMS) program. Respondent failed to verify the absolute neutrophil count for the patient before dispensing RX#6547497 for clozapine 25mg tablets and RX#654796 for clozapine 100mg tablets on April 22, 2016. The absolute neutrophil counts for the patient were not entered into the clozapine registry system in order to obtain a pre-dispense authorization code before dispensing the medication. Respondent's acts and omissions violated the pharmacy law.

Matter that Mitigate Against Issuance of a Letter of Public Reproval

31. Respondent contends that issuance by the board against him of a letter of public reproval, as authorized by Business and Professions Code section 495, would be the appropriate disposition of this matter. Respondent observes that complainant's Accusation's allegations against Safeway Pharmacy 911 were resolved. But, respondent does not acknowledge that the corporate pharmacy's executives voluntarily informed complainant's enforcement analysts about the loss of the large amount of Norco from the subject pharmacy site in Sonoma County. And, the corporate owner of the pharmacy site conducted a comprehensive investigation that led to the detection of the wrongdoing by a dishonest pharmacy technician, who more likely than not caused the loss of the Norco. And, Safeway's management terminated the employment of the dishonest pharmacy technician

and removed respondent from his role as pharmacist-in-charge at the Sonoma County pharmacy site. But, in respondent's instance, he was oblivious or wholly unaware, during his tenure as the pharmacist-in-charge of the facility, to the theft of nearly 29,000 Norco tablets until several days after commencement of the onsite investigations by Safeway internal control analysts. And, well into the investigation by the board's Inspector Hall, respondent had not insight into the absence of pharmacy records for the facility where he had acted as pharmacist-in-charge. (The Stipulation crafted by respondent and complainant only suggests "records might have been sent to Iron Mountain Storage.")

Complainant's Cost Recovery Petition

32. Complainant incurred costs of investigation and prosecution of the Accusation against respondent as follows:

Attorney General's Costs

By Deputy Attorney General (DAG)

| | |
|--|------------|
| Prosecution Activity During Fiscal Year 2017 | |
| 27.75 hours at \$170 per hour | \$3,867.50 |

| | |
|--|-------------------|
| Prosecution Activity During Fiscal Year 2016 | |
| <u>12.75 hours at \$170 per hour</u> | <u>\$2,167.50</u> |
| Subtotal for DAG | \$6,035.00 |

By Paralegal Staff

| | |
|---|-------|
| Paralegal Service During Fiscal Year 2017 | |
| 1 hour at \$120 per hour | \$120 |

| | |
|---|--------------|
| Paralegal Service During Fiscal Year 2016 | |
| <u>1.75 hours at \$120 per hour</u> | <u>\$210</u> |
| Subtotal for Paralegal Services | \$360 |

| | |
|----------------------------|------------|
| Total Costs of Prosecution | \$6,395.00 |
|----------------------------|------------|

Complainant's Investigative Costs

| | |
|--------------------------------|------------|
| Inspector Jennifer Hall's Cost | |
| 27.75 hours at \$102 per hour | \$2,830.50 |

| | |
|------------------------------|----------|
| Supervisor's Costs | |
| 1.75 hours at \$121 per hour | \$211.75 |

| | |
|---------------------------|------------|
| Total Investigative Costs | \$3,042.25 |
|---------------------------|------------|

| | |
|------------------------------------|------------|
| GRAND TOTAL OF THE COSTS INCURRED: | \$9,437.25 |
|------------------------------------|------------|

33. In support of recovery of the costs of prosecution, complainant's attorney's "billing summary" shows approximately one-dozen entries captioned as "settlement preparation/negotiation." Nothing indicates with whom the "settlement negotiations" were conducted. And, following those entries pertaining to the settlement discussions, the billing summary reflects notes for "client communication" and "communication with other party."

At the hearing of this matter, complainant's attorney disclosed that complainant's Accusation's allegations as leveled against Safeway Pharmacy 911 were settled well before the hearing date; but, the exact date for the settlement with the corporation was not made known at the hearing. The settlement with the corporation resulted in a letter of public reproof being imposed against the subject pharmacy. And, that settlement resolution did not impose any amount of costs against the corporation.

At the hearing of this matter, complainant did not ascribe any portion of the costs of the attorney's time, as devoted to settlement discussions with the corporation regarding Safeway Pharmacy 911, to the corporation, versus the amount of attorney preparation time necessary to move to the hearing date the matter of the prosecution of complainant's Accusation's allegations against respondent.

34. Notwithstanding the immediate foregoing, respondent did not advance a meritorious defense in the exercise of his right to a hearing in this matter. Also, respondent cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation's allegations. And, respondent did not raise a "colorable challenge" to complainant's Accusation's allegations.

35. Despite the certainty of respondent's past unprofessional conduct that supports imposition of license disciplinary action, a basis, however, does exist to warrant a reduction of the full assessment upon respondent for recovery of the costs of investigation and prosecution incurred by complainant. The imposition of cost recovery upon respondent of even half of the costs of investigation and prosecution will unfairly penalize respondent, in light of his age, his claimed impending diminished good health, the expense of treatment of his wife's cancer progress as well as her traumatic brain injury, and the realistic prospect that respondent will confront reduced earnings in the immediate coming years.

36. The reasonable and appropriate costs, as owed by respondent to the board, should amount to less than one-half but more than one-third of the costs of investigation and prosecution, that is the exact amount of \$3,900.

Ultimate Findings

37. An insufficient amount of time has passed for the board to determine that respondent has attained rehabilitation from his past unprofessional conduct in violating the law pertaining to dangerous drugs and controlled substances, so as to enable him to hold an unrestricted license as a pharmacist. And a rational basis does not exist for the issuance to

respondent of a letter of public reproof. Rather, the board's guidelines require a period of probation with a stay of license revocation.

38. Respondent is obligated to reimburse to the board a reasonable and appropriate measure of the costs of investigation and prosecution in the amount of \$3,900, as necessarily incurred before the date of the hearing in this matter.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856 [the standard of proof applicable to proceedings for the discipline of professional licenses is clear and convincing evidence to a reasonable certainty].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.) Coupled with the parties' stipulations, complainant's allegations in the Accusation against respondent were established by clear and convincing evidence.

Applicable Law

2. Business and Professions Code section 4300, provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

DUTIES OF A PHARMACIST-IN-CHARGE

3. "'Pharmacist-in-charge' means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy." (Bus. & Prof. Code, § 4036.5.) "The purpose of protecting the public by encouraging pharmacists-in-charge to take necessary precautions to adequately supervise and maintain the inventory of dangerous drugs." (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1168.)

4. Business and Professions Code section 4113, subdivision (c), provides the following with regard to the duties of the pharmacist-in-charge: "the pharmacist-in-charge *shall be responsible for a pharmacy's compliance* with all state and federal laws and regulations pertaining to the practice of pharmacy." (Emphasis added.)

FAILURE TO MAINTAIN COMPLETE ACCOUNTABILITY OF DANGEROUS DRUGS

5. Business and Professions Code section 4301, subdivision (j), provides that the board shall take action against any holder of a license who is guilty of unprofessional conduct, including: “[t]he violation of any of the statutes of this state, or of any other state, or of the United States regulating controlled substances and dangerous drugs.”

California Code of Regulations, title 16, section 1714, subdivision (d), states:

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

The statutory definition of a pharmacist-in-charge under Business and Professions Code section 4036.5, makes it clear that a pharmacist-in-charge has broad responsibilities to ensure the pharmacy under his charge complies with all applicable laws and regulations. Based on a plain reading of the statute, a pharmacist-in-charge is responsible to ensure a pharmacy’s compliance at all times, including times when the pharmacist-in-charge may be off duty or away from the pharmacy. Stated differently, section 4036.5 does not state that a pharmacist-in-charge is responsible to ensure the pharmacy’s compliance only during times when the pharmacist-in-charge is on duty or at the pharmacy.

The responsibilities imposed by California Code of Regulations, title 16, section 1714, subdivision (d), must be interpreted in light of the statutory definition in Business and Professions Code section 4036.5. Based on the statutory definition of a pharmacist-in-charge, title 16, section 1714, subdivision (d), requires a pharmacist-in-charge, while on duty, to take steps and put into place practices necessary to maintain effective control against theft or diversion at all times, including times that the pharmacist-in-charge is not on the pharmacy premises or on duty. As set forth in the parties’ Stipulation and Factual Findings 4 through 8, respondent failed to take steps and put into place practices necessary to prevent theft or diversion of dangerous drugs over the period of April 29, 2013, through July 9, 2014. The evidence thus established that respondent violated California Code of Regulations, title 16, section 1714, subdivision (d). Violation of this regulation was a significant issue in a very recently reported appellate court decision that noted the licensee had “violated this provision because he ‘was responsible for ensuring that the pharmacy maintained and secured its drugs from diversion and theft,’ and the evidence showed he ‘failed to secure the drugs that were being delivered to the pharmacy.’” (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1170.)

FAILURE TO MAINTAIN COMPLETE ACCOUNTABILITY OF DANGEROUS DRUGS

6. Business and Professions Code section 4301, subdivisions (j) and (o), provide that the board shall take action against any holder of a license who is guilty of unprofessional conduct, including: “(j) [t]he violation of any of the statutes of this state, or of any other state, or of the United States regulating controlled substances and dangerous drugs,” and “[v]iolating . . . and provision or term of [the Pharmacy Law] or of the applicable federal and state laws regulations governing pharmacy”

Business and Professions Code section 4105, subdivision (a), provides:

(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.

Business and Professions Code section 4105, subdivision (c), establishes:

(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.

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE - OPERATIONAL STANDARDS AND SECURITY

7. By the parties’ stipulation, and clear and convincing evidence, cause exists for revocation or suspension of licensure, under California Code of Regulations, title 16, section 1714, subdivisions (d), in conjunction with Business and Professions Code section 4301, subdivision (o), by reason of the Stipulation of Factual Allegations as well as Factual Findings 4 through 8, along with Legal Conclusions 2 through 5.

SECOND CAUSE FOR DISCIPLINE- FAILURE TO RETAIN RECORDS ON LICENSED PREMISES

8. By the parties’ stipulation, and clear and convincing evidence cause exists for discipline against respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4105, subdivisions (a) and (c), in conjunction with Business and Professions Code section 4301, subdivision (o), by reason of the Stipulation of Factual Allegations as well as Factual Findings 4 through 7, and 9, along with Legal Conclusions 2, and 4 through 6.

Established Guidelines for Imposition of License Disciplinary Action

9. The board has promulgated a booklet titled “Disciplinary Guidelines,” which serves as a manual of disciplinary guidelines and a set of model disciplinary orders.

The guidelines suggest factors in mitigation, witnesses in mitigation, matters in rehabilitation, as well as matters in aggravation should be weighed in the imposition of license disciplinary action. Accordingly, the matters set out in Factual Findings 10 through 19, and 21 through 30, have been considered in making the Orders below.

Among many topics in the board's guidelines booklet is the board's formulation for categories of violations of provisions under the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.). The categories correlate to recommended penalties upon finding a licensee's violations of law. The categories for violations of the law range from Category I to Category IV, that is from minor violations, which justify a one-year term of probation, to the egregious violations that should result in revocation without the possibility of any term of probation.

Respondent's acts and omissions constitute both Category I and Category II violations.

Respondent's violation of the "operational standards and security" concerns of California Code of Regulations, title 16, section 1714 is a Category I violation. A Category I violation suggests an offense that is relatively minor but is potentially harmful. Despite being the least serious of the categories, the minimum form of discipline for a Category I violation entails a period of probation for not less than one year under standard terms and conditions of probation.

Respondent's violation of the "general requirements" expected of a licensed pharmacist as prescribed by Business and Professions Code section 4105 is a Category II violation. Such a violation contemplates a minimum form of discipline as a stay of revocation with a period of probation of three years under standard terms and conditions of probation. But, outright revocation of licensure may be imposed for a violation of a Category II offense. The guidelines set out that a Category II violation contemplates: a violation with a serious potential for harm; a violation that involves a greater disregard for pharmacy law and public safety than a Category I violation; or, a violation that reflects poorly on ethics, care exercised or competence.

Rehabilitation

10. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.) At the hearing of this matter, respondent failed to make a candid acknowledgment of his unprofessional conduct that contributed to the theft, loss, or misplacement of a large amount of the drug known as Norco.

And, he declined to accept responsibility for the failure of the subject pharmacy (Safeway Pharmacy 911) to retain records on the premises for the time required by law.

The board's disciplinary guidelines provide a non-exhaustive list of the evidence a respondent may submit to demonstrate his rehabilitative efforts and competency. Relevant to this matter, are recent written statements or performance evaluations from persons in position of authority who have on-the-job knowledge of respondent's current competence in the practice of pharmacy. At the hearing of this matter, respondent provided little of such evidence.

Pharmacists must be able to perform competently in a stressful work environment. Mistakes made by a pharmacist can have serious, significant consequences to patients, including death. Respondent's receipt in recent years of three citations exists as aggravating factors. Respondent presented little evidence of rehabilitation or that he is safe to practice as a pharmacist without close oversight by board probation monitors or close supervision by a competent pharmacist-in-charge. In light of respondent's violations, and applying the board's disciplinary guidelines, a stay of revocation under terms of probation exists as the only measure of discipline that can protect the public.

Important to note is the concept that, "[t]here is nothing in the law or in logic that requires the existence of a victim . . . before the board may order a license revoked as part of its effort to protect the people of California from unscrupulous conduct" or unprofessional acts or omissions. (*Hoang v. California State Board of Pharmacy* (2014) 230 Cal.App.4th 448, 457.)

Other Determinations

11. California Code of Regulations, title 16, section 1760, provides in part:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled 'Disciplinary Guidelines' (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

12. It is determined that complainant established that the nature and extent of respondent's more serious violation, which comes within the Category II offenses, warrant the discipline prescribed in the Guidelines. But, due to the matters in mitigation, the matters in rehabilitation, respondent's professional background, which includes 46 years as a board

licensee, his participation in civic and professional endeavors, and the lack of past record of license disciplinary action against respondent's license, the minimum discipline for Category II violations is set out below. Additionally, two of the optional terms of probation as set forth below deviate slightly from the Disciplinary Guidelines, the board believes that it is warranted under these facts and circumstances.

Costs of Investigation and Prosecution

13. Business and Professions Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In this matter, the board has incurred costs of investigation and prosecution in the amount of \$9,437.25.

The California Supreme Court's reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the board's exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 35.

With all factors considered, the costs of investigation and prosecution as set forth in Factual Findings 32 through 34, 36, and 38, are reasonable and appropriate in a total amount of \$3,900.

ORDER

Original Pharmacist License RPH 27678 issued to respondent Frank Peter Tarantino, Jr., is revoked; however, the revocation of the pharmacist license is stayed, and respondent's license is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; or,
- a conviction of any crime, discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Original Pharmacist License RPH 27678 or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this Decision and the terms, conditions and restrictions imposed on respondent by the Decision, as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) or business owner to report to the board in writing acknowledging that the listed individual(s) has/have read the Decision in case number 5957, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

7. Reimbursement of Board Costs

Respondent is liable for the costs incurred by complainant, and he shall pay to the Board of Pharmacy costs of investigation and enforcement in the total amount of \$3,900.

Respondent shall make full payment of the costs within 60 days of the effective date of this Decision.

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

8. Probation Monitoring Costs

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

9. Status of License

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

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

10. License Surrender While on Probation/Suspension

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

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

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

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

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

12. Tolling of Probation

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

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

writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

13. Violation of Probation

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

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

14. Completion of Probation

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

15. Remedial Education

Within sixty (60) days of the effective date of this Decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to: (1) control of dangerous drugs and controlled

substances, and (2) maintenance and control of pharmacy records. The program of remedial education shall consist of at least 40 hours, which shall be completed within nine months of the effective date of this Decision at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

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

16. Separate File of Records

If respondent owns a pharmacy or serves as a pharmacist-in-charge, Respondent shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

17. Report of Controlled Substances

If respondent owns a pharmacy or serves as a pharmacist-in-charge, Respondent shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

18. Consultant for Owner or Pharmacist-In-Charge

During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-charge. However, if during the period of probation respondent serves as a pharmacist-in-charge, respondent shall retain an independent consultant at his own expense who shall be responsible for reviewing pharmacy operations on a [monthly/quarterly] basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board or its designee, for prior approval, within thirty (30) days of the effective date of this Decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

19. Ethics Course

Within ninety (90) calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

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

IT IS SO ORDERED this 14th day of September, 2018.

This Decision and Order will be effective at 5 p.m. on October 15, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read 'Victor Law', is written over a horizontal line.

By

Victor Law, R.Ph.
Board President

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

In the Matter of the Accusation Against:

SAFEWAY PHARMACY 911
477 West Napa Street
Sonoma, CA 95476

Pharmacy Permit No. PHY 35032,

Respondent,

And

FRANK PETER TARANTINO, JR.

Pharmacist License No. RPH 27678

Respondent.

Case No. 5957

OAH No. 2017100145

**ORDER GRANTING PETITION FOR
RECONSIDERATION AND STAY OF
EXECUTION OF THE EFFECTIVE
DATE OF DECISION AND ORDER AS
TO RESPONDENT FRANK PETER
TARANTINO, JR. ONLY**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter was adopted by the California State Board of Pharmacy (Board) on May 8, 2018, and it was set to become effective on June 7, 2018, at 5 p.m. Respondent Tarantino, Pharmacist License No. RPH 27678, timely filed a Petition for Reconsideration pursuant to Government Code section 11521. The petition having been read and considered, and good cause appearing, IT IS HEREBY ORDERED:

(1) That reconsideration be, and is, hereby granted, said reconsideration to be upon all pertinent parts of the record and such written argument as the parties may wish to submit, but no new evidence will be allowed;

(2) That the parties are given until July 6, 2018, to submit written argument to the Board at 1625 North Market Boulevard, Suite N219, Sacramento, California, 95834.

(3) That the effective date of the Board's May 8, 2018, Decision and Order in this matter is hereby stayed until the Board renders its decision after reconsideration.

IT IS SO ORDERED this 7th day of June 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read 'Victor Law', is written over a horizontal line.

By

Victor Law, R.Ph.
Board President

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

In the Matter of the Accusation Against:

SAFEWAY PHARMACY 911
477 West Napa Street
Sonoma, CA 95476

Pharmacy Permit No. PHY 35032,

Respondent,

And

FRANK PETER TARANTINO, JR.

Pharmacist License No. RPH 27678

Respondent.

Case No. 5957

OAH No. 2017100145

DECISION AND ORDER

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

This decision shall become effective at 5:00 p.m. on June 7, 2018.

It is so ORDERED on May 8, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

SAFEWAY PHARMACY 911¹
477 West Napa Street
Sonoma, CA 95476

Pharmacy Permit No. PHY 35032,

Respondent,

and

FRANK PETER TARANTINO, JR.

Pharmacist License No. RPH 27678,

Respondent.

Case No. 5957

OAH No. 2017100145

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings (OAH), heard this matter on February 14, 2018, in Oakland, California.

Deputy Attorney General Susana A. Gonzales represented complainant Virginia Herold, Executive Officer, the Board of Pharmacy, Department of Consumer Affairs.

Attorney at Law Alissa Brice Castaneda, of Quarles and Brady, represented respondent Frank Peter Tarantino, Jr., who attended the hearing of this matter.

¹ The Accusation in this matter identifies as a party respondent Safeway Pharmacy 911 with premises located at 477 West Napa Street, Sonoma, California 95476. On an unknown date before commencement of the hearing in this matter, the corporate respondent and complainant reached a settlement of the Accusation's allegations against Safeway Pharmacy 911. Hence, Safeway Pharmacy 911 is not a respondent subject to this decision.

The record was held open to permit complainant to file with OAH, and to serve on respondent's attorney, a declaration in support of the recovery of costs of investigation as incurred by the board. On February 15, 2018, complainant filed with OAH the "Certification of Investigative Costs: Declaration of Jennifer Hall," which was marked as exhibit "7," and received into evidence. On February 21, 2018, OAH filed "Respondent Frank Tarantino's Response and Objection to [the] Certification of Investigative Costs . . . ,," which was marked as exhibit "H," and received as argument.

On February 21, 2018, the parties were deemed to have submitted the matter for decision, and the record closed.

STIPULATION TO FACTUAL ALLEGATIONS

On February 12, 2018, with the advice and consent of his attorney, respondent Frank Peter Tarantino, Jr., (respondent) entered into a written stipulation and agreement with complainant regarding pertinent portions of certain allegations in the Accusation. The stipulation included the following admissions, in pertinent part as follows:

- i. Respondent admits the truth of each and every fact, charge, and allegation contained in paragraphs 1-12 and 18-19 in Accusation No. 5957
- ii. With respect to paragraph 17 of Accusation No. 5957, [r]espondent admits that he told the [b]oard investigator that the records *might have been sent* to Iron Mountain Storage.

(Emphasis added.)

At the commencement of the proceeding, respective counsel for the parties agreed that the paramount purpose of the administrative adjudication proceeding was to permit respondent to present, in support of reduction or elimination of the board's imposed penalty, evidence in mitigation, including respondent's testimony under oath. The hearing in this matter ensued and the following factual findings were developed from the parties' stipulation, the evidence, and the arguments presented before submission of the matter.

FACTUAL FINDINGS

1. On July 1, 2017, complainant Virginia Herold (complainant), in her official capacity as the Executive Officer of the Board of Pharmacy (the board), Department of Consumer Affairs, made and issued the Accusation against respondent.

Respondent's License Information

2. On May 23, 1972, the board issued Pharmacist License Number RPH 27678 to respondent. The license issued to respondent was in full force and effect at all times relevant to the matters raised in the Accusation. Respondent's Pharmacist License will expire on February 28, 2019, unless renewed, surrendered, or revoked before that date.

License for Safeway Pharmacy 911

3. On approximately September 23, 1988, the board issued Pharmacy Permit Number PHY 35032 to Safeway Pharmacy 911. The Pharmacy Permit expired on January 30, 2015, and was cancelled on April 15, 2015.

The Investigative Report by Board Inspector Jennifer Hall

4. On September 8, 2014, Board Inspector Jennifer Hall, Pharm. D., (Inspector Hall) issued a 10-page report, which was accompanied by several attachments consisting of more than 100 pages. The inspector's report was thorough, persuasive, and compelling. The report provides necessary background information regarding respondent's acts and omissions that resulted in complainant's Accusation's charges against him as well as against Safeway Pharmacy 911. In pertinent part, the investigative report revealed the following:

On April 22, 2014, from a corporate office in Pleasanton, California, G. S., the Regional Pharmacy Manager for Safeway Inc. (Safeway) for the Northern California Division, wrote a letter to board Enforcement Analyst Raymond Flores. On May 5, 2014, the board received the Safeway regional pharmacy manager's letter stating that through a "data mining" exercise, Safeway found a "potential for substantial variance" for Norco at Safeway Pharmacy 911. The analysis by Safeway showed that between February 6, 2013, and February 6, 2014, Safeway Store Pharmacy 911 in Sonoma sustained a potential loss of 23,686 doses of Norco. Safeway concluded that 24 1,000-count bottles of Norco had been ordered in a suspicious manner because the orders had not been executed through the automated ordering system, but rather by a manual ordering process. Importantly, the manual orders were not entered into the inventory system for the subject Safeway pharmacy. A later investigation by Safeway disclosed a manual order on March 4, 2014, of one 1,000 count bottle of Norco. And, then the corporation's personnel detected additional manual ordering on April 3, 2014, of 3,000 tablets of Norco. The internal corporate audit and corporate in-house investigation by Safeway revealed that nearly all of the manual orders for Norco were placed by a single pharmacy technician, P.T.S.

Two days after the board received the letter from Safeway Regional Pharmacy Manager G. S., the board sent, on May 7, 2017, a letter to respondent, in his capacity as pharmacist-in-charge, requesting information and additional explanation pertaining to the loss sustained at Safeway Pharmacy 911.

On June 23, 2014, Inspector Hall interviewed G. S. The Safeway Regional Pharmacy Manager rendered a detailed statement culminating in the revelations that P.T.S. had entered all, but one, of the manual orders for the missing or stolen Norco. Although the method used by P.T.S. in removing the large quantity of Norco from the premises for the subject pharmacy was never discovered, that pharmacy technician was determined to have been the most likely culprit for the loss of the large amount of missing Norco tablets. P.T.S. gave G. S. information on June 20, 2014, that his registration as the pharmacy technician was subject to revocation by the board. When P.T.S. did not report to work, on June 21 and June 22, 2014, Safeway on June 26, 2014, terminated the employment of P.T.S., on the ground of "job abandonment."

On July 9, 2014, Inspector Hall conducted an inspection and audit of Safeway Pharmacy 911. Respondent assisted with the inspection and he engaged in an interview with the board's inspector. Among other things, Inspector Hall's audit detected that the subject pharmacy, between May 7, 2012, and July 9, 2014, could not account for 49,368 tablets of Norco. And, as for time respondent held the position as pharmacist-in-charge for Safeway Pharmacy 911, over the period from April 29, 2013, to July 9, 2014, the quantity of Norco that was missing, lost, or stolen reached a total of 28,256 tablets.

During his interview with Inspector Hall, respondent made an admission that Safeway Pharmacy 911 may have sent documents and records pertaining to drugs into an off-site facility known as Iron Mountain Storage. Respondent possessed, at the subject pharmacy, no documentary proof for review by the board inspector that the board had issued an "off-site storage waiver" regarding the pharmacy's records that were absent from the premises of the subject pharmacy.

Respondent's Employment - Safeway Pharmacy 911

5. From May 5, 2013, to July 9, 2014, the board secured and analyzed definitive records establishing that respondent held the designation of the pharmacist-in-charge for Safeway Pharmacy 911, which is located at 477 West Napa Street, Sonoma, California 95476. (But, by respondent's testimony at the hearing of this matter, he held that position before May 5, 2013, and after July 9, 2014.)

Dangerous Drugs and Controlled Substances

6. The concept of "dangerous drugs" means any drug for self-use in humans or animals, including:

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

[¶] . . . [¶]

(c) Any other drug . . . that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to section 4006. (Bus. & Prof. Code, § 4022)

7. Hydrocodone with acetaminophen, also known as “Norco,” was before October 2014 a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(3), and a dangerous drug pursuant to Business and Professions Code section 4022. On October 6, 2014, hydrocodone with acetaminophen (Norco) was reclassified as a Schedule II controlled substance under the Code of Federal Regulations, title 21, section 1308.12, subdivision (b)(1)(vii).

Causes for Discipline

FAILURE TO EFFECTIVELY CONTROL THEFT OR DIVERSION OF DANGEROUS DRUGS

8. For the period of at least May 5, 2013, to July 9, 2014, respondent’s acts and omissions constituted a failure to effectively control theft or diversion of dangerous drugs at the Safeway Pharmacy 911 on West Napa Street in Sonoma, California. As the designated pharmacist-in-charge for Safeway Pharmacy 911 on Napa Street in Sonoma, California, for the subject period of time, respondent failed to be responsible for the security of the subject pharmacy’s prescription department, including the provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs. While he acted as the pharmacist-in-charge of Safeway Pharmacy 911, for the period of May 5, 2013, and July 9, 2014, respondent failed to account for at least 28,256 tablets of Norco, which were stolen, lost, or improperly dispensed.

FAILURE TO RETAIN RECORDS ON LICENSED PREMISES

9. Through his acts or omissions, in the capacity as the pharmacist-in-charge of Safeway Pharmacy 911 for a three-year period ending in early July 2014, respondent failed to retain records on the premises of the subject pharmacy regarding the acquisition and disposition of dangerous drugs at the pharmacy’s premises in a readily retrievable form.

Respondent’s Background and Matters in Mitigation

10. Respondent will reach his 71st birthday in April 2018. Respondent was born and raised in San Francisco, California. Respondent claims that he has recently received a diagnosis suggestive of a serious health-care impairment. (At the hearing, however, respondent did not provide either a copy of a medical record or articulate clear, definitive testimony regarding the precise nature and actual extent of the illness that supposedly afflicts him.)

11. In 1972, respondent graduated from the University of the Pacific (UOP) Pharmacy School, which is located in Stockton (San Joaquin County) California. He was

awarded the Doctor of Pharmacy (Pharm. D.) degree that year. His undergraduate studies were fulfilled at San Francisco City College and University of San Francisco.

12. Before graduating from the UOP Pharmacy School and prior to being licensed, respondent worked as an intern pharmacist at Saint Joseph Hospital in Stockton. Upon acquiring licensure, he was hired full time as a staff pharmacist at that hospital in Stockton.

For a few years after earning the Pharm. D. degree, respondent taught classes at UOP. Then, he was offered an opportunity to work in San Francisco at Presbyterian Hospital, which later became known as the California Pacific Medical Center, and he served as the hospital's Pharmacist Coordinator. Through that position, he mentored UOP pharmacy students. In time his title became that of Assistant Director of Pharmacy for the hospital. For the final year of his employment at the hospital, that is from 1983 to 1984, respondent served as the Director of Pharmacy for the hospital. While serving at that medical facility, respondent held a role as an Adjunct Professor.

At the onset of the HIV/AIDS health crisis, respondent began work with the American Hospital Supply Company as a branch manager for the San Francisco office. He expended great energy in managing HIV patients with an array of drug therapies, which included use of pharmaceuticals, long-term nutrition programs, and short-term antibiotic treatment courses. In that role, respondent initially managed a core group of five employees, which included pharmacists. As a branch manager for American Hospital Supply Company, respondent opened company branches in Seattle and Hawaii. However, the success of the company made it a corporate acquisition target so that when the company merged with a larger corporation, respondent lost his job after holding the employment position for a span of approximately five years.

Following the approximate five years with American Hospital Supply Company, respondent joined two other pharmacists to form a business in Oakland, California. The business was called "Home Nutrition Systems." That business, in which respondent held a part ownership interest, distributed pharmaceuticals on "Pill Hall" in Oakland to focus upon medical facilities such as Providence Hospital, Merritt Hospital, and Oakland Children's Hospital. The four to five years of success of that business resulted in the company being taken over in a merger with a larger corporation. As a consequence of the merger and acquisition of the business he had partially owned, respondent's position was eliminated.

At that point in time, respondent decided to work as an independent, relief pharmacist and he became associated with a registry-type company called "Rx Relief." That business placed pharmacists desiring to work in temporary employment assignments through "fill-in" pharmacist assignments. Because of his efficiency, Rx Relief hired respondent to supervise the placement of pharmacists throughout its network; yet, respondent continued to personally accept temporary work assignments as a pharmacist. Then, he assumed the role of Regional Manager for the Northern California area for Rx Relief. Through that job, respondent hired, trained, and placed 20 to 40 relief pharmacists.

While he worked for Rx Relief, respondent became very acquainted with the Safeway system of pharmacies. As part of his temporary employment work through Rx Relief, respondent was attached to various Safeway Pharmacy sites. In time, the Director of Pharmacy for Safeway asked respondent to work full-time for Safeway. After he had worked as a Safeway Pharmacy staff pharmacist "for about a month," the Pharmacy Director for Safeway appointed him to perform the very placement work duties and functions that he had carried out for Rx Relief. Hence, respondent accepted the offer to become the "Float Team Manager" for a network in Northern California of 70 pharmacy sites owned by Safeway. (Before he left the assignment, Safeway acquired approximately 100 pharmacies, which employed pharmacists hired and trained by respondent.) Respondent held the Float Team Manager position for approximately three years.

After performing work as the Float Team Manager for the entire Northern California area, Safeway hired respondent to work as a Regional Pharmacy Director, which entailed his supervising and placing pharmacists in 35 to 44 Safeway sites in the Bay Area, which included San Francisco, the entire East Bay (Alameda and Contra Costa counties), Modesto and the area of Santa Clara County near the City of Sunnyvale.

As part of the work as the Regional Pharmacy Director for Safeway, respondent was responsible for not only hiring but also training pharmacists. Hence, respondent hired and trained between 100 and 150 pharmacists who worked for Safeway. Also, his work required him to supervise all pharmacists-in-charge personnel at the more than 40 stores.

Respondent held the position as a Regional Pharmacy Director for Safeway for approximately 17 years.

13. After 17 years in the demanding role as Regional Pharmacy Director for Safeway, when he was older than 60 years of age, respondent sought to "step down" and to again "work with patients" as a pharmacist. Safeway enabled him to work again as a "float" pharmacist for various store sites in the North Bay. In time he secured a permanent position at Safeway Pharmacy 911 in Sonoma. Initially, respondent worked under the supervision of Pharmacist-in-Charge Lee Tucker.

In either late April or early May 2013, Mr. Tucker retired, which resulted in respondent assuming the role of the pharmacist-in-charge for the pharmacy where the acts and omissions described in complainant's Accusation occurred.

14. Although in approximate late April 2013, respondent accepted the position as pharmacist-in-charge for Safeway Pharmacy No. 911, his wife received in May 2013 a definitive diagnosis of breast cancer and her health had been poor before the date she received the actual diagnosis of cancer. In essence, respondent took on the full-time position at the subject pharmacy in order to maintain medical insurance coverage necessary for the treatment of his wife's poor health problems.

15. Between mid- and late-2014, respondent ended his role as the pharmacist-in-charge for Safeway Pharmacy 911. In October 2014, respondent's wife fell down stairs to suffer a traumatic brain injury. At that point in October 2014, respondent took family leave to provide care and aid to his wife. (Despite the Accusation's allegation that his pharmacist-in-charge role ended in July 2014, respondent was persuasive that in October 2014, he ended his position as the pharmacist-in-charge for Safeway Pharmacy No. 911.)

16. After October 2014, respondent worked for several months as a "floater" until early 2016. In 2016, respondent was given a permanent assignment as a staff pharmacist at the Santa Rosa-Mendocino Safeway Pharmacy. Because of personnel shortages, Safeway appointed respondent as pharmacist-in-charge for the Santa Rosa-Mendocino pharmacy over a period of one year, which ended in 2017.

As of the date of the hearing (February 14, 2018), respondent was working in the "floating" pharmacist role. He adamantly testified that he has worked full-time in recent years so as to average approximately 1,700 hours per year in providing professional services as a pharmacist in the employ of Safeway Pharmacies. (But, later in this testimony at the hearing in mid-February 2018, respondent proclaimed that for approximately a month or two before the hearing date he had commenced "Family Medical" leave so as to stay home with his ill wife. Yet, he had plans to resume in the near future his full-time role as a "float" pharmacist for the network of Safeway Pharmacies.)

17. Respondent considers himself to be very proficient in pain management drug therapies and he has significant skills as an immunizing pharmacist in that he has administered "thousands of flu shots" through Safeway pharmacies. (But at the hearing of this matter, respondent presented no documentary evidence to support his elevated or enhance skill set as a pharmacist. Hence, respondent's claim cannot be verified as an accurate assessment of his current proficiency.)

18. Respondent has been very active in professional organizations that serve the pharmacy profession. He has held memberships in associations such as the San Francisco Society of Pharmacy and the Marin County Society of Pharmacy. When he worked for various hospitals, respondent was very involved with the California Society of Hospital Pharmacists, which included him serving on several hospital committees. Also, he has delivered many scholarly presentations to groups of pharmacists. And, over the years, respondent has "mentored" or trained up to 300 pharmacists. And, as a Safeway regional manager, he hired and trained, at least 100 pharmacists, into the Safeway pharmacy network. (But, at the hearing of this matter, respondent offered no documentary evidence supporting his participation in professional organizations or his activities as a scholarly lecturer on topics pertinent to the pharmacy profession. Hence, respondent's claim cannot be verified as an accurate assessment of his recent level of service to the pharmacy industry)

19. Other than the instant Accusation, respondent has no record of the board's disciplinary action or any allegation against his pharmacist license for substantiated unprofessional conduct on his part. (Lawyers for respondent and complainant stipulated that

the three board-issued citations against respondent are not technically past adverse administrative disciplinary actions against his license.)

Respondent's Unpersuasive Claims of Extenuation

20. Respondent's contention was not persuasive that he was "totally blind sided" by the theft of Norco that appeared to have been carried out by a former pharmacy technician. At the hearing of this matter, respondent asserted that the thefts occurred on days that he was absent, or at times when "relief" pharmacists acted as the managing pharmacist for the subject pharmacy. But, respondent's positions failed to detract from complainant's Accusation's allegations that respondent bore ultimate responsibility as the designated pharmacist-in-charge to put in place and to execute systems and policies for effective controls that would tend to have averted theft or diversion of dangerous drugs.

Matters in Rehabilitation

21. As of the date of the hearing in this matter (February 14, 2018), respondent remained employed as a pharmacist by Safeway. He serves in the capacity as a "floating" pharmacist as he takes assignments at various store sites as a "fill-in," or replacement pharmacist.

22. At the hearing of this matter, respondent compellingly proclaimed that the loss of Norco, in the amount stated above, will never happen again under his watch as a pharmacist-in-charge. The Safeway Pharmacy network has implemented a set of stern policies and guidelines for the safeguarding of controlled substances and dangerous drugs. He has learned from the experience as he has now fostered a heightened awareness to potential theft of dangerous drugs or controlled substances.

23. Following the end of this role as pharmacist-in-charge for Safeway Pharmacy No. 911, respondent resumed the position of "float" pharmacist, which enables him to work only as a general pharmacist at different pharmacies operated by Safeway. His practice now dictates that he "validate what the computers" show on screens. Moreover, he "always checks all the trash cans during [his] shift" to assure that invoices are not thrown away or that medications are not secreted through the trash receptacles. He directs all workers to leave backpacks, big purses, sweatshirts or large coats outside the confines of a pharmacy. He lives by the motto, "Trust but Verify."

Support for Respondent from Other Pharmacists

24. Respondent has the respect, admiration, and support of many pharmacists. At the hearing of this matter, respondent offered five letters² that endorse his years of service to his profession. The writers of the letters submit comments including the following:

² A letter, dated November 27, 2017, by David Valencia, Pharm.D.; a letter, dated "11/27/2017," by Steven Protzel, Pharm. D., Associate Clinical Professor, Dept. of

- I have known [respondent] for more than 20 years I met [respondent] in 1994 while working for Safeway and we worked together for 14 years. I have always found him to be a dedicated and professional colleague. As the Director of Pharmacy, I . . . recognized [respondent's] leadership qualities Working as a Pharmacy District Manager, [respondent] . . . took to the challenge and [he] delivered outstanding results. His work ethic and results exceeded . . . expectations . . . [¶] . . . As a pharmacist, [respondent] sets the bar for professionalism, honesty, compassion . . . board compliance for all to reach His honesty and dedication to the profession is a standard to be recognized.
- I have known [respondent] for over 25 years [W]e worked together for 18 years [for Safeway] [Respondent] is a dedicated professional and person of compassion for others
- I have known [respondent] for 20 years I have always found [respondent] to be a person of high integrity and professionalism [Respondent] has a high regard for and dedication to the profession and practice of pharmacy.
- I have known [respondent] for over 15 years [Respondent] hired me as a pharmacy intern, and we later worked together as pharmacy managers for Safeway Pharmacy stores within Sonoma County [Respondent] has always shown to be a professional, competent, and trusted friend and pharmacist.
- I have known [respondent] for 13 years [Respondent] has been a role model for me, and his work ethic and relationships with his patients are . . . things I admire the most about [respondent].

Other Matters

25. Despite the sincerity of the authors of the commendation letters, which support respondent's history of good character and professionalism, the letter writers do not indicate possession of recent knowledge of the exact allegations in complainant's Accusation against respondent, and none of the letter writers has insight into respondent's present level of proficiency in the capacity of a pharmacist-in-charge or as a general pharmacist.

Community Health Services, University of California, San Francisco; a letter, dated November 30, 2017, by Phillip Lubina, Pharm. D.; an email, dated December 5, 2017, by Kenneth Weld, Pharm. D.; an email, dated December 3, 2017, by Jennifer Kichinko, Pharmacy Manager, Safeway 2718 (Town of Mill Valley, Marin County) California.

26. Respondent called no witness to the hearing of this matter. No person appeared on respondent's behalf to offer evidence pertaining to his current reputation in his community for exhibiting competent skills as a pharmacist-in-charge. No person came to the hearing of this matter to describe respondent's attitude towards his past acts and omissions that led to the malfeasance committed by him as revealed through the work of Inspector Jennifer Hall.

27. Respondent presented no competent, corroborating evidence that since mid-2014 he has been involved or participated in significant or conscientious community, religious, or privately-sponsored programs designed for social benefit or to ameliorate social problems.

28. Respondent's unprofessional acts for both the violation of failing to properly secure dangerous drugs and the violation of failing to retain records on licensed premises operates as a potential harm to the public.

29. The passage of time between discovery by board personnel of respondent's acts and omission that led to complainant's Accusation and the date of the hearing has not adversely impacted respondent's due process rights, especially regarding his ability to present evidence in his defense. The doctrine of laches cannot be found to be applicable to the facts developed in this matter.

Matters in Aggravation

30. Respondent has a record establishing the agency's issuance of three citations against him for unprofessional conduct on his part. Those matters include: Case No CI 2016 74543 as a citation and fine issued on March 28, 2017; Citation Case No. 2016 75356 a citation and fine issued on May 31, 2017; and, Citation Case No. CI 2017 75941 as a citation issued on July 28, 2017.

Citation Case No. CI 2016 74543 pertained to respondent's violation of the regulations prescribing self-assessment of a pharmacy by a newly appointed pharmacist-in-charge within 30 days of a change of persons holding the role of pharmacist-in-charge, as required by California Code of Regulations, title 16, section 1715, subdivision (b)(2). In particular, in April 2016, respondent officially became the pharmacist-in-charge for the Safeway Pharmacy (No. PHY 52321) on Mendocino Avenue in Santa Rosa. By the date of a board inspection on August 10, 2016, the Self-Assessment had not been completed by respondent. For the citation a fine of \$100 was imposed. Respondent has paid the fine and the board case file has closed.

Citation Case No. CI 2016 75356 pertained to respondent's violation of the regulations prohibiting a variation from a medical doctor's prescription instruction, as required by California Code of Regulations, title 16, section 1716. In particular, on February 8, 2013, respondent permitted the incorrect dispensation of medication to a particular patient of a Safeway Pharmacy (No. PHY 35032) on West Napa Street in Sonoma, California. The

prescription had been written for budesonide 3mg capsules by a physician for a patient but respondent allowed the incorrect dispensing to the patient of risperidone 3mg tablets. After the patient had ingested one dose of risperidone, the patient required admission to a hospital for treatment. For the citation a fine of \$750 was imposed for the violation of the pharmacy law. Respondent has paid the fine and the board case file has closed.

Citation Case No. CI 2017 75941 pertained to respondent's violation of the statute prohibiting acts or omissions that involve, in part or whole, the failure to exercise, or implement, a pharmacist's best professional judgment or acts or omissions involving, in part or whole, inappropriate failure to fully maintain and retain appropriate patient-specific information, as required by Business and Professions Code section 4306.5 subdivisions (b) and (d). In particular, at the Safeway Pharmacy (No. PHY 27678) on Mendocino Avenue in Santa Rosa, respondent failed to dispense clozapine correctly to a particular patient as required by the Clozapine Risk Evaluation and Mitigation Strategy (REMS) program. Respondent failed to verify the absolute neutrophil count for the patient before dispensing RX#6547497 for clozapine 25mg tablets and RX#654796 for clozapine 100mg tablets on April 22, 2016. The absolute neutrophil counts for the patient were not entered into the clozapine registry system in order to obtain a pre-dispense authorization code before dispensing the medication. Respondent's acts and omissions violated the pharmacy law.

Matter that Mitigate Against Issuance of a Letter of Public Reproval

31. Respondent contends that issuance by the board against him of a letter of public reproval, as authorized by Business and Professions Code section 495, would be the appropriate disposition of this matter. Respondent observes that complainant's Accusation's allegations against Safeway Pharmacy 911 were resolved. But, respondent does not acknowledge that the corporate pharmacy's executives voluntarily informed complainant's enforcement analysts about the loss of the large amount of Norco from the subject pharmacy site in Sonoma County. And, the corporate owner of the pharmacy site conducted a comprehensive investigation that led to the detection of the wrongdoing by a dishonest pharmacy technician, who more likely than not caused the loss of the Norco. And, Safeway's management terminated the employment of the dishonest pharmacy technician and removed respondent from his role as pharmacist-in-charge at the Sonoma County pharmacy site. But, in respondent's instance, he was oblivious or wholly unaware, during his tenure as the pharmacist-in-charge of the facility, to the theft of nearly 29,000 Norco tablets until several days after commencement of the onsite investigations by Safeway internal control analysts. And, well into the investigation by the board's Inspector Hall, respondent had not insight into the absence of pharmacy records for the facility where he had acted as pharmacist-in-charge. (The Stipulation crafted by respondent and complainant only suggests "records might have been sent to Iron Mountain Storage.")

Complainant's Cost Recovery Petition

32. Complainant incurred costs of investigation and prosecution of the Accusation against respondent as follows:

Attorney General's Costs
By Deputy Attorney General (DAG)

| | |
|--|-------------------|
| Prosecution Activity During Fiscal Year 2017 | |
| 27.75 hours at \$170 per hour | \$3,867.50 |
| Prosecution Activity During Fiscal Year 2016 | |
| <u>12.75 hours at \$170 per hour</u> | <u>\$2,167.50</u> |
| Subtotal for DAG | \$6,035.00 |

By Paralegal Staff

| | |
|---|--------------|
| Paralegal Service During Fiscal Year 2017 | |
| 1 hour at \$120 per hour | \$120 |
| Paralegal Service During Fiscal Year 2016 | |
| <u>1.75 hours at \$120 per hour</u> | <u>\$210</u> |
| Subtotal for Paralegal Services | \$360 |

Total Costs of Prosecution \$6,395.00

Complainant's Investigative Costs

| | |
|--------------------------------|------------|
| Inspector Jennifer Hall's Cost | |
| 27.75 hours at \$102 per hour | \$2,830.50 |
| Supervisor's Costs | |
| 1.75 hours at \$121 per hour | \$211.75 |

Total Investigative Costs \$3,042.25

GRAND TOTAL OF THE COSTS INCURRED: \$9,437.25

33. In support of recovery of the costs of prosecution, complainant's attorney's "billing summary" shows approximately one-dozen entries captioned as "settlement preparation/negotiation." Nothing indicates with whom the "settlement negotiations" were conducted. And, following those entries pertaining to the settlement discussions, the billing summary reflects notes for "client communication" and "communication with other party."

At the hearing of this matter, complainant's attorney disclosed that complainant's Accusation's allegations as leveled against Safeway Pharmacy 911 were settled well before the hearing date; but, the exact date for the settlement with the corporation was not made known at the hearing. The settlement with the corporation resulted in a letter of public reproof being imposed against the subject pharmacy. And, that settlement resolution did not impose any amount of costs against the corporation.

At the hearing of this matter, complainant did not ascribe any portion of the costs of the attorney's time, as devoted to settlement discussions with the corporation regarding Safeway Pharmacy 911, to the corporation, versus the amount of attorney preparation time necessary to move to the hearing date the matter of the prosecution of complainant's Accusation's allegations against respondent.

34. Notwithstanding the immediate foregoing, respondent did not advance a meritorious defense in the exercise of his right to a hearing in this matter. Also, respondent cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation's allegations. And, respondent did not raise a "colorable challenge" to complainant's Accusation's allegations.

35. Despite the certainty of respondent's past unprofessional conduct that supports imposition of license disciplinary action, a basis, however, does exist to warrant a reduction of the full assessment upon respondent for recovery of the costs of investigation and prosecution incurred by complainant. The imposition of cost recovery upon respondent of even half of the costs of investigation and prosecution will unfairly penalize respondent, in light of his age, his claimed impending diminished good health, the expense of treatment of his wife's cancer progress as well as her traumatic brain injury, and the realistic prospect that respondent will confront reduced earnings in the immediate coming years.

36. The reasonable and appropriate costs, as owed by respondent to the board, should amount to less than one-half but more than one-third of the costs of investigation and prosecution, that is the exact amount of \$3,900.

Ultimate Findings

37. An insufficient amount of time has passed for the board to determine that respondent has attained rehabilitation from his past unprofessional conduct in violating the law pertaining to dangerous drugs and controlled substances, so as to enable him to hold an unrestricted license as a pharmacist. And a rational basis does not exist for the issuance to respondent of a letter of public reproof. Rather, the board's guidelines require a period of probation with a stay of license revocation.

38. Respondent is obligated to reimburse to the board a reasonable and appropriate measure of the costs of investigation and prosecution in the amount of \$3,900, as necessarily incurred before the date of the hearing in this matter.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. Complainant has the burden of proving each of the grounds for discipline alleged in the Accusation, and must do so by clear and convincing evidence to a reasonable certainty.

(*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856 [the standard of proof applicable to proceedings for the discipline of professional licenses is clear and convincing evidence to a reasonable certainty].) “The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations].” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; *italics original.*) Coupled with the parties’ stipulations, complainant’s allegations in the Accusation against respondent were established by clear and convincing evidence.

Applicable Law

2. Business and Professions Code section 4300, provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

DUTIES OF A PHARMACIST-IN-CHARGE

3 “‘Pharmacist-in-charge’ means a pharmacist proposed by a pharmacy and approved by the board as the supervisor or manager responsible for ensuring the pharmacy’s compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.” (Bus. & Prof. Code, § 4036.5.) “The purpose of protecting the public by encouraging pharmacists-in-charge to take necessary precautions to adequately supervise and maintain the inventory of dangerous drugs.” (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1168.)

4. Business and Professions Code section 4113, subdivision (c), provides the following with regard to the duties of the pharmacist-in-charge: “the pharmacist-in-charge *shall be responsible for a pharmacy’s compliance* with all state and federal laws and regulations pertaining to the practice of pharmacy.” (Emphasis added.)

FAILURE TO MAINTAIN COMPLETE ACCOUNTABILITY OF DANGEROUS DRUGS

5. Business and Professions Code section 4301, subdivision (j), provides that the board shall take action against any holder of a license who is guilty of unprofessional conduct, including: “[t]he violation of any of the statutes of this state, or of any other state, or of the United States regulating controlled substances and dangerous drugs.”

California Code of Regulations, title 16, section 1714, subdivision (d), states:

Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession

of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

The statutory definition of a pharmacist-in-charge under Business and Professions Code section 4036.5, makes it clear that a pharmacist-in-charge has broad responsibilities to ensure the pharmacy under his charge complies with all applicable laws and regulations. Based on a plain reading of the statute, a pharmacist-in-charge is responsible to ensure a pharmacy's compliance at all times, including times when the pharmacist-in-charge may be off duty or away from the pharmacy. Stated differently, section 4036.5 does not state that a pharmacist-in-charge is responsible to ensure the pharmacy's compliance only during times when the pharmacist-in-charge is on duty or at the pharmacy.

The responsibilities imposed by California Code of Regulations, title 16, section 1714, subdivision (d), must be interpreted in light of the statutory definition in Business and Professions Code section 4036.5. Based on the statutory definition of a pharmacist-in-charge, title 16, section 1714, subdivision (d), requires a pharmacist-in-charge, while on duty, to take steps and put into place practices necessary to maintain effective control against theft or diversion at all times, including times that the pharmacist-in-charge is not on the pharmacy premises or on duty. As set forth in the parties' Stipulation and Factual Findings 4 through 8, respondent failed to take steps and put into place practices necessary to prevent theft or diversion of dangerous drugs over the period of April 29, 2013, through July 9, 2014. The evidence thus established that respondent violated California Code of Regulations, title 16, section 1714, subdivision (d). Violation of this regulation was a significant issue in a very recently reported appellate court decision that noted the licensee had "violated this provision because he 'was responsible for ensuring that the pharmacy maintained and secured its drugs from diversion and theft,' and the evidence showed he 'failed to secure the drugs that were being delivered to the pharmacy.'" (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1170.)

FAILURE TO MAINTAIN COMPLETE ACCOUNTABILITY OF DANGEROUS DRUGS

6. Business and Professions Code section 4301, subdivisions (j) and (o), provide that the board shall take action against any holder of a license who is guilty of unprofessional conduct, including: "(j) [t]he violation of any of the statutes of this state, or of any other state, or of the United States regulating controlled substances and dangerous drugs," and "[v]iolating . . . and provision or term of [the Pharmacy Law] or of the applicable federal and state laws regulations governing pharmacy"

Business and Professions Code section 4105, subdivision (a), provides:

(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.

Business and Professions Code section 4105, subdivision (c), establishes:

(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.

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE - OPERATIONAL STANDARDS AND SECURITY

7. By the parties' stipulation, and clear and convincing evidence, cause exists for revocation or suspension of licensure, under California Code of Regulations, title 16, section 1714, subdivisions (d), in conjunction with Business and Professions Code section 4301, subdivision (o), by reason of the Stipulation of Factual Allegations as well as Factual Findings 4 through 8, along with Legal Conclusions 2 through 5.

SECOND CAUSE FOR DISCIPLINE- FAILURE TO RETAIN RECORDS ON LICENSED PREMISES

8. By the parties' stipulation, and clear and convincing evidence cause exists for discipline against respondent's pharmacy technician registration pursuant to Business and Professions Code section 4105, subdivisions (a) and (c), in conjunction with Business and Professions Code section 4301, subdivision (o), by reason of the Stipulation of Factual Allegations as well as Factual Findings 4 through 7, and 9, along with Legal Conclusions 2, and 4 through 6.

Established Guidelines for Imposition of License Disciplinary Action

9. The board has promulgated a booklet titled "Disciplinary Guidelines," which serves as a manual of disciplinary guidelines and a set of model disciplinary orders.

The guidelines suggest factors in mitigation, witnesses in mitigation, matters in rehabilitation, as well as matters in aggravation should be weighed in the imposition of license disciplinary action. Accordingly, the matters set out in Factual Findings 10 through 19, and 21 through 30, have been considered in making the Orders below.

Among many topics in the board's guidelines booklet is the board's formulation for categories of violations of provisions under the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.). The categories correlate to recommended penalties upon finding a licensee's violations of law. The categories for violations of the law range from Category I to Category IV, that is from minor violations, which justify a one-year term of probation, to the egregious violations that should result in revocation without the possibility of any term of probation.

Respondent's acts and omissions constitute both Category I and Category II violations.

Respondent's violation of the "operational standards and security" concerns of California Code of Regulations, title 16, section 1714 is a Category I violation. A Category I violation suggests an offense that is relatively minor but is potentially harmful. Despite being the least serious of the categories, the minimum form of discipline for a Category I violation entails a period of probation for not less than one year under standard terms and conditions of probation.

Respondent's violation of the "general requirements" expected of a licensed pharmacist as prescribed by Business and Professions Code section 4105 is a Category II violation. Such a violation contemplates a minimum form of discipline as a stay of revocation with a period of probation of three years under standard terms and conditions of probation. But, outright revocation of licensure may be imposed for a violation of a Category II offense. The guidelines set out that a Category II violation contemplates: a violation with a serious potential for harm; a violation that involves a greater disregard for pharmacy law and public safety than a Category I violation; or, a violation that reflects poorly on ethics, care exercised or competence.

Rehabilitation

10. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.) At the hearing of this matter, respondent failed to make a candid acknowledgment of his unprofessional conduct that contributed to the theft, loss, or misplacement of a large amount of the drug known as Norco. And, he declined to accept responsibility for the failure of the subject pharmacy (Safeway Pharmacy 911) to retain records on the premises for the time required by law.

The board's disciplinary guidelines provide a non-exhaustive list of the evidence a respondent may submit to demonstrate his rehabilitative efforts and competency. Relevant to this matter, are recent written statements or performance evaluations from persons in position of authority who have on-the-job knowledge of respondent's current competence in the practice of pharmacy. At the hearing of this matter, respondent provided little of such evidence.

Pharmacists must be able to perform competently in a stressful work environment. Mistakes made by a pharmacist can have serious, significant consequences to patients, including death. Respondent's receipt in recent years of three citations exists as aggravating factors. Respondent presented little evidence of rehabilitation or that he is safe to practice as a pharmacist without close oversight by board probation monitors or close supervision by a

competent pharmacist-in-charge. In light of respondent's violations, and applying the board's disciplinary guidelines, a stay of revocation under terms of probation exists as the only measure of discipline that can protect the public.

Important to note is the concept that, "[t]here is nothing in the law or in logic that requires the existence of a victim . . . before the board may order a license revoked as part of its effort to protect the people of California from unscrupulous conduct" or unprofessional acts or omissions. (*Hoang v. California State Board of Pharmacy* (2014) 230 Cal.App.4th 448, 457.)

Other Determinations

11. California Code of Regulations, title 16, section 1760, provides in part:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled 'Disciplinary Guidelines' (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

12. It is determined that complainant established that the nature and extent of respondent's more serious violation, which comes within the Category II offenses, warrant the discipline prescribed in the Guidelines. But, due to the matters in mitigation, the matters in rehabilitation, respondent's professional background, which includes 46 years as a board licensee, his participation in civic and professional endeavors, and the lack of past record of license disciplinary action against respondent's license, the minimum discipline for Category II violations is set out below.

Costs of Investigation and Prosecution

13. Business and Professions Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." In this matter, the board has incurred costs of investigation and prosecution in the amount of \$9,437.25.

The California Supreme Court's reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45-46, is persuasive and should be

considered in this matter. Scrutiny of certain factors, which pertain to the board's exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set forth in Factual Finding 35.

With all factors considered, the costs of investigation and prosecution as set forth in Factual Findings 32 through 34, 36, and 38, are reasonable and appropriate in a total amount of \$3,900.

ORDER

Original Pharmacist License RPH 27678 issued to respondent Frank Peter Tarantino, Jr., is revoked; however, the revocation of the pharmacist license is stayed, and respondent's license is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; or,
- a conviction of any crime, discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Original Pharmacist License RPH 27678 or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms

and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of this Decision and the terms, conditions and restrictions imposed on respondent by the Decision, as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) or business owner to report to the board in writing acknowledging that the listed individual(s) has/have read the Decision in case number 5957, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

7. Reimbursement of Board Costs

Respondent is liable for the costs incurred by complainant, and he shall pay to the Board of Pharmacy costs of investigation and enforcement in the total amount of \$3,900.

Respondent shall make full payment of the costs within 60 days of the effective date of this Decision.

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

8. Probation Monitoring Costs

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

9. Status of License

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

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

10. License Surrender While on Probation/Suspension

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

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

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

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

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

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing in California as a pharmacist for a minimum of 100 hours per calendar month, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

'Cessation of practice' means any calendar month during which respondent is not practicing as a pharmacist for at least 16 hours, as defined by Business and Professions Code section 4000 et seq. 'Resumption of practice' means any calendar month during which respondent is practicing as a pharmacist for at least 100 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

13. Violation of Probation

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

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

probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

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

15. Remedial Education

Within sixty (60) days of the effective date of this Decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to: (1) control of dangerous drugs and controlled substances, and (2) maintenance and control of pharmacy records. The program of remedial education shall consist of at least 40 hours, which shall be completed within nine months of the effective date of this Decision at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

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

16. Pharmacy Self-Assessment Mechanism

Within the first 18 months of probation, respondent shall complete the Pharmacist Self-Assessment Mechanism (PSAM) examination provided by the National Association of Boards of Pharmacy (NABP). Respondent shall submit a record of completion to the board demonstrating he/she has completed this examination. Respondent shall bear all costs for the examination. Continuing education hours received for this examination shall not be used as part of the required continuing education hours for renewal purposes.

Failure to timely complete the PSAM or submit documentation thereof shall be considered a violation of probation.

Respondent shall waive any rights to confidentiality and provide examination results to the board or its designee. Based on the results of the examination, the board shall determine which courses are appropriate for remedial education.

17. Separate File of Records

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

18. Report of Controlled Substances

Respondent shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

19. Consultant for Owner or Pharmacist-In-Charge

During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-charge. However, if during the period of probation respondent serves as a pharmacist-in-charge, respondent shall retain an independent consultant at his own expense who shall be responsible for reviewing pharmacy operations on a [monthly/quarterly] basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board or its designee, for prior approval, within thirty (30) days of the effective date of this Decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

20. Ethics Course

Within ninety (90) calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

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

DATED: March 22, 2018

DocuSigned by:



28DB5AD99FE7453...

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-0266
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5957

12 **SAFEWAY PHARMACY 911**
13 **477 West Napa Street**
Sonoma, CA 95476

ACCUSATION

14 **Pharmacy Permit No. PHY 35032**

15 **FRANK PETER TARANTINO, JR.**
16 **485 Pinewood Drive**
San Rafael, CA 94903

17 **Pharmacist License No. RPH 27678**

18 Respondents.

19
20 Complainant alleges:

21 PARTIES

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

24 2. On or about September 23, 1988, the Board of Pharmacy issued Pharmacy Permit
25 Number PHY 35032 to Safeway Pharmacy 911, with Frank Tarantino designated as the
26 Pharmacist-in-Charge from May 5, 2013, to October 20, 2014 ("Respondent Safeway"). The
27 Pharmacy Permit expired on January 30, 2015, and was cancelled on April 15, 2015.
28

3. On or about May 23, 1972, the Board of Pharmacy issued Pharmacist License Number RPH 27678 to Frank Peter Tarantino ("Respondent Tarantino"). The Pharmacist License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on February 28, 2017, unless renewed.

JURISDICTION

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

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

7. 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 AND REGULATORY PROVISIONS

8. Section 4105 of the Code states, in pertinent part:

“(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.

///

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

3 9. Code section 4113, subdivision (c), states:

4 “(c) The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with all
5 state and federal laws and regulations pertaining to the practice of pharmacy.”

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

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

11 ...

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

16 DANGEROUS DRUGS

17 11. Section 4022 of the Code states

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

20 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
21 prescription,” “Rx only,” or words of similar import.

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

25 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
26 prescription or furnished pursuant to Section 4006.”

27 ///

28 ///

1 12. Hydrocodone with acetaminophen, also known as "Norco," is a Schedule III
2 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(3), and a
3 dangerous drug pursuant to Code section 4022. On October 6, 2014, Hydrocodone with
4 acetaminophen was reclassified as a Schedule II controlled substance under the Code of Federal
5 Regulations, title 21, section 1308.12, subdivision (b)(1)(vii).

6 COST RECOVERY

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

11 RESPONDENT SAFEWAY

12 FIRST CAUSE FOR DISCIPLINE

13 (Cal. Code Regs., tit. 16, § 1714, subd. (b))
14 (Failure to Properly Secure Dangerous Drugs)

15 14. Respondent Safeway has subjected its pharmacy permit to disciplinary action in that it
16 failed to properly secure dangerous drugs at its facility. (Cal. Code Regs., tit. 16, § 1714, subd.
17 (b).) The circumstances are as follows:

18 15. On or about May 5, 2014, the Board received a letter from Respondent Safeway's
19 Regional Pharmacy Manager, G.S., indicating a potential loss of 24,000 tablets of Norco. G.S.
20 explained that on February 13, 2014, Respondent Safeway detected a potential loss of Norco. A
21 data mining analysis between February 6, 2013, and February 6, 2014, indicated that Respondent
22 Safeway had ordered approximately 23,686 more doses of Norco than were dispensed.
23 Respondent Safeway discovered that twenty-four 1,000 count bottles of Norco were ordered in a
24 suspicious manner in that they were not ordered through the automated ordering system, but
25 instead were ordered manually. These manual orders were not entered into the inventory system.
26 A more detailed investigation revealed another manual order of one 1,000 count bottle of Norco
27 on March 4, 2014, which was not added to inventory. An additional 3,000 tablets of Norco were
28 ordered manually on April 13, 2014. These tablets were added to inventory.

16. Respondent Safeway's investigation revealed that almost all of the manual orders of Norco were placed by a pharmacy technician working for Respondent Safeway. The pharmacy technician was terminated for job abandonment on June 26, 2014, following the revocation of his technician's license on June 20, 2014. A Board investigator conducted an audit for Norco received and dispensed by Respondent Safeway between May 7, 2012, and July 9, 2014, and determined that 49,368 tablets of Norco were unaccounted for during that period. Furthermore, the Board's investigation revealed that between April 29, 2013, and July 9, 2014, while Respondent Tarantino was the Pharmacist-In-Charge of Respondent Safeway, 28,256 tablets of Norco were unaccounted for.

SECOND CAUSE FOR DISCIPLINE

(Bus. & Prof. Code, § 4105, subds., (a), (c))
(Failure to Retain Records on Licensed Premises)

17. Respondent Safeway has subjected its pharmacy permit to disciplinary action because it failed to retain records regarding the acquisition and disposition of dangerous drugs on the licensed premises in a readily retrievable form. (Bus. & Prof. Code, § 4105, subs. (a), (c).) The circumstances are that on or about July 9, 2014, a Board investigator conducted an inspection of Respondent Safeway. Respondent Tarantino was the pharmacist in charge at the time, and had been since May 5, 2013. During the inspection, the Board investigator asked Respondent Tarantino where the records for the acquisition and disposition of dangerous drugs were stored. Respondent Tarantino stated that Respondent Safeway sent the records to Iron Mountain Storage, an off-site facility. The Board had not granted Respondent Safeway an off-site storage waiver.

RESPONDENT TARANTINO

FIRST CAUSE FOR DISCIPLINE

(Cal. Code Regs., tit. 16, § 1714, subd. (d))
(Failure to Effectively Control Theft or Diversion of Dangerous Drugs)

18. Respondent Tarantino has subjected his Pharmacist License to disciplinary action in that he failed to be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. (Cal. Code Regs., tit. 16, § 1714, subd. (d).) The

1 circumstances are that while he was the Pharmacist-in-Charge of Respondent Safeway between
2 May 5, 2013, and July 9, 2014, at least 28,256 tablets of Norco were unaccounted for. The
3 circumstances are set forth in further detail in paragraphs 15 and 16, above.

4 SECOND CAUSE FOR DISCIPLINE

5 (Bus. & Prof. Code, § 4105, subds. (a)(c))
6 (Failure to Retain Records on Licensed Premises)

7 19. Respondent has subjected his Pharmacist License to disciplinary action in that he
8 failed to retain records regarding the acquisition and disposition of dangerous drugs on the
9 licensed premises in a readily retrievable form. (Bus. & Prof. Code, § 4105, subds. (a), (c).) The
10 circumstances are set forth in paragraph 17, above.

11 PRAAYER

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

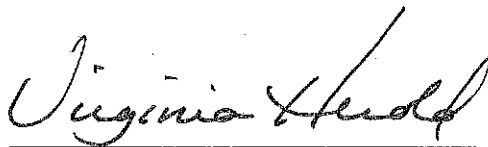
14 1. Revoking or suspending Original Permit Number PHY 35032, issued to Safeway
15 Pharmacy 911;

16 2. Revoking or suspending Original Pharmacist License Number RPH 27678, issued to
17 Frank Peter Tarantino;

18 3. Ordering Respondent Safeway and Respondent Tarantino to pay the Board of
19 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
20 Business and Professions Code section 125.3; and,

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

22
23 DATED: 7/11/17



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

27 SF2016201688
28 90722135.doc