

1 BILL LOCKYER, Attorney General
of the State of California
2 PAUL V. BISHOP, State Bar No. 50133
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-4618
Facsimile: (916) 327-8643

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2529

11 NANCY MITSUDA ASAI
12 631 E. Utah
Fresno, CA 93720

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Original Pharmacist License No. RPH39625

14 Respondent.
15

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
21 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
22 by Bill Lockyer, Attorney General of the State of California, by Paul V. Bishop, Deputy Attorney
23 General.

24 2. Respondent NANCY MITSUDA ASAI (Respondent) is represented in this
25 proceeding by attorney Shari I. Weintraub, whose address is 550 West "C" Street, Suite 1410,
26 San Diego, CA 92101.

27 3. On or about September 11, 1985, the Board of Pharmacy issued Original
28 Pharmacist License No. RPH39625 to NANCY MITSUDA ASAI (Respondent). The was in

1 full force and effect at all times relevant to the charges brought in Accusation No. 2529 and will
2 expire on March 1, 2003, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2529 was filed before the Board of Pharmacy (Board) ,
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on June 26,
7 2002. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2529 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and
11 understands the charges and allegations in Accusation No. 2529. Respondent has also carefully
12 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

14 6. Respondent is fully aware of its legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
16 counsel at its own expense; the right to confront and cross-examine the witnesses against them;
17 the right to present evidence and to testify on its own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation No. 2529.

26 9. Respondent agrees that its Original Pharmacist License is subject to
27 discipline and they agree to be bound by the Board of Pharmacy (Board) 's imposition of
28 discipline as set forth in the Disciplinary Order below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

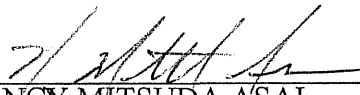
1. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,000.00, within 30 days of the effective date of the Boards adoption of this stipulation.

The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the Board its costs of investigation and prosecution. If Respondent fails to pay costs as agreed herein her license shall be suspended until full payment is received by the Board.

ACCEPTANCE

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

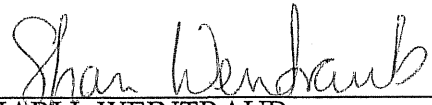
DATED: 3/6/03.



NANCY MITSUDA ASAI
Respondent

I have read and fully discussed with Respondent NANCY MITSUDA ASAI the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 17 March 2003.



SHARI I. WEINTRAUB
Attorney for Respondent

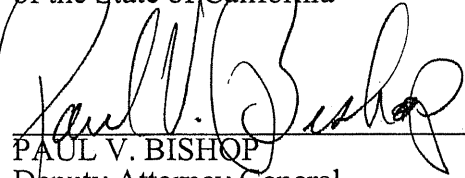
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

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

DATED: Mar 26, 2003.

BILL LOCKYER, Attorney General
of the State of California



A handwritten signature in black ink, appearing to read "Paul V. Bishop", is written over a horizontal line.

PAUL V. BISHOP
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against:

NANCYMITSUDA ASAI
631 E. Utah
Fresno, CA 93720

Original Pharmacist License No. RPH39625

Respondent.

Case No. 2529

OAH No.

DECISION AND ORDER

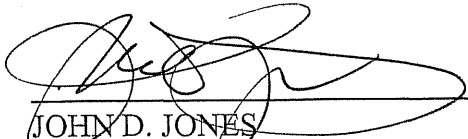
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 28, 2003.

It is so ORDERED April 28, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

Exhibit A
Accusation No. 2529

1 BILL LOCKYER, Attorney General
of the State of California
2 PAUL V. BISHOP, State Bar No. 50133
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, CA 94244-2550
5 Telephone: (916) 324-4618
Facsimile: (916) 327-8643
6 E-mail: paul.bishop@doj.ca.gov

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2529

12 RAY FISHER PHARMACY
1021 East Herndon Avenue, #101
13 Fresno, CA 93720

A C C U S A T I O N

14 Original Pharmacist Permit Number No.
PHY39916,

15 NANCY MITSUDA ASAI
16 631 E. Utah
Fresno, CA 93720

17 Original Pharmacist License Number No. RPH
18 39625,

19 and

20 ESPERANZA T. CAMBA
707 W. Channault Ave,
21 Clovis, CA 93611

22 Original Pharmacist License Number No. RPH
~~34910~~ 43010

23 Respondents.
24

25 ///

26 ///

27 ///

28 ///

1 Complainant alleges:

2 PARTIES

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

6 2. On or about March 21, 1994, the Board of Pharmacy issued Original
7 Pharmacy Permit Number No. PHY39916 to RAY FISHER PHARMACY (Pharmacy). The
8 Original Pharmacy Permit Number was in full force and effect at all times relevant to the charges
9 brought herein and will expire on March 1, 2003, unless renewed.

10 3. On or about September 11, 1985, the Board of Pharmacy issued Original
11 Pharmacist License Number No. RPH 39625 to NANCY MITSUDA ASAI (Asai). The Original
12 Pharmacist License Number was in full force and effect at all times relevant to the charges
13 brought herein and will expire on June 30, 2003, unless renewed. At all times relevant to the
14 charges brought herein, Asai was the Pharmacist In Charge at the Pharmacy.

15 4. On or about November 2, 1990, the Board of Pharmacy issued Original
16 Pharmacist License Number No. RPH 34910 to ESPERANZA T. CAMBA (Camba). The
17 Original Pharmacist License Number was in full force and effect at all times relevant to the
18 charges brought herein and will expire on December 31, 2003, unless renewed. At all times
19 relevant to the charges brought herein Camba was employed by the Pharmacy.

20 JURISDICTION

21 5. This Accusation is brought before the Board of Pharmacy (Board) under
22 the authority of the following sections of the Business and Professions Code (Code).

23 6. Section 4301 of the Code states:

24 "The board shall take action against any holder of a license who is guilty of
25 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
26 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
27 following:

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

.....
.....
.....

“(b) Incompetence.

“(c) Gross negligence.

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

.....

“(o) 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. . . .”

7. Section 4076 of the Code states:

“(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

.....
.....
.....
.....

“(2) The directions for the use of the drug.

“(5) The date of issue.

“(9) The expiration date of the effectiveness of the drug dispensed.

“(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

8. Section 4077 of the Code states, in pertinent part, that except as provided in subdivisions (b) and (c) of this section, no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Section 4076.

9. Section 4078 of the Code provides that no person shall place a false or misleading label on a prescription.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Section 4113 of the Code provides, in pertinent part, that:

“(b) 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.” . . .

11. Section 4115 of the Code provides, in pertinent part:

“(a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

.

(g) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a).”

12. 16 California Code of Regulations, section 1707, requires that records be stored so they are secure from unauthorized access and so that the confidentiality of any patient-related information is maintained.

13. 16 California Code of Regulations, section 1707.2, provides that a pharmacist shall provide oral consultation to a patient whenever a prescription drug is dispensed that has not been previously dispensed to the patient in the same dosage form, strength or with the same written directions.

14. 16 California Code of Regulations, section 1709.1, provides that the pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

15. 16 California Code of Regulations, section 1716, provides that the pharmacist shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber.

16. 16 California Code of Regulations, section 1764, provides:

“No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner then caring for the

1 patient, another licensed pharmacist serving the patient, or a person duly authorized by law to
2 receive such information.”

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

7 FIRST CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 I. Respondent CAMBA and PHARMACY are subject to disciplinary action
10 under sections 4301, 4076, and 4077, and 16 California Code of Regulations, sections 1707.2
11 and 1716, in that they dispensed a dangerous drug in an incorrectly labeled container and failed to
12 provide oral consultation to the patient receiving that prescription. The circumstances are as
13 follows:

14 J. On or about July 11, 2001, Respondents dispensed the drug
15 acetaminophen with codeine #3, a schedule II drug and a dangerous drug within the meaning of
16 section 4022, a new prescription for patient E.V., with written directions to “take 12 tablets every
17 four to six hours as needed for pain,” when the prescriber had ordered “1 to 2 tablets every four
18 to six hours,” in violation of 16 California Code of Regulations, section 1716. The respondents
19 failed to provide the patient receiving the new prescription an oral consultation in violation of 16
20 California Code of Regulations, section 1707.2.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

23 K. Respondent ASAI and PHARMACY are subject to disciplinary action
24 under sections 4301, 4115(g)(1), 4076(a), and 16 California Code of Regulations, section 1793.7,
25 in that they failed to have written technician policies and procedures, did not maintain proper
26 staffing ratios during work hours, and dispensed drugs in mislabeled containers. The
27 circumstances are as follows:

28 ///

1 M. On or about July 19, 2001, an audit of Respondent PHARMACY revealed
2 the following violations:

3 1. Respondents did not have written technician policies and
4 procedures and job descriptions as required by 16 California Code of Regulations, section
5 1793.7(e);

6 2. Respondents did not maintain the proper staffing ratios required by
7 section 4115(g)(1), and 16 California Code of Regulations, section 1793.7(f), because with only
8 one pharmacist on duty, there were two technicians and seven clerks working in the pharmacy at
9 the same time; and,

10 3. Triphasil, a dangerous drug within the meaning of section 4022,
11 was prepared to be dispensed by the Pharmacy with an expiration date after the date printed by
12 the manufacturer on the drug container in violation of section 4078.

13 THIRD CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct)

15 N. Respondents ASAI and PHARMACY are subject to disciplinary action
16 under sections 4301, 4076, 4077, 4078, and 16 California Code of Regulations, sections 1707
17 1764, in that they possessed controlled drugs with prescription labels that had expiration dates
18 later than that given by the manufacturer, and they failed to store and dispose of patient
19 information in an authorized manner. The circumstances are as follows:

20 O. On or about October 8, 2001, an inspection of PHARMACY revealed that
21 Respondent ASAI allowed prescriptions for Clobetasol .05% Gel and Lidex .05% ointment to be
22 prepared with an expiration date on the labels later than that given by the manufacturer in
23 violation of sections 4077 and 4078, and that she allowed patient records to be stored in an area
24 open to the public and to be disposed of in a public area without making them illegible in
25 violation of 16 California Code of Regulations, sections 1707 and 1764.

26 PRAYER

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- A. Revoking or suspending Original Pharmacy Permit Number No. PHY39916, issued to RAY FISHER PHARMACY;
- B. Revoking or suspending Original Pharmacist License Number No. RPH 39625, issued to NANCY MITSUDA ASAI;
- C. Revoking or suspending Original Pharmacist License Number No. RPH 34910, issued to ESPERANZA T. CAMBA;
- D. Ordering RAY FISHER PHARMACY, NANCY MITSUDA ASAI and ESPERANZA T. CAMBA 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;
- E. Taking such other and further action as deemed necessary and proper.

DATED: 6/11/02

P. F. Harris
PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

I:\ALL\BISHOP\ray fisher pharmacy\FISHER ACCUSATION.wpd