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of the State of California
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Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 DANILO JUQUIANA DACO
3650 Hazelwood
13 Vallejo, CA 94591
14 Pharmacy Technician License No. TCH 8394,
15 ELSIE HUEY
130 Pelican Lane
16 Novato, CA 94949
17 Pharmacist License No. RPH 41809,
18 and
19 KAISER FOUNDATION HOSPITAL
99 Montecillo Road
20 San Rafael, CA 94903
21 Hospital Pharmacy License No. HSP 18749,
22 Respondent.

Case No. 2479

**STIPULATED SETTLEMENT
AND ORDER**

(Respondents Huey and Kaiser only)

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 ///

1 PARTIES

2 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
3 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
4 by Bill Lockyer, Attorney General of the State of California, by Fred A. Slimp II, Deputy
5 Attorney General.

6 2. Respondent Kaiser Foundation Hospital (Respondent Pharmacy)
7 and Respondent Elsie Huey, R.Ph., (Respondent Pharmacist) are represented in this proceeding
8 by attorney Cheryl L. Schreck, Esq., and Thelen, Reid & Priest, LLP, whose address is
9 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071-3193.

10 3. On or about July 29, 1988, the Board of Pharmacy issued Pharmacist
11 License Number RPH 41809 to Respondent Pharmacist. The Pharmacist License was in full
12 force and effect at all times relevant to the charges brought in Accusation No. 2479 and will
13 expire on January 31, 2002, unless renewed. Respondent Pharmacist has been the Pharmacist-
14 in-Charge at Respondent Pharmacy since December 6, 1998.

15 4. On or about March 18, 1981, the Board of Pharmacy issued Hospital
16 Pharmacy License No. HSP 18749 to Kaiser Foundation Hospital (Respondent Pharmacy).
17 The License was in full force and effect at all times relevant to the charges brought in Accusation
18 No. 2479 and will expire on November 1, 2002, unless renewed.

19 JURISDICTION

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

25 ADVISEMENT AND WAIVERS

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


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: 10/11/02

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5 for Ante e Cowy
KAISER FOUNDATION HOSPITAL

6 Respondent

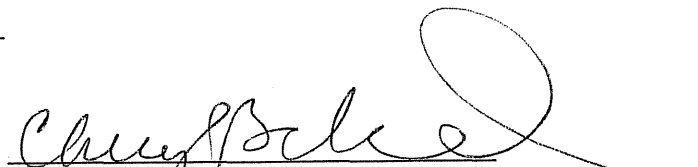
7 DATED: 10/8/02

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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: 10/14/02

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16 
CHERYL L. SCHRECK, Esq.
Thelen, Reid & Priest, LLP

17 Attorneys for Respondents

18 ENDORSEMENT

19
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
of the State of California

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25 

26 FRED A. SLIMP II
Deputy Attorney General

27 Attorneys for Complainant

28

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

In the Matter of the Accusation Against:

DANILO JUQUIANA DACO
3650 Hazelwood
Vallejo, CA 94591

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.

Case No. 2479

(Respondents Huey and Kaiser, *only*)

DECISION AND 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 on December 23, 2002.

It is so ORDERED December 23, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By:


JOHN D. JONES
Board President

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of the State of California
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9 **BOARD OF PHARMACY**
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19 KAISER FOUNDATION HOSPITAL
99 Montecillo Road
20 San Rafael, CA 94903
21 Hospital Pharmacy License No. HSP 18749
22 Respondents.

Case No. 2479
ACCUSATION

23
24 Complainant alleges:

25 PARTIES

26 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
27 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
28 Affairs.

1 9. Section 4301(*l*) of the Code provides in pertinent part that the Board
2 shall take action against any holder of a license who is guilty of unprofessional conduct,
3 which shall include but is not limited to, the conviction of a crime substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter.

5 10. Section 4301(*o*) of the Code provides in pertinent part that the Board
6 shall take action against any holder of a license who is guilty of unprofessional conduct,
7 which shall include but is not limited to, violating or attempting to violate, directly or indirectly,
8 or assisting in or abetting the violation of or conspiring to violate any provision or term of
9 this chapter or of the applicable federal and state laws and regulations governing pharmacy,
10 including regulations established by the Board.

11 11. Section 4113 of the Code provides in pertinent part that every pharmacy
12 shall designate a pharmacist-in-charge and that said pharmacist-in-charge shall be responsible for
13 a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice
14 of pharmacy.

15 12. Section 4022 of the Code in pertinent part defines a dangerous drug as any
16 drug unsafe for self-medication or that may lawfully be dispensed only by prescription.

17 13. Section 4060 of the Code provides in pertinent part that no person shall
18 possess any controlled substance except upon proper prescription or other legal basis as indicated
19 therein.

20 14. Section 4081 of the Code provides in pertinent part that all records of sale,
21 acquisition or disposition of dangerous drugs shall be at all times, during business hours, open
22 to inspection by authorized officers of the law, and shall be preserved for at least three years
23 from the date of making. A current inventory shall be kept by every pharmacy. The owner,
24 officer and partner of any pharmacy shall be jointly responsible, with the pharmacist-in-charge,
25 for maintaining the records and inventory described in this section.

26 15. Health and Safety Code (H&S Code) section 11173(a) provides
27 in pertinent part that no person shall obtain or attempt to obtain controlled substances by fraud,
28 deceit, misrepresentation, or subterfuge.

1 *Pharmacy Technician Daco*

2 FIRST CAUSE FOR DISCIPLINE

3 (Moral Turpitude, Fraud, Dishonesty)

4 24. Commencing on or about November 2, 2000, and continuing until
5 on or about December 1, 2000, respondent Daco, then employed as a pharmacy technician
6 at respondent Kaiser Permanente Foundation Main Pharmacy No. 391, San Rafael, California,
7 stole and/or fraudulently or deceitfully converted and appropriated to his own use and possession
8 approximately nine hundred (900) Vicodin tablets, which had a total dollar value of four hundred
9 fifty dollars (\$450.00) from the above indicated pharmacy while respondent Huey was
10 pharmacist-in-charge.

11 25. Respondent Daco's conduct as set forth in paragraph 24, above, constitutes
12 unprofessional conduct within the meaning of Code section 4301(f).

13 SECOND CAUSE FOR DISCIPLINE

14 (Violation of California and Federal Drug Statutes)

15 26. Complainant realleges the allegations contained in paragraph 24, above,
16 and incorporates them herein by reference as if fully set forth at this point.

17 27. Respondent Daco's conduct as set forth in paragraph 24, above, constitutes
18 violation of Code section 4060 and Health and Safety Code section 11173(a) and therefore
19 unprofessional conduct within the meaning of Code section 4301(j).

20 THIRD CAUSE FOR DISCIPLINE

21 (Conviction of Crime Substantially Related)

22 28. Complainant realleges the allegations contained in paragraph 24, above,
23 and incorporates them herein by reference as if fully set forth at this point.

24 29. On or about December 5, 2000, respondent Daco was arrested as a result
25 of his conduct as set forth in paragraph 24, above, and charged with violation of Penal Code
26 section 508, embezzlement by employee. Thereafter on or about March 9, 2001, respondent
27 Daco pled guilty to violation of Penal Code section 508 in Marin County Superior Court
28 in criminal case number SR00011452 (SC1117045A), and was convicted thereon. Pursuant to

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

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

6 *Pharmacist Huey and Pharmacy Kaiser*

7 FOURTH CAUSE FOR DISCIPLINE

8 (Violation of Pharmacy Law and Regulations)

9 31. Complainant realleges the allegations contained in paragraph 24, above,
10 and incorporates them herein by reference as if fully set forth at this point.

11 32. Prior to the discovery of respondent Daco's conduct as set forth
12 in paragraph 24, above, an audit of respondent pharmacy was conducted covering the period
13 between July and November, 2000, which audit established a shortage of controlled substances
14 and dangerous drugs of a total dollar value of three thousand five hundred dollars (\$3,500.00).
15 Thereafter a surveillance camera was placed inside the pharmacy which led to the discovery of
16 respondent Daco's thefts.

17 33. The shortage of controlled substances set forth in paragraph 32, above,
18 constitutes a failure to maintain a current inventory in violation of Code section 4081 and
19 Title 16, California Code of Regulations, section 1718, and a failure to provide effective controls
20 and procedures to guard against theft and diversion of controlled substances in violation of
21 Title 21, Federal Code of Regulations, section 1301.71 by respondent Huey and therefore
22 unprofessional conduct within the meaning of Code section 4301(o).

23 FIFTH CAUSE FOR DISCIPLINE

24 (Violation of Pharmacy Law and Regulations)

25 34. Complainant realleges the allegations contained in paragraph 24, above,
26 and incorporates them herein by reference as if fully set forth at this point.

27 35. Prior to the discovery of respondent Daco's conduct as set forth
28 in paragraph 24, above, an audit of respondent pharmacy was conducted covering the period

1 between July and November, 2000, which audit established a shortage of controlled substances
2 and dangerous drugs of a total dollar value of three thousand five hundred dollars (\$3,500.00).
3 Thereafter, a surveillance camera was placed inside the pharmacy which led to the discovery of
4 respondent Daco's thefts.

5 36. The shortage of controlled substances set forth in paragraph 35, above,
6 constitutes a failure to maintain a current inventory in violation of Code section 4081 and
7 Title 16, California Code of Regulations, section 1718, and a failure to provide effective controls
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).

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