

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

In the Matter of the Accusation Against:

**THE DIENNET PHARMACY,
MARCEL DIENNET, CEO/PRES,
Pharmacy Permit No. PHY 44310, and**

**AFSHIN YORAM SHAMOONI,
Registered Pharmacist License No. RPH 57014,**

Respondents

Agency Case No. 6671

OAH No. 2019090665

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on August 26, 2020.

It is so ORDERED on July 27, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe
Board President

1 XAVIER BECERRA
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2 LINDA L. SUN
Supervising Deputy Attorney General
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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

14 **THE DIENNET PHARMACY, MARCEL**
15 **DIENNET, CEO/PRES**
16 **9454 Wilshire Boulevard, #M6**
17 **Beverly Hills, CA 90212**

18 **Pharmacy Permit No. PHY 44310,**

19 **and**

20 **AFSHIN YORAM SHAMOONI**
21 **459 S. Swall Drive**
22 **Beverly Hills, CA 90211**

23 **Registered Pharmacist License No. RPH**
24 **57014**

25 Respondents.

Case No. 6671

OAH No. 2019090665

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO THE
DIENNET PHARMACY, MARCEL
DIENNET, CEO/PRES

26 In the interest of a prompt and speedy settlement of this matter, consistent with the public
27 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
28 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order, which will
be submitted to the Board for approval and adoption as the final disposition of the Accusation

solely with respect to Respondent The Diennet Pharmacy, Marcel Diennet, CEO/President (“Respondent Diennet”). It does not apply to Afshin Yoram Shamooni.

PARTIES

1. Anne Sodergren (“Complainant”) is the Executive Officer of the Board of Pharmacy (“Board”). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Stephen D. Svetich, Deputy Attorney General.

2. Respondent Diennet is represented in this proceeding by attorney Peter A. Schey, whose address is: 11010 Rodeo Drive, Oak View, CA 93022.

3. On or about August 26, 1999, the Board issued Pharmacy Permit No. PHY 44310 to Respondent Diennet. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 6671, and will expire on August 1, 2020, unless renewed.

JURISDICTION

4. Accusation No. 6671 was filed before the Board, and is currently pending against Respondent Diennet. The Accusation and all other statutorily required documents were properly served on Respondent Diennet on June 11, 2019. Respondent Diennet timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 6671 is attached as **Exhibit A** and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent Diennet has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 6671. Respondent Diennet has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent Diennet is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against it; the right to present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of

documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondent Diennet admits the truth of each and every charge and allegation in Accusation No. 6671.

10. Respondent Diennet agrees that its Pharmacy Permit is subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 44310 issued to Respondent The Diennet Pharmacy, Marcel Diennet, CEO/President is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Definition: Respondent

For the purposes of these terms and conditions, "respondent" shall refer to The Diennet Pharmacy. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by respondent to or before the board or its designee shall be made by an owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

2. 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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;

a conviction of any crime; or

1 discipline, citation, or other administrative action filed by any state or federal agency
2 which involves respondent's Pharmacy Permit or which is related to the practice of
3 pharmacy or the manufacturing, obtaining, handling or distributing, billing, or charging
4 for any dangerous drug, and/or dangerous device or controlled substance.

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

6 3. Report to the Board

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

15 4. Interview with the Board

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

21 5. Cooperate with Board Staff

22 Respondent shall timely cooperate with the board's inspection program and with the board's
23 monitoring and investigation of respondent's compliance with the terms and conditions of the
24 probation, including but not limited to: timely responses to requests for information by board
25 staff; timely compliance with directives from board staff regarding requirements of any term or
26 condition of probation; and timely completion of documentation pertaining to a term or condition
27 of probation. Failure to timely cooperate shall be considered a violation of probation.

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1 6. Reimbursement of Board Costs

2 As a condition precedent to successful completion of probation, respondent shall pay to the
3 board its costs of investigation and prosecution in the amount of \$10,592.00. There shall be no
4 deviation from this schedule absent prior written approval by the board or its designee. Failure to
5 pay costs by the deadline(s) as directed shall be considered a violation of probation.

6 Respondent shall be permitted to pay these costs in a payment plan approved by the board
7 or its designee, so long as full payment is completed no later than one (1) year prior to the end
8 date of probation.

9 7. Probation Monitoring Costs

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

14 8. Status of License

15 Respondent shall, at all times while on probation, maintain current its Pharmacy Permit
16 with the board. Failure to maintain current licensure shall be considered a violation of probation.

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

21 9. License Surrender While on Probation/Suspension

22 Following the effective date of this decision, should respondent wish to discontinue
23 business, respondent may tender the premises license to the board for surrender. The board or its
24 designee shall have the discretion whether to grant the request for surrender or take any other
25 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
26 license, respondent will no longer be subject to the terms and conditions of probation.

27 Respondent may not apply for any new license from the board for three (3) years from the
28 effective date of the surrender. Respondent shall meet all requirements applicable to the license

1 sought as of the date the application for that license is submitted to the board.

2 Respondent further stipulates that it shall reimburse the board for its costs of investigation
3 and prosecution prior to the acceptance of the surrender.

4 Upon acceptance of the surrender, respondent shall relinquish the premises wall and
5 renewal license to the board within ten (10) days of notification by the board that the surrender is
6 accepted. Respondent shall further submit a completed Discontinuance of Business form
7 according to board guidelines and shall notify the board of the records inventory transfer within
8 five (5) days. Respondent shall further arrange for the transfer of all records of acquisition and
9 disposition of dangerous drugs and/or devices to premises licensed and approved by the board.

10 Respondent shall also, by the effective date of this decision, arrange for the continuation of
11 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing
12 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more
13 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary
14 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to
15 the pharmacy's ongoing patients, Respondent shall provide a copy of the written notice to the
16 board. For the purposes of this provision, "ongoing patients" means those patients for whom the
17 pharmacy has on file a prescription with one or more refills outstanding, or for whom the
18 pharmacy has filled a prescription within the preceding sixty (60) days.

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

22 Respondent further stipulates that it shall reimburse the board for its costs of investigation
23 and prosecution prior to the acceptance of the surrender.

24 10. Sale or Discontinuance of Business

25 During the period of probation, should respondent sell, trade or transfer all or part of the
26 ownership of the licensed entity, discontinue doing business under the license issued to
27 respondent, or should practice at that location be assumed by another full or partial owner,
28 person, firm, business, or entity, under the same or a different premises license number, the board

1 or its designee shall have the sole discretion to determine whether to exercise continuing
2 jurisdiction over the licensed location, under the current or new premises license number, and/or
3 carry the remaining period of probation forward to be applicable to the current or new premises
4 license number of the new owner.

5 11. Notice to Employees

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

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

19 12. Owners and Officers: Knowledge of the Law

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

26 13. Premises Open for Business

27 Respondent shall remain open and engaged in its ordinary business as a Pharmacy in
28 California for a minimum of 120 hours per calendar month. Any month during which this

1 minimum is not met shall toll the period of probation, *i.e.*, the period of probation shall be
2 extended by one month for each month during with this minimum is not met. During any such
3 period of tolling of probation, respondent must nonetheless comply with all terms and conditions
4 of probation, unless respondent is informed otherwise in writing by the board or its designee. If
5 respondent is not open and engaged in its ordinary business as a Pharmacy for a minimum of 120
6 hours in any calendar month, for any reason (including vacation), respondent shall notify the
7 board in writing within ten (10) days of the conclusion of that calendar month. This notification
8 shall include at minimum all of the following: the date(s) and hours respondent was open; the
9 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on
10 which respondent will resume business as required. Respondent shall further notify the board in
11 writing with ten (10) days following the next calendar month during which respondent is open
12 and engaged in its ordinary business as a Pharmacy in California for a minimum of 120 hours.
13 Any failure to timely provide such notification(s) shall be considered a violation of probation.

14 14. Posted Notice of Probation

15 Respondent shall prominently post a probation notice provided by the board or its designee
16 in a place conspicuous to and readable by the public within two (2) days of receipt thereof from
17 the board or its designee. Failure to timely post such notice, or to maintain the posting during the
18 entire period of probation, shall be considered a violation of probation.

19 Respondent shall not, directly or indirectly, engage in any conduct or make any statement
20 which is intended to mislead or is likely to have the effect of misleading any patient, customer,
21 member of the public, or other person(s) as to the nature of and reason for the probation of the
22 licensed entity.

23 15. Violation of Probation

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

1 If respondent violates probation in any respect, the board, after giving respondent notice
2 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
3 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
4 probation, the board shall have continuing jurisdiction and the period of probation shall be
5 automatically extended until the petition to revoke probation or accusation is heard and decided.

6 16. Completion of Probation

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

9 17. No Additional Ownership or Management of Licensed Premises

10 Respondent shall not acquire any additional ownership, legal or beneficial interest in, nor
11 serve as a manager, administrator, member, officer, director, associate, partner or any business,
12 firm, partnership, or corporation currently or hereinafter licensed by the board except as
13 approved by the board or its designee. Violations of this restriction shall be considered a violation
14 of probation.

15 18. Consultant Review of Pharmacy Operations

16 During the period of probation, respondent shall retain, at its own expense, an independent
17 consultant who shall be responsible for conducting an on-site physical inspection to review the
18 operations of the pharmacy on a monthly basis for compliance by respondent with state and
19 federal laws and regulations governing the practice of the pharmacy, and compliance by
20 respondent. During the period of probation, the Board or its designee, retains discretion to reduce
21 the frequency and/or form of inspection of the pharmacist consultant's review.

22 The consultant shall be a pharmacist licensed by and not on probation with the board, who
23 has been approved by the board or its designee to serve in this position. Respondent shall submit
24 the name of the proposed consultant to the board or its designee for approval within thirty (30)
25 days of the effective date of the decision. Assumption of any unauthorized supervision
26 responsibilities shall be considered a violation of probation. In addition, failure to timely seek
27 approval for, timely retain, or ensure timely reporting by the consultant shall be considered a
28 violation of probation.

1 **ACCEPTANCE**

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

7
8 DATED: _____
9 THE DIENNET PHARMACY, MARCEL DIENNET,
10 CEO/PRESIDENT
11 *Respondent*

12 I have read and fully discussed with Respondent The Diennet Pharmacy, Marcel Diennet,
13 CEO/President the terms and conditions and other matters contained in the above Stipulated
14 Settlement and Disciplinary Order. I approve its form and content.

15 DATED: _____
16 PETER A. SCHEY
17 *Attorney for Respondent*

18 **ENDORSEMENT**

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

21 DATED: _____ Respectfully submitted,
22 XAVIER BECERRA
23 Attorney General of California
24 LINDA L. SUN
25 Supervising Deputy Attorney General

26 STEPHEN D. SVETICH
27 Deputy Attorney General
28 *Attorneys for Complainant*

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1 ACCEPTANCE

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

7
8 DATED: 05/26/2020


THE DIENNET PHARMACY, MARCEL DIENNET,
CEO/PRESIDENT
Respondent

9
10 I have read and fully discussed with Respondent The Diennet Pharmacy, Marcel Diennet,
11 CEO/President the terms and conditions and other matters contained in the above Stipulated
12 Settlement and Disciplinary Order. I approve its form and content.
13

14
15 DATED: 05/27/2020


PETER A. SCHEY
Attorney for Respondent


16
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Pharmacy.
20

21 DATED: May 28, 2020

Respectfully submitted,

22 XAVIER BECERRA
23 Attorney General of California
24 LINDA L. SUN
25 Supervising Deputy Attorney General


26 STEPHEN D. SVETICH
27 Deputy Attorney General
28 Attorneys for Complainant

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Exhibit A

Accusation No. 6671

1 XAVIER BECERRA
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Deputy Attorney General
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7 *Attorneys for Complainant*

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14 **THE DIENNET PHARMACY, MARCEL**
DIENNET, CEO/PRESIDENT
15 **9454 Wilshire Boulevard, #M6**
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A C C U S A T I O N

16 **Pharmacy Permit No. PHY 44310,**

17 **and**

18 **AFSHIN YORAM SHAMOONI**
19 **459 S. Swall Drive**
Beverly Hills, CA 90211

20 **Registered Pharmacist License No. RPH**
21 **57014**

22 Respondents.

23
24 **PARTIES**

25 1. Anne Sodergren ("Complainant") brings this Accusation solely in her official
26 capacity as the Interim Executive Officer of the Board of Pharmacy (the "Board"), Department of
27 Consumer Affairs.

2. On or about August 26, 1999, the Board issued Pharmacy Permit Number PHY 44310 to Respondent The Diennet Pharmacy, Marcel Diennet, CEO/PRESIDENT (“Respondent Diennet”). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on August 1, 2019, unless renewed.

3. On or about May 23, 2005, the Board issued Registered Pharmacist License Number RPH 57014 to Respondent Afshin Yoram Shamooni (“Respondent Shamooni”). The Registered Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2019, unless renewed.

JURISDICTION

4. This Accusation is brought before the 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 4300 of the Code states, in pertinent part:

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

6. 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 PROVISIONS

7. Section 4301 of the Code states:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

“

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

4 “. . . .

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

7 “. . . .

8 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
9 board. . . .”

10 8. Section 4022 of the Code states

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

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

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

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

20 9. Section 4081 of the Code states:

21 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
22 or dangerous devices shall be at all times during business hours open to inspection by authorized
23 officers of the law, and shall be preserved for at least three years from the date of making. A
24 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
25 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
26 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
27 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
28

1 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
2 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

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

10 10. Section 4307, subdivision (a) of the Code states:

11 “Any person who has been denied a license or whose license has been revoked or is under
12 suspension, or who has failed to renew his or her license while it was under suspension, or who
13 has been a manager, administrator, owner, member, officer, director, associate, or partner of any
14 partnership, corporation, firm, or association whose application for a license has been denied or
15 revoked, is under suspension or has been placed on probation, and while acting as the manager,
16 administrator, owner, member, officer, director, associate, or partner had knowledge or
17 knowingly participated in any conduct for which the license was denied, revoked, suspended, or
18 placed on probation, shall be prohibited from serving as a manager, administrator, owner,
19 member, officer, director, associate, or partner of a license as follows:

20 “(1) Where a probationary license is issued or where an existing license is placed on
21 probation, this prohibition shall remain in effect for a period not to exceed five years.

22 “(2) Where the license is denied or revoked, the prohibition shall continue until the
23 license is issued or reinstated. . . .”

24 11. Section 4332 of the Code states:

25 “Any person who fails, neglects, or refuses to maintain the records required by Section
26 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects,
27 or refuses to produce or provide the records within a reasonable time, or who willfully produces
28 or furnishes records that are false, is guilty of a misdemeanor.”

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

REGULATORY PROVISIONS

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

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

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

FLORIDA STATUTORY PROVISION

14. Florida Statutes, title XXXII, section 465.0156, states in pertinent part:

“(1) Any pharmacy which is located outside this state and which ships, mails, or delivers, in any manner, a dispensed medicinal drug into this state shall be considered a nonresident pharmacy, shall be registered with the board. . . .”

COST RECOVERY PROVISION

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

DRUGS

16. **Tenuate, Tepanil, Tenuate Dospan (Generic Name: Diethylpropion):** Tenuate, Tepanil, or Tenuate Dospan is a dangerous drug pursuant to section 4022 of the Code and a Schedule IV Controlled Substance pursuant to Health & Safety Code section 11057, subdivision (f)(1). Valium is used to treat anxiety.

17. **Valium (Generic Name: Diazepam):** Valium is a dangerous drug pursuant to section 4022 of the Code and a Schedule IV Controlled Substance pursuant to Health & Safety Code section 11057, subdivision (d)(9). Tenuate, Tepanil, or Tenuate Dospan is used to treat obesity.

18. **Librium (Generic Name: Chlordiazepoxide):** Librium is a dangerous drug pursuant to section 4022 of the Code and a Schedule IV Controlled Substance pursuant to Health & Safety Code section 11057, subdivision (d)(5). Librium is used to treat anxiety.

FACTS

19. On or about January 12, 2016, the Board received an email from a diversion investigator from the Drug Enforcement Administration (“DEA”). The DEA investigator informed the Board that he had inspected Respondent Diennet’s pharmacy in connection with Respondent Diennet’s application to be an importer of Schedule IV Controlled Substances. Respondent Shamooni admitted to the investigator that over the ten years preceding the inspection, Respondents had only dispensed controlled substances pursuant to prescriptions issued by one physician, Dr. S. K., a medical doctor located in Arkansas. Respondent Shamooni admitted that Respondents dispensed the controlled substances via prescriptions written by Dr. S. K. even though they were aware that Dr. S. K. never performed an examination on the patients, never saw the patients, and was not licensed to practice medicine in California. The DEA investigator also learned that Respondents dispensed controlled substances to patients in multiple states, including Florida, even though Respondent Diennet is not licensed to dispense controlled substances in those states.

20. On or about February 25, 2016, the DEA investigator sent another email to the Board informing the Board that Respondent Diennet surrendered its DEA license under a “surrender for cause” after the DEA presented Respondent Diennet with the option to surrender its registration to avoid an Order to Show Cause (“OSC”). Effective February 18, 2016, Respondent Diennet surrendered its DEA registration.

21. As a result of the information the Board received from the DEA, the Board opened an investigation into Respondents' dispensing activities. On or about September 12, 2018, a Board

investigator sent a letter to Respondent Shamooni requesting records relating to Respondent Diennet's dispensing practices and prescriptions relating to the DEA's investigation. In response to this request, Respondent Shamooni provided a partial response reflecting the following information:

- i. The Board requested copies of prescriptions written by Dr. S. K. and filled by Respondent Diennet between February 1, 2014, and February 22, 2016. Respondent Shamooni provided the Board with copies of ten responsive prescriptions and informed the Board that Respondent Diennet only had three years of records and no longer had 2014 prescription records. Six of the ten prescriptions provided by Respondent Shamooni were for Schedule IV Controlled Substances. Specifically, the controlled substances were diazepam, diethypropion, or testosterone.
- ii. Respondent Shamooni admitted that Respondent Diennet was not licensed in Florida at the time of his response.
- iii. A spreadsheet containing records of all prescriptions filled at Respondent Diennet between November 6, 2013, and November 22, 2016. During this period, Respondent Diennet's most commonly dispensed medication was a compounded controlled substance to assist with weight loss. Respondent Diennet dispensed 22,552 prescriptions, and 22,546 of those prescriptions were issued by Dr. S. K.
- iv. Respondent Diennet dispensed approximately 509 prescriptions to the State of Florida even though Respondent Diennet was not licensed as a pharmacy in Florida.
- v. Respondent Shamooni stated that "there is no relationship between The Diennet Pharmacy and the website: <https://diennet.com/>," and that "prescriptions are not generated from <https://diennet.com/>."
- vi. Respondent Shamooni stated that Respondent Diennet surrendered its DEA registration because "the owner wanted to retire."
- vii. Respondent Diennet was typically staffed with one pharmacist and one technician.

22. On or about September 17, 2018, the Board requested the following information from Respondents within 72 hours:

- i. Copies of ten prescriptions issued by Dr. S. K. and dispensed by Respondent Diennet to patients in California in 2015 and 2016.
- ii. A statement addressing the following questions:
 - a. “Prior to the pharmacy’s DEA surrender, describe the sequential steps this pharmacy takes to satisfy its corresponding responsibility to dispense only medically legitimate controlled substance prescriptions. In other words, what criteria/criterion must a controlled substance prescription satisfy before this pharmacy decides to fill and dispense medication?”
 - b. “What is your and/or your pharmacy’s policy on filling a controlled substance prescription with regards to Dr. [S. K.] (out-of-state-prescriber)?”
 - c. “Why did this pharmacy dispense controlled substance prescriptions to out of state patients (between 2013-2015) when it was not licensed in those states?”

23. Neither Respondent Diennet nor Respondent Shamooni responded to the Board’s September 17, 2018, request. On September 28, 2018, a Board investigator emailed Respondent Shamooni and spoke to a pharmacy technician at Respondent Diennet by telephone to request a response. On October 2, 2018, a Board investigator sent an official letter to Respondent Shamooni explaining that the request was a final notice and failure to comply with the Board’s request for information could result in a violation of Business and Professions Code section 4301, subdivision (q). On October 2, 2018, and October 4, 2018, a Board investigator unsuccessfully tried to contact Respondent Diennet by telephone; Respondent Diennet’s voice mail box was full. On October 4, 2018, a Board investigator sent an official letter to Respondent Diennet and Respondent Shamooni’s address of record.

24. On October 8, 2018, Respondent Shamooni sent an email to the Board stating, “Our lawyers have advised us not to sign anything. We sincerely apologize for this matter.”

25. On October 11, 2018, the Board issued a written notice to Respondent Shamooni and Respondent Diennet regarding their possible violations of laws governing the practice of pharmacy.

26. On October 16, 2018, Respondent Shamooni provided a signed written response to the three questions asked in the Board's September 17, 2018, request.

27. The Diennet Institute's website is www.diennet.com. The website contains a medical questionnaire. Consumers must complete and submit the medical questionnaire to be eligible to fill prescriptions at Respondent Diennet's pharmacy. The bottom of the questionnaire includes the following statement:

I am requesting that a licensed prescriber act only as an adjunct capacity to my local physician, when reviewing my request and authorizing the prescription for dispensing by the Diennet Pharmacy. I authorize the Diennet Institute to disclose any information including medical information and pharmaceutical to the prescribing physician for the dispensing of my prescription from the Diennet Pharmacy. I authorize the Diennet Pharmacy and prescribing physician, in order for me to receive my prescription from the Diennet Pharmacy, to provide all information including medical and pharmaceutical to the Diennet Institute and Doctor Marcel Diennet.

The physical address for The Diennet Institute is the same as the address for Respondent Diennet. Records of the California Secretary of State revealed that Marcel Diennet is the Chief Executive Officer, Secretary, Chief Financial Officer, and sole director of the Diennet Institute. The records also reflect that The Diennet Institute is a "sales office." This indicates The Diennet Institute is the sales office for Respondent Diennet.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Subverting a Board Investigation

– Respondent Diennet)

28. Respondent Diennet's Permit is subject to disciplinary action pursuant to section 4301, subdivision (q), of the Code in that starting on September 12, 2018, Respondent Diennet engaged in conduct that subverted or attempted to subvert a Board investigation in the following ways:

- i. Respondent Diennet or its employees failed to produce all documents requested by the Board's investigator.
- ii. Respondent Shamooni, Respondent Diennet's Pharmacist-in-Charge, dishonestly reported to the Board's investigator that Respondent Diennet has no connection to

1 The Diennet Institute's website. The real facts are that Respondent Diennet and The
2 Diennet Institute share the same owner, and that The Diennet Institute is the sales
3 office of Respondent Diennet.

- 4 iii. Respondent Shamooni, Respondent Diennet's Pharmacist-in-Charge, dishonestly
5 reported to the Board that Respondent Diennet surrendered its DEA registration
6 because Respondent Diennet's owner wanted to retire. The true facts are that
7 Respondent Diennet surrendered its DEA registration to avoid the DEA issuing an
8 OSC regarding Respondent Diennet's violation of laws governing the practice of
9 pharmacy.

10 Complainant refers to and by this reference incorporates the allegations set forth above in
11 paragraphs 16 through 27, inclusive, as though set forth fully.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Violation of Statute**

14 **– Respondent Diennet)**

15 29. Respondent Diennet's Permit is subject to disciplinary action pursuant to section
16 4301, subdivision (j), of the Code in that between November 6, 2013, and November 22, 2016,
17 Respondent Diennet dispensed approximately 509 prescriptions to consumers in the State of
18 Florida without being properly registered in Florida as a nonresident pharmacy pursuant to
19 Florida Statutes, title XXXII, section 465.0156. Complainant refers to and by this reference
20 incorporates the allegations set forth above in paragraphs 16 through 27, inclusive, as though set
21 forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Failure to Produce Records**

24 **– Respondent Diennet)**

25 30. Respondent Diennet's Permit is subject to disciplinary action pursuant to sections
26 4081, subdivision (a), 4332, and 4333 of the Code, and California Code of Regulations, title 16,
27 section 1718, in that starting on September 17, 2018, Respondent Diennet failed to produce
28 records of prescriptions for dangerous drugs as requested by the Board in its September 17, 2018,

request. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 16 through 27, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct – Subverting a Board Investigation
– Respondent Shamooni)**

31. Respondent Shamooni's Pharmacist License is subject to disciplinary action pursuant to section 4301, subdivision (q), of the Code in that starting on September 12, 2018, Respondent Diennet engaged in conduct that subverted or attempted to subvert a Board investigation in the following ways:

- i. Respondent Shamooni failed to produce all documents requested by the Board's investigator.
- ii. Respondent Shamooni, Respondent Diennet's Pharmacist-in-Charge, dishonestly reported to the Board's investigator that Respondent Diennet has no connection to The Diennet Institute's website. The real facts are that Respondent Diennet and The Diennet Institute share the same owner, and that The Diennet Institute is the sales office of Respondent Diennet.
- iii. Respondent Shamooni, Respondent Diennet's Pharmacist-in-Charge, dishonestly reported to the Board that Respondent Diennet surrendered its DEA registration because Respondent Diennet's owner wanted to retire. The true facts are that Respondent Diennet surrendered its DEA registration to avoid the DEA issuing an OSC regarding Respondent Diennet's violation of laws governing the practice of pharmacy.

Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 16 through 27, inclusive, as though set forth fully.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Violation of Statute**

3 **– Respondent Shamooni)**

4 32. Respondent Shamooni's Pharmacist License is subject to disciplinary action pursuant
5 to section 4301, subdivision (j), of the Code in that between November 6, 2013, and November
6 22, 2016, Respondent Diennet and/or Respondent Shamooni dispensed approximately 509
7 prescriptions to consumers in the State of Florida without being properly registered in Florida as a
8 nonresident pharmacy pursuant to Florida Statutes, title XXXII, section 465.0156. Complainant
9 refers to and by this reference incorporates the allegations set forth above in paragraphs 16
10 through 27, inclusive, as though set forth fully.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Failure to Produce Records**

13 **– Respondent Shamooni)**

14 33. Respondent Shamooni's Pharmacist License is subject to disciplinary action pursuant
15 to sections 4081, subdivision (a), 4332, and 4333 of the Code, and California Code of
16 Regulations, title 16, section 1718, in that starting on September 17, 2018, Respondent Shamooni
17 failed to produce records of prescriptions for dangerous drugs as requested by the Board in its
18 September 17, 2018, request. Complainant refers to and by this reference incorporates the
19 allegations set forth above in paragraphs 16 through 27, inclusive, as though set forth fully.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct – Dishonesty, Fraud, or Deceit**

22 **– Respondent Shamooni)**

23 34. Respondent Shamooni's Pharmacist License is subject to disciplinary action pursuant
24 to section 4301, subdivision (f), of the Code in that starting on September 13, 2018, Respondent
25 Shamooni committed an act involving dishonesty, fraud, or deceit in response to the Board's
26 request for information in the following ways:

- 27 i. Respondent Shamooni, Respondent Diennet's Pharmacist-in-Charge, dishonestly
28 reported to the Board's investigator that Respondent Diennet has no connection to

1 The Diennet Institute's website. The real facts are that Respondent Diennet and The
2 Diennet Institute share the same owner, and that The Diennet Institute is the sales
3 office of Respondent Diennet.

- 4 ii. Respondent Shamooni, Respondent Diennet's Pharmacist-in-Charge, dishonestly
5 reported to the Board that Respondent Diennet surrendered its DEA registration
6 because Respondent Diennet's owner wanted to retire. The true facts are that
7 Respondent Diennet surrendered its DEA registration to avoid the DEA issuing an
8 OSC regarding Respondent Diennet's violation of laws governing the practice of
9 pharmacy.

10 Complainant refers to and by this reference incorporates the allegations set forth above in
11 paragraphs 16 through 27, inclusive, as though set forth fully.

12 **OTHER MATTERS**

13 35. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
14 PHY 44310, issued to The Diennet Pharmacy, Marcel Diennet, CEO/PRES, The Diennet
15 Pharmacy shall be prohibited from serving as a manger, administrator, owner, member, officer,
16 director, associate, or partner of a licensee for five years if Pharmacy Permit Number 44310 is
17 placed on probation or until Pharmacy Permit Number 44310 is reinstated if it is revoked.

18 36. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
19 PHY 44310, issued to The Diennet Pharmacy, Marcel Diennet, CEO/PRES, while Marcel
20 Diennet was an officer and owner and had knowledge of or knowingly participated in any
21 conduct for which the licensee was disciplined, Marcel Diennet shall be prohibited from serving
22 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
23 for five years if Pharmacy Permit Number PHY 44310 is placed on probation or until Pharmacy
24 Permit Number PHY 44310 is reinstated if it is revoked

25 **DISCIPLINE CONSIDERATIONS**

26 37. To determine the degree of discipline, if any, to be imposed on Respondent Diennet,
27 Complainant alleges that on or about December 15, 2000, in a prior disciplinary action entitled *In*
28 *the Matter of the Accusation Against The Diennet Pharmacy, a Corporation, doing business as*

1 *The Diennet Pharmacy*, in Case Number 1984. Respondent's license was revoked, with the
2 revocation stayed pending a three-year probationary period. This proceeding arose out of a
3 criminal conviction in the matter titled *United States of America v. Marcel Diennet*, United States
4 District Court for the Western District of Tennessee, Case No. 98CR20002-001, for violating
5 United States Code, title 18, section 545 (unlawfully and knowingly importing and causing the
6 importation into the United States of approximately 4,993 dosage units of a substance containing
7 Diazepam contrary to law). That decision is now final and is incorporated by reference as if fully
8 set forth.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Permit Number PHY 44310, issued to The
13 Diennet Pharmacy, Marcel Diennet, CEO/PRESIDENT;
- 14 2. Revoking or suspending Registered Pharmacist License Number RPH 57014, issued
15 to Afshin Yoram Shamooni;
- 16 3. Ordering Marcel Diennet and Afshin Yoram Shamooni to pay the Board of Pharmacy
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3; and,
- 19 4. Prohibiting The Diennet Pharmacy from serving as a manager, administrator, owner,
20 member officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
21 Number PHY 44310 is placed on probation or until Pharmacy Permit Number PHY 44310 is
22 reinstated if Pharmacy Permit Number 44310 issued to The Diennet Pharmacy, Marcel Diennet,
23 CEO/PRESIDENT, is revoked;
- 24 5. Prohibiting Marcel Diennet from serving as a manager, administrator, owner, member
25 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
26 PHY 44310 is placed on probation or until Pharmacy Permit Number PHY 44310 is reinstated if
27 Pharmacy Permit Number 44310 issued to The Diennet Pharmacy, Marcel Diennet, CEO/
28 PRESIDENT, is revoked; and

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

DATED: May 30, 2019



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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