1 2 3 4 5	BILL LOCKYER, Attorney General of the State of California FRED A. SLIMP II, State Bar No. 118693 Deputy Attorney General California Department of Justice 1515 Clay Street, 20th Floor ~ P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2117 Facsimile: (510) 622-2121			
6	Attorneys for Complainant			
7	DEEODE 7	rur		
8 9	BOARD OF PHARMACY			
10	STATE OF CALIFORNIA			
11	In the Matter of the Accusation Against:	Case No. 2479		
12	DANILO JUQUIANA DACO	STIPULATED SETTLEMENT		
13	3650 Hazelwood Vallejo, CA 94591	AND ORDER		
14	Pharmacy Technician License No. TCH 8394,	(Respondents Huey and Kaiser only)		
15 16	ELSIE HUEY 130 Pelican Lane Novato, CA 94949			
17	Pharmacist License No. RPH 41809,			
18	and			
. 19	KAISER FOUNDATION HOSPITAL			
20	99 Montecillo Road San Rafael, CA 94903			
21	Hospital Pharmacy License No. HSP 18749,			
22	Respondent.			
23				
24	IT IS HEREBY STIPULATED AND	AGREED by and between respondents		
25	Elsie Huey, R.Ph., and Kaiser Foundation Hospital, and each of them, and complainant			
26	Patricia F. Harris that the following matters are true:			
27	///			
28	///			
	II .			

PARTIES

- 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Fred A. Slimp II, Deputy Attorney General.
- 2. Respondent Kaiser Foundation Hospital (Respondent Pharmacy) and Respondent Elsie Huey, R.Ph., (Respondent Pharmacist) are represented in this proceeding by attorney Cheryl L. Schreck, Esq., and Thelen, Reid & Priest, LLP, whose address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071-3193.
- 3. On or about July 29, 1988, the Board of Pharmacy issued Pharmacist License Number RPH 41809 to Respondent Pharmacist. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 2479 and will expire on January 31, 2002, unless renewed. Respondent Pharmacist has been the Pharmacist-in-Charge at Respondent Pharmacy since December 6, 1998.
- 4. On or about March 18, 1981, the Board of Pharmacy issued Hospital Pharmacy License No. HSP 18749 to Kaiser Foundation Hospital (Respondent Pharmacy). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2479 and will expire on November 1, 2002, unless renewed.

JURISDICTION

5. Accusation No. 2479 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs,, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on May 2, 2002. Respondents timely filed Notices of Defense contesting the Accusation. A copy of Accusation No. 2479 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondents, and each of them, have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 2479. Respondents, and each of them, have also carefully read, fully discussed with counsel, and understand the

- 7. Respondents, and each of them, are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their 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. Respondents, and each of them, voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

- 9. Respondent Pharmacist admits the truth of the allegations in paragraphs 32 and 33 of Accusation No. 2479, and Respondent Pharmacy admits the truth of the allegations in paragraphs 35 and 36 of Accusation 2479.
 - 10. Respondent Pharmacist agrees to be bound by the Board's Order below.
 - 11. Respondent Pharmacy agrees to be bound by the Board's Order below.

CONTINGENCY

Respondents, and each of them, understand and agree 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 Respondents or their counsel. By signing the stipulation, Respondents, and each of them, understand and agree that they may not withdraw their 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 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

- 13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 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 Order:

ORDER

IT IS HEREBY ORDERED that:

- 1. Respondent Kaiser Foundation Hospital is hereby cited for the violations set forth in Accusation number 2479 pursuant to Business and Professions Code section 125.9 and, pursuant to the same statutory authority, is fined two thousand dollars (\$2,000). Said fine shall be paid within thirty (30) days from the effective date of this decision.
- 2. Respondent Elsie Huey, R.Ph., is hereby cited for the violations set forth in Accusation number 2479 pursuant to Business and Professions Code section 125.9.
- 3. As to respondent Elsie Huey, R.Ph., Accusation number 2479 is withdrawn effective immediately upon the effective date of this decision.
- 4. As to respondent Kaiser Foundation Hospital, Accusation number 2479 shall be withdrawn effective immediately upon payment of the fine imposed pursuant to paragraph 1, above. Should respondent Kaiser Foundation Hospital fail to pay the fine as required in paragraph 1, above, this stipulated settlement shall be null and void and of no effect whatsoever as to respondent Kaiser Foundation Hospital, and complainant may institute, reinstitute, or recommence such disciplinary proceedings against respondent Kaiser Foundation Hospital as shall then be by law available to complainant.

ACCEPTANCE

We, and each of us, have carefully read the above Stipulated Settlement and Order and have fully discussed it with our attorney, Cheryl L. Schreck, Esq., and Thelen, Reid & Priest, LLP. We, and each of us, understand the stipulation and the effect it will have on Hospital Pharmacy License number HSP 18749 and on Pharmacist License number RPH 41809.

1	We enter into this Stipulated Settlement and Order Voluntarily, knowingly, and intelligently,		
2	and agree to be bound by the Decision and Order of the Board of Pharmacy.		
3	DATED: 13111 102		
4			
5	for KAISER FOUNDATION HOSPITAL		
6	Respondent		
7	DATED: 10/8/02		
8	9 . 1		
9	ELSIE HUEY, R.Ph.		
10	Respondent		
11	I have read and fully discussed with Respondents Elsie Huey, R.Ph, and Kaiser		
12	Foundation Hospital, and each of them, the terms and conditions and other matters contained		
13	in the above Stipulated Settlement and Order. I approve its form and content.		
14	DATED: <u>16/14/02</u>		
15			
16	Chuffolle		
17	CHERYL L. SCHRECK, Esq. Thelen, Reid & Priest, LLP		
18	Attorneys for Respondents		
19	<u>ENDORSEMENT</u>		
20	The foregoing Stipulated Settlement and Order is hereby respectfully submitted		
21	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.		
22	DATED: 10/29/02		
23	BILL LOCKYER, Attorney General		
24	of the State of California		
25	FMX		
26	1, 1		
27	FRED A. SLIMP II Deputy Attorney General		
28	Attorneys for Complainant		

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

Case No. 2479

In the Matter of the Accusation Against:

DANILO JUQUIANA DACO 3650 Hazelwood Vallejo, CA 94591	(Respondents Huey and Kaiser, only)
Pharmacy Technician License No. TCH 8394,	
ELSIE HUEY 130 Pelican Lane Novato, CA 94949	
Pharmacist License No. RPH 41809,	
and	
KAISER FOUNDATION HOSPITAL 99 Montecillo Road San Rafael, CA 94903	
Hospital Pharmacy License No. HSP 18749,	
Respondent.	
DECISION AN	D ORDER
The attached Stipulated Settlement	and Order is hereby adopted by the Board
of Pharmacy, Department of Consumer Affairs, as	its Decision in this matter.
This Decision shall become effective	e on <u>December 23, 2002</u> .
It is so ORDEREDDecember	23, 2002
BOARD OF I DEPARTME	PHARMACY NT OF CONSUMER AFFAIRS

By:/

JOHN D. JONES

STATE OF CALIFORNIA

1 2 3 4 5 6 7	BILL LOCKYER, Attorney General of the State of California FRED A. SLIMP II, State Bar No. 118693 Deputy Attorney General California Department of Justice 1515 Clay Street, 20 th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2117 Facsimile: (510) 622-2121			
8	BEFORE THE			
9				
10	STATE OF CAL	LIFORNIA		
11	In the Matter of the Accusation Against:	Case No. 2479		
12	DANILO JUQUIANA DACO 3650 Hazelwood	ACCUSATION		
13	Vallejo, CA 94591			
14	Pharmacy Technician License No. TCH 8394,			
15 16	ELSIE HUEY 130 Pelican Lane Novato, CA 94949			
17	Pharmacist License No. RPH 41809,			
18	and			
19	KAISER FOUNDATION HOSPITAL			
20	99 Montecillo Road San Rafael, CA 94903			
21	Hospital Pharmacy License No. HSP 18749			
22	Respondents.			
23		_		
24	Complainant alleges:			
25	PARTIE	<u>ES</u>		
26	1. Patricia F. Harris (Complainant) brings this Accusation solely in her			
27	official capacity as the Executive Officer of the Boa	ard of Pharmacy, Department of Consumer		
28	Affairs.			

- 2. On or about July 12, 1993, the Board of Pharmacy issued Pharmacy
 Technician License Number TCH 8394 to Danilo Juquiana Daco (respondent Daco).
 The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2003, unless renewed.
- 3. On or about July 29, 1988, the Board of Pharmacy issued Pharmacist License Number RPH 41809 to Elsie Huey (respondent Huey). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2002, unless renewed. Respondent Huey has been the Pharmacist-in-Charge at respondent pharmacy since December 6, 1998.
- 4. On or about March 18, 1981, the Board of Pharmacy issued Hospital Pharmacy License Number HSP 18749 to Kaiser Foundation Hospital (respondent pharmacy). The Hospital Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on November 1, 2002, unless renewed.

JURISDICTION

- 5. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).
- 6. Section 4300 of the Code provides in pertinent part that every license issued may be suspended or revoked.
- 7. Section 4301(f) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which shall include but is not limited to, the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- 8. Section 4301(j) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which shall include but is not limited to, the violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

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- 9. Section 4301(*l*) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which shall include but is not limited to, the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- 10. Section 4301(o) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which shall include but is not limited to, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the Board.
- 11. Section 4113 of the Code provides in pertinent part that every pharmacy shall designate a pharmacist-in-charge and that said 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.
- 12. Section 4022 of the Code in pertinent part defines a dangerous drug as any drug unsafe for self-medication or that may lawfully be dispensed only by prescription.
- 13. Section 4060 of the Code provides in pertinent part that no person shall possess any controlled substance except upon proper prescription or other legal basis as indicated therein.
- 14. Section 4081 of the Code provides in pertinent part that all records of sale, acquisition or disposition of dangerous drugs shall be at all times, during business hours, open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every pharmacy. The owner, officer and partner of any pharmacy shall be jointly responsible, with the pharmacist-in-charge, for maintaining the records and inventory described in this section.
- 15. Health and Safety Code (H&S Code) section 11173(a) provides in pertinent part that no person shall obtain or attempt to obtain controlled substances by fraud, deceit, misrepresentation, or subterfuge.

- 16. Title 16, California Code of Regulations, section 1718 provides in pertinent part that "current inventory" as used in section 4081 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in section 4081.
- 17. Title 21, Code of Federal Regulations, section 1301.71 provides in pertinent part that all registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances, including adequately supervising employees having access to narcotics storage areas.

DRUGS

- 18. Lorcet, a trade name for hydrocodone bitartrate and acetaminophen, is a Schedule III controlled substance as defined in H&S Code section 11056(e)(4) and dangerous drug within the meaning of Code section 4022.
- 19. Lortab, a trade name for hydrocodone bitartrate and acetaminophen, is a Schedule III controlled substance as defined in H&S Code section 11056(e)(4) and dangerous drug within the meaning of Code section 4022.
- 20. Diazepam is a Schedule IV controlled substance as defined in H&S Code section 11057(d)(8) and dangerous drug within the meaning of Code section 4022.
- 21. Vicodin and Vicodin ES, trade names for hydrocodone bitartrate and acetaminophen, is a Schedule III controlled substance as defined in H&S Code section 11056(e)(4) and dangerous drug within the meaning of Code section 4022.
- 22. Code section 125.3 provides in pertinent part that the Board may recover its investigation and enforcement costs in a disciplinary proceeding wherein a licentiate is found to have committed a violation(s) of the licensing act administered by the Board.
- 23. Respondents are guilty of unprofessional conduct within the meaning of Code sections 4301(f), 4301(j), 4301(l), and 4301(o) as more particularly set forth herein below.

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Pharmacy Technician Daco

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FIRST CAUSE FOR DISCIPLINE

(Moral Turpitude, Fraud, Dishonesty)

- 24. Commencing on or about November 2, 2000, and continuing until on or about December 1, 2000, respondent Daco, then employed as a pharmacy technician at respondent Kaiser Permanente Foundation Main Pharmacy No. 391, San Rafael, California, stole and/or fraudulently or deceitfully converted and appropriated to his own use and possession approximately nine hundred (900) Vicodin tablets, which had a total dollar value of four hundred fifty dollars (\$450.00) from the above indicated pharmacy while respondent Huey was pharmacist-in-charge.
- 25. Respondent Daco's conduct as set forth in paragraph 24, above, constitutes unprofessional conduct within the meaning of Code section 4301(f).

SECOND CAUSE FOR DISCIPLINE

(Violation of California and Federal Drug Statutes)

- 26. Complainant realleges the allegations contained in paragraph 24, above, and incorporates them herein by reference as if fully set forth at this point.
- 27. Respondent Daco's conduct as set forth in paragraph 24, above, constitutes violation of Code section 4060 and Health and Safety Code section 11173(a) and therefore unprofessional conduct within the meaning of Code section 4301(j).

THIRD CAUSE FOR DISCIPLINE

(Conviction of Crime Substantially Related)

- 28. Complainant realleges the allegations contained in paragraph 24, above, and incorporates them herein by reference as if fully set forth at this point.
- 29. On or about December 5, 2000, respondent Daco was arrested as a result of his conduct as set forth in paragraph 24, above, and charged with violation of Penal Code section 508, embezzlement by employee. Thereafter on or about March 9, 2001, respondent Daco pled guilty to violation of Penal Code section 508 in Marin County Superior Court in criminal case number SR00011452 (SC1117045A), and was convicted thereon. Pursuant to

said conviction, respondent Daco was sentenced to three (3) years' supervised probation, which included a condition that respondent Daco not be employed in any hospital or pharmaceutical capacity whereby he may have access to medications.

30. Respondent Daco's conduct as set forth in paragraphs 24 and 29, above, constitutes unprofessional conduct within the meaning of Code section 4301(*l*).

Pharmacist Huey and Pharmacy Kaiser

FOURTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law and Regulations)

- 31. Complainant realleges the allegations contained in paragraph 24, above, and incorporates them herein by reference as if fully set forth at this point.
- 32. Prior to the discovery of respondent Daco's conduct as set forth in paragraph 24, above, an audit of respondent pharmacy was conducted covering the period between July and November, 2000, which audit established a shortage of controlled substances and dangerous drugs of a total dollar value of three thousand five hundred dollars (\$3,500.00). Thereafter a surveillance camera was placed inside the pharmacy which led to the discovery of respondent Daco's thefts.
- 33. The shortage of controlled substances set forth in paragraph 32, above, constitutes a failure to maintain a current inventory in violation of Code section 4081 and Title 16, California Code of Regulations, section 1718, and a failure to provide effective controls and procedures to guard against theft and diversion of controlled substances in violation of Title 21, Federal Code of Regulations, section 1301.71 by respondent Huey and therefore unprofessional conduct within the meaning of Code section 4301(o).

FIFTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law and Regulations)

- 34. Complainant realleges the allegations contained in paragraph 24, above, and incorporates them herein by reference as if fully set forth at this point.
- 35. Prior to the discovery of respondent Daco's conduct as set forth in paragraph 24, above, an audit of respondent pharmacy was conducted covering the period

between July and November, 2000, which audit established a shortage of controlled substances 1 and dangerous drugs of a total dollar value of three thousand five hundred dollars (\$3,500.00). 2 Thereafter, a surveillance camera was placed inside the pharmacy which led to the discovery of 3 respondent Daco's thefts. 4 36. 5 The shortage of controlled substances set forth in paragraph 35, above. constitutes a failure to maintain a current inventory in violation of Code section 4081 and 6 Title 16, California Code of Regulations, section 1718, and a failure to provide effective controls 7 8 and procedures to guard against theft and diversion of controlled substances in violation of 9 Title 21, Federal Code of Regulations, section 1301.71 by respondent Kaiser and therefore 10 unprofessional conduct within the meaning of Code section 4301(o). 11 /// 12 /// 13 /// 14 /// 15 /// 16 /// 17 /// 18 /// 19 /// 20 /// 21 /// 22 /// 23 /// 24 /// 25 /// 26 /// 27 /// 28 ///

PRAYER WHEREFORE complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Board of Pharmacy issue a decision: 1. Revoking or suspending Pharmacy Technician License Number 4 TCH 8394, issued to Danilo Juquiana Daco; 2. Revoking or suspending Pharmacist/License Number RPH 41809, issued to Elsie Huey; 3. Revoking or suspending Hospital Pharmacy License Number HSP 18749. 8 issued to Kaiser Foundation Hospital; 4. Ordering Danilo Juquiana Daco, Elsie Huey, and Kaiser Foundation Hospital to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and 12 Taking such other and further action as may be deemed necessary or 5. 13 14 proper. DATED: 4/26/02 17 **Executive Officer** 18 Board of Pharmacy Department of Consumer Affairs 19 State of California 20 Complainant

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