

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

In the Matter of the Accusation Against:

**KAISER FOUNDATION HOSPITAL
INPATIENT/OUTPATIENT PHARMACY**
2425 Geary Boulevard
San Francisco, CA 94115

Original Permit Number HSP 6602

and

CHARLES C. LINO
1603 Gamble Lane
Escondido, CA 92029

Original Pharmacist License No. RPH 42290

Respondents.

Case No. 6212

OAH No. 2019050476

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 January 23, 2020.

It is so ORDERED on December 24, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe".

By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
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7 *Attorneys for Complainant*

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

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13 In the Matter of the Accusation Against:

Case No. 6212

14 **KAISER FOUNDATION HOSPITAL**
INPATIENT/OUTPATIENT PHARMACY
15 2425 Geary Boulevard
San Francisco, CA 94115

OAH No. 2019050476

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
CHARLES C. LINO ONLY**

16 Original Permit Number HSP 6602

17 and

18 **CHARLES C. LINO**
19 1301 Myrtle Beach Way
Modesto, CA 95357

20 Original Pharmacist License No. RPH 42290

21 Respondents.
22

23
24 IT IS HEREBY STIPULATED AND AGREED by and between Charles C. Lino and the
25 Board of Pharmacy that the following matters are true:

26 **PARTIES**

27 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of
28 Pharmacy (Board). She brought this action solely in her official capacity and is represented in

1 this matter by Xavier Becerra, Attorney General of the State of California, by Susana A.
2 Gonzales, Deputy Attorney General.

3 2. On or about January 19, 1989, the Board issued Original Pharmacist License Number
4 RPH 42290 (Pharmacist License) to Charles C. Lino (Respondent Lino). The Pharmacist License
5 was in full force and effect at all times relevant to the charges brought in this Accusation and will
6 expire on October 31, 2020, unless renewed.

7 **JURISDICTION**

8 3. Accusation No. 6212 was filed before the Board, and is currently pending against
9 Respondent Lino. The Accusation and all other statutorily required documents were properly
10 served on Respondent on February 28, 2018. Respondent Lino timely filed his Notice of Defense
11 contesting the Accusation.

12 4. A copy of Accusation No. 6212 is attached as exhibit A and incorporated herein by
13 reference.

14 **ADVISEMENT AND WAIVERS**

15 5. Respondent Lino has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 6212. Respondent Lino has also carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
18 Order.

19 6. Respondent Lino is fully aware of his legal rights in this matter, including the right to
20 a hearing on the charges and allegations in the Accusation; the right to confront and cross-
21 examine the witnesses against them; the right to present evidence and to testify on his own behalf;
22 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
23 documents; the right to reconsideration and court review of an adverse decision; and all other
24 rights accorded by the California Administrative Procedure Act and other applicable laws.

25 7. Respondent Lino voluntarily, knowingly, and intelligently waives and gives up each
26 and every right set forth above.

27 ///

28 ///

1 **CULPABILITY**

2 8. Respondent Lino understands and agrees that the charges and allegations in
3 Accusation No. 6212, if proven at a hearing, constitute cause for imposing discipline upon his
4 Pharmacist License.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent Lino agrees that, at a hearing, Complainant could establish a
7 factual basis for the charges in the Accusation, and that Respondent Lino hereby gives up his
8 right to contest those charges.

9 10. Respondent Lino agrees that his Pharmacist License is subject to discipline and he
10 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
11 below.

12 **CONTINGENCY**

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

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

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

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Pharmacist License Number RPH 42290, issued to
9 Respondent Lino, is revoked. However, the revocation is stayed and Respondent Lino is placed
10 on probation for three (3) years on the following terms and conditions.

11 1. **Obey All Laws**

12 Respondent Lino shall obey all state and federal laws and regulations.

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

- 15 • an arrest or issuance of a criminal complaint for violation of any provision of the
16 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
17 substances laws
- 18 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
19 criminal proceeding to any criminal complaint, information or indictment
- 20 • a conviction of any crime
- 21 • the filing of a disciplinary pleading, issuance of a citation, or initiation of another
22 administrative action filed by any state or federal agency which involves
23 Respondent Lino's license or which is related to the practice of pharmacy or the
24 manufacturing, obtaining, handling, distributing, billing, or charging for any drug,
25 device or controlled substance.

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

27 2. **Report to the Board**

28 Respondent Lino shall report to the board quarterly, on a schedule as directed by the board
or its designee. The report shall be made either in person or in writing, as directed. Among other

1 requirements, Respondent Lino shall state in each report under penalty of perjury whether there
2 has been compliance with all the terms and conditions of probation.

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

8 **3. Interview with the Board**

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

14 **4. Cooperate with Board Staff**

15 Respondent Lino shall timely cooperate with the board's inspection program and with the
16 board's monitoring and investigation of Respondent Lino's compliance with the terms and
17 conditions of his probation, including but not limited to: timely responses to requests for
18 information by board staff; timely compliance with directives from board staff regarding
19 requirements of any term or condition of probation; and timely completion of documentation
20 pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a
21 violation of probation.

22 **5. Continuing Education**

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

25 **6. Reporting of Employment and Notice to Employers**

26 During the period of probation, Respondent Lino shall notify all present and prospective
27 employers of the decision in case number 6212 and the terms, conditions and restrictions imposed
28 on Respondent Lino by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of
undertaking any new employment, Respondent Lino shall report to the board in writing the name,

1 physical address, and mailing address of each of his employer(s), and the name(s) and telephone
2 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in- charge, designated
3 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work
4 schedule, if known. Respondent Lino shall also include the reason(s) for leaving the prior
5 employment. Respondent Lino shall sign and return to the board a written consent authorizing
6 the board or its designee to communicate with all of Respondent Lino's employer(s) and
7 supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board
8 or its designee, concerning Respondent Lino's work status, performance, and monitoring. Failure
9 to comply with the requirements or deadlines of this condition shall be considered a violation of
10 probation.

11 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
12 Respondent Lino undertaking any new employment, Respondent Lino shall cause (a) his direct
13 supervisor, (b) Entity pharmacist-in-charge, designated representative-in-charge, responsible
14 manager, or other compliance supervisor, and (c) the owner or owner representative of his
15 employer, to report to the board in writing acknowledging that the listed individual(s) has/have
16 read the decision in case number 6212, and terms and conditions imposed thereby. If one person
17 serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It
18 shall be the Respondent Lino's responsibility to ensure that these acknowledgment(s) are timely
19 submitted to the board. In the event of a change in the person(s) serving the role(s) described in
20 (a), (b), or (c) during the term of probation, Respondent Lino shall cause the person(s) taking over
21 the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging
22 that he or she has read the decision in case number 6212, and the terms and conditions imposed
23 thereby.

24 If Respondent Lino works for or is employed by or through an employment service,
25 Respondent Lino must notify the person(s) described in (a), (b), and (c) above at every entity
26 licensed by the board of the decision in case number 6212, and the terms and conditions imposed
27 thereby in advance of Respondent Lino commencing work at such licensed entity. A record of
28 this notification must be provided to the board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
2 (15) days of Respondent Lino undertaking any new employment by or through an employment
3 service, Respondent Lino shall cause the person(s) described in (a), (b), and (c) above at the
4 employment service to report to the board in writing acknowledging that he or she has read the
5 decision in case number, and the terms and conditions imposed thereby. It shall be Respondent
6 Lino's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

7 Failure to timely notify present or prospective employer(s) or failure to cause the identified
8 person(s) with that/those employer(s) to submit timely written acknowledgments to the board
9 shall be considered a violation of probation.

10 "Employment" within the meaning of this provision includes any full-time, part-time,
11 temporary, relief, or employment/management service position as a pharmacist, or any position
12 for which a pharmacist is a requirement or criterion for employment, whether the Respondent
13 Lino is an employee, independent contractor or volunteer.

14 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

15 Respondent Lino shall further notify the board in writing within ten (10) days of any
16 change in name, residence address, mailing address, e-mail address or phone number.

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

19 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

20 During the period of probation, Respondent Lino shall not supervise any intern pharmacist,
21 be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other
22 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
23 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

24 **9. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, respondent shall pay to the
26 board its costs of investigation and prosecution in the amount of eight thousand eight-hundred
27 and fifty dollars (\$8,850.00).

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

4 **10. Probation Monitoring Costs**

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

9 **11. Status of License**

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

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

18 **12. License Surrender While on Probation/Suspension**

19 Following the effective date of this decision, should respondent cease practice due to
20 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
21 respondent may relinquish his license, including any indicia of licensure issued by the board,
22 along with a request to surrender the license. The board or its designee shall have the discretion
23 whether to accept the surrender or take any other action it deems appropriate and reasonable.
24 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
25 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
26 become a part of the respondent's license history with the board.

27 Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall
28 license, including any indicia of licensure not previously provided to the board within ten (10)
days of notification by the board that the surrender is accepted if not already provided.

1 Respondent may not reapply for any license from the board for three (3) years from the effective
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
3 of the date the application for that license is submitted to the board, including any outstanding
4 costs.

5 **13. Practice Requirement – Extension of Probation**

6 Except during periods of suspension, respondent shall, at all times while on probation, be
7 employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any
8 month during which this minimum is not met shall extend the period of probation by one month.
9 During any such period of insufficient employment, respondent must nonetheless comply with all
10 terms and conditions of probation, unless respondent receives a waiver in writing from the board
11 or its designee.

12 If respondent does not practice as a pharmacist in California for the minimum number of
13 hours in any calendar month, for any reason (including vacation), respondent shall notify the
14 board in writing within ten (10) days of the conclusion of that calendar month. This notification
15 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
16 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume
17 practice at the required level. Respondent shall further notify the board in writing within ten (10)
18 days following the next calendar month during which respondent practices as a pharmacist in
19 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
20 considered a violation of probation.

21 It is a violation of probation for respondent's probation to be extended pursuant to the
22 provisions of this condition for a total period, counting consecutive and non-consecutive months,
23 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
24 probation period on its website.

25 **14. Violation of Probation**

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

1 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
2 board or its designee may post a notice of the extended probation period on its website.

3 If respondent violates probation in any respect, the board, after giving respondent notice
4 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
5 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
6 probation, or the preparation of an accusation or petition to revoke probation is requested from
7 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
8 probation shall be automatically extended until the petition to revoke probation or accusation is
9 heard and decided, and the charges and allegations in Accusation No. 6212 shall be deemed true
10 and correct.

11 **15. Completion of Probation**

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

14 **16. Remedial Education**

15 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
16 board or its designee, for prior approval, an appropriate program of remedial education related to
17 inventory control, record-keeping, and pharmacy law related to state and federal regulations
18 related to inventory control. The program of remedial education shall consist of at least 10 hours
19 per year, which shall be completed at respondent's own expense. Fifty percent (50%) or
20 Respondent's remedial education must be live webinar or in-person. Respondent must also
21 complete the board's diversion program, "Prescription Drug Abuse and Preventing Drug
22 Diversion—What a Pharmacist Needs to Know." All remedial education shall be in addition to,
23 and shall not be credited toward, continuing education (CE) courses used for license renewal
24 purposes for pharmacists.

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

1 Following the completion of each course, the board or its designee may require the
2 respondent, at his own expense, to take an approved examination to test the respondent's
3 knowledge of the course. If the respondent does not achieve a passing score on the examination
4 that course shall not count towards satisfaction of this term. Respondent shall take another course
5 approved by the board in the same subject area.

6 17. No New Ownership or Management of Licensed Premises

7 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
8 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
9 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
10 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
11 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
12 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
13 that interest, but only to the extent of that position or interest as of the effective date of this
14 decision. Violation of this restriction shall be considered a violation of probation.

15 ACCEPTANCE

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

21 DATED:

22 9/27/19

Charles C. Lino

23 CHARLES C. LINO
Respondent Lino

24 ///

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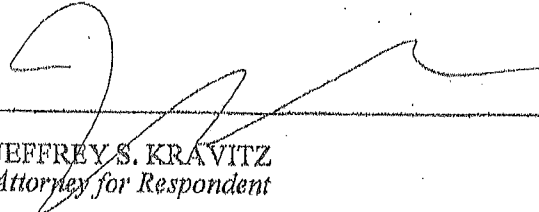
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1 I have read and fully discussed with Respondent Charles C. Lino the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

4 DATED: 9/27/19


JEFFREY S. KRAVITZ
Attorney for Respondent

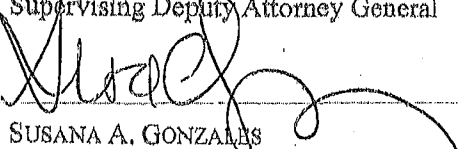
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8 ENDORSEMENT

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

11 DATED: 9/27/19

Respectfully submitted,

12 XAVIER BECERRA
13 Attorney General of California
14 DIANN SOKOLOFF
15 Supervising Deputy Attorney General


16 SUSANA A. GONZALES
17 Deputy Attorney General
18 *Attorneys for Complainant*

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20
21 OK2017901451
91162608.docx

Exhibit A

Accusation No. 6212

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
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9 **BEFORE THE**
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

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12 **KAISER FOUNDATION HOSPITAL**
13 **INPATIENT/OUTPATIENT PHARMACY**
14 **2425 Geary Boulevard**
San Francisco, CA 94115

A C C U S A T I O N

15 **Original Permit Number No. HSP 6602**

16 **and**

17 **CHARLES C. LINO**
18 **1301 Myrtle Beach Way**
Modesto, CA 95357

19 **Original Pharmacist License No. RPH42290**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about October 9, 1990, the Board of Pharmacy (Board) issued Original Permit
27 Number HSP 6602 (Permit) to Kaiser Foundation Hospital Inpatient / Out Patient Pharmacy
28

1 (Respondent Kaiser). The Permit was in full force and effect at all times relevant to the charges
2 brought in this Accusation and will expire on November 1, 2018, unless renewed.

3 3. On or about January 19, 1989, the Board issued Original Pharmacist License Number
4 RPH 42290 (Pharmacist License) to Charles C. Lino (Respondent Lino). The Pharmacist License
5 was in full force and effect at all times relevant to the charges brought in this Accusation and will
6 expire on October 31, 2018, unless renewed.

7 JURISDICTION

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

11 5. Section 4300 of the Code states:

12 "(a) Every license issued may be suspended or revoked.

13 "(b) The board shall discipline the holder of any license issued by the board, whose default
14 has been entered or whose case has been heard by the board and found guilty, by any of the
15 following methods:

16 "(1) Suspending judgment.

17 "(2) Placing him or her upon probation.

18 "(3) Suspending his or her right to practice for a period not exceeding one year.

19 "(4) Revoking his or her license.

20 "(5) Taking any other action in relation to disciplining him or her as the board in its
21 discretion may deem proper.

22 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
23 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
24 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
25 may issue the license subject to any terms or conditions not contrary to public policy, including,
26 but not limited to, the following:

27 "(1) Medical or psychiatric evaluation.

28 "(2) Continuing medical or psychiatric treatment.

1 "(3) Restriction of type or circumstances of practice.

2 "(4) Continuing participation in a board-approved rehabilitation program.

3 "(5) Abstention from the use of alcohol or drugs.

4 "(6) Random fluid testing for alcohol or drugs.

5 "(7) Compliance with laws and regulations governing the practice of pharmacy.

6 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
7 certificate of licensure for any violation of the terms and conditions of probation. Upon
8 satisfactory completion of probation, the board shall convert the probationary certificate to a
9 regular certificate, free of conditions.

10 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
11 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
12 shall have all the powers granted therein. The action shall be final, except that the propriety of
13 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
14 Civil Procedure."

15 6. Section 4300.1 of the Code states:

16 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
17 operation of law or by order or decision of the board or a court of law, the placement of a license
18 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
19 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
20 proceeding against, the licensee or to render a decision suspending or revoking the license."

21 STATUTORY AND REGULATORY PROVISIONS

22 7. Section 4301 of the Code, in pertinent part, states:

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

26 . . .

27 "(j) The violation of any of the statutes of this state, of any other state, or of the United
28 States regulating controlled substances and dangerous drugs.

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“(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 or by any other state or federal regulatory agency.”

....

8. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices 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 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

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

9. Section 4113 of the Code states:

“(a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

1 “(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The
2 board shall not issue or renew a pharmacy license without identification of an approved
3 pharmacist-in-charge for the pharmacy.

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

6 “(d) Every pharmacy shall notify the board in writing, on a form designed by the board,
7 within 30 days of the date when a pharmacist-in-charge ceases to act as the pharmacist-in-charge,
8 and shall on the same form propose another pharmacist to take over as the pharmacist-in-charge.
9 The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If
10 disapproved, the pharmacy shall propose another replacement within 15 days of the date of
11 disapproval and shall continue to name proposed replacements until a pharmacist-in-charge is
12 approved by the board.

13 “(e) If a pharmacy is unable, in the exercise of reasonable diligence, to identify within 30
14 days a permanent replacement pharmacist-in-charge to propose to the board on the notification
15 form, the pharmacy may instead provide on that form the name of any pharmacist who is an
16 employee, officer, or administrator of the pharmacy or the entity that owns the pharmacy and who
17 is actively involved in the management of the pharmacy on a daily basis, to act as the interim
18 pharmacist-in-charge for a period not to exceed 120 days. The pharmacy, or the entity that owns
19 the pharmacy, shall be prepared during normal business hours to provide a representative of the
20 board with the name of the interim pharmacist-in-charge with documentation of the active
21 involvement of the interim pharmacist-in-charge in the daily management of the pharmacy, and
22 with documentation of the pharmacy's good faith efforts prior to naming the interim pharmacist-
23 in-charge to obtain a permanent pharmacist-in-charge. By no later than 120 days following the
24 identification of the interim pharmacist-in-charge, the pharmacy shall propose to the board the
25 name of a pharmacist to serve as the permanent pharmacist-in-charge. The proposed permanent
26 pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall
27 propose another replacement within 15 days of the date of disapproval, and shall continue to
28 name proposed replacements until a pharmacist-in-charge is approved by the board.”

1 10. California Code of Regulations (CCR), Title 16, Section 1714 states:

2 “(a) All pharmacies (except hospital inpatient pharmacies as defined by Business and
3 Professions Code section 4029 which solely or predominantly furnish drugs to inpatients of the
4 hospital) shall contain an area which is suitable for confidential patient counseling.

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

9 “(c) The pharmacy and fixtures and equipment shall be maintained in a clean and orderly
10 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly
11 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for
12 pharmaceutical purposes.

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

17 “(e) The pharmacy owner, the building owner or manager, or a family member of a
18 pharmacist owner (but not more than one of the aforementioned) may possess a key to the
19 pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key
20 to a pharmacist or 2) providing access in case of emergency. An emergency would include fire,
21 flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that
22 the pharmacist may readily determine whether the key has been removed from the container.

23 “(f) The board shall require an applicant for a licensed premise or for renewal of that
24 license to certify that it meets the requirements of this section at the time of licensure or renewal.

25 “(g) A pharmacy shall maintain a readily accessible restroom. The restroom shall contain a
26 toilet and washbasin supplied with running water.”

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1 11. CCR, Title 16, section 1718, states:

2 "Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions
3 Code shall be considered to include complete accountability for all dangerous drugs handled by
4 every licensee enumerated in Sections 4081 and 4332.

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

7 12. CCR, Title 16, section 1793.7, states:

8 "(a) In addition to employing a pharmacy technician to perform the tasks specified in
9 section 1793.2, a pharmacy may employ a non-licensed person to type a prescription label or
10 otherwise enter prescription information into a computer record system, but the responsibility for
11 the accuracy of the prescription information and the prescription as dispensed lies with the
12 registered pharmacist who initials the prescription or prescription record. At the direction of the
13 registered pharmacist, a non-licensed person may also request and receive refill authorization.

14 "(b) A pharmacist may supervise the number of non-licensed personnel performing the
15 duties specified in subdivision (a) that the pharmacist determines, in the exercise of his or her
16 professional judgment, does not interfere with the effective performance of the pharmacist's
17 responsibilities under the Pharmacy Law.

18 "(c) A pharmacist who, exercising his or her professional judgment pursuant to subdivision
19 (b), refuses to supervise the number of non-licensed personnel scheduled by the pharmacy, shall
20 notify the pharmacist-in-charge in writing of his or her determination, specifying the
21 circumstances of concern with respect to the pharmacy or the non-licensed personnel that have
22 led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting
23 of the relevant schedule.

24 "(d) No entity employing a pharmacist may discharge, discipline, or otherwise discriminate
25 against any pharmacist in the terms and conditions of employment for exercising or attempting to
26 exercise in good faith the right established pursuant to this section."

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1 COST RECOVERY

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

6 DRUGS

7 14. Hydrocodone/APAP, sometimes marketed under the brand name of Norco, is a
8 narcotic substance (hydrocodone) and a non-narcotic substance (acetaminophen abbreviated as
9 APAP) and is scheduled II controlled substance pursuant to Health and Safety code section
10 11055(b)(1)(I) and a dangerous drug pursuant to Business and Professions Code section 4022. It
11 is used to treat moderate to severe pain.

12 15. Promethazine with codeine, sometimes marketed under the brand name of Phenergan
13 with codeine, is a scheduled V controlled substance pursuant to Health and Safety code section
14 11058(c)(1) and a dangerous drug pursuant to Business and Professions Code section 4022.

15 16. Alprazolam, sometimes marketed under the brand name of Xanax, is a scheduled IV
16 controlled substance pursuant to Health and Safety code section 11057, subdivision (d)(1), and a
17 dangerous drug pursuant to Business and Professions Code section 4022. It is used to treat
18 anxiety.

19 17. Carisoprodol, sometimes marketed under the brand name of Soma, is a scheduled IV
20 controlled substance pursuant to Health and Safety code section 11057, subdivision (d), and a
21 dangerous drug pursuant to Business and Professions Code section 4022. It is used to treat
22 muscle spasms.

23 18. Sildenafil, sometimes marketed under the brand name of Viagra, is a dangerous drug
24 pursuant to Business and Professions Code section 4022 in that it is only available by
25 prescription. It is used to treat erectile dysfunction and pulmonary hypertension.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Security of the Pharmacy)

3 19. Respondent Kaiser has subjected its Permit to discipline under Code section 4301,
4 subdivisions (j) and (o), in that it failed to maintain security of the pharmacy such that large
5 quantities of dangerous drugs and controlled substances were diverted and/or lost. On November
6 18, 2016, Respondent Kaiser reported a loss of at least 105,204 tablets of alprazolam 2 mg, 4,115
7 tablets of alprazolam 1 mg, 7,564 tablets of carisoprodol 350 mg, and 35,475 ml of promethazine
8 with codeine 6.25 mg/ 10 mg/ 5 ml. A subsequent investigation and audit by a Board inspector
9 for the period of November 12, 2013, through November 15, 2016, revealed Respondent Kaiser
10 could not account for a shortage of 69,906 tablets of hydrocodone/apap 10/325 mg, 94,296 tablets
11 of hydrocodone/apap 5/325 mg, 652 tablets of alprazolam 0.5 mg, 3,613 tablets of alprazolam 1
12 mg, 106,999 tablets of alprazolam 2 mg, 4,042 tablets of sildenafil 20 mg, and 12 tablets of
13 Viagra 50 mg, and an overage of 60 tablets of alprazolam 0.25 mg. (Cal. Code Reg., tit. 16, §
14 1714, subd. (b).)

15 SECOND CAUSE FOR DISCIPLINE

16 (Failure to Maintain Correct Inventory)

17 20. Respondent Kaiser has subjected its Permit to discipline under Code section 4301,
18 subdivisions (j) and (o), in that it failed to maintain a correct inventory of dangerous drugs. The
19 circumstances are described above in paragraph 19. (Bus. & Prof. Code, § 4081, subd. (a), Cal.
20 Code Reg., tit. 16, § 1718.)

21 THIRD CAUSE FOR DISCIPLINE

22 (Receipt of Dangerous Drugs)

23 21. Respondent Kaiser has subjected its Permit to discipline under Code section 4301,
24 subdivisions (j) and (o), in that it failed to provide pharmacist supervision of pharmacy technician
25 T. M. including maintenance of appropriate pharmacy records. Video surveillance of the
26 pharmacy showed of pharmacy technician T. M. receiving dangerous drugs without the
27 supervision of a pharmacist. (Cal. Code Reg., tit. 16, § 1793.7, subd. (b).)

1 FOURTH CAUSE FOR DISCIPLINE

2 (Security of the Pharmacy)

3 22. Respondent Lino has subjected his Pharmacist License to discipline under Code
4 section 4301, subdivisions (j) and (o), in that he failed to maintain security of the pharmacy such
5 that large quantities of dangerous drugs and controlled substances were diverted and/or lost as
6 pharmacist-in-charge of Respondent Kaiser. Respondent Lino was pharmacist-in-charge of
7 Respondent Kaiser from January 30, 2010, to August 2, 2016. Additional circumstances are
8 described above in paragraph 19. (Cal. Code Reg., tit. 16, § 1714, subd. (b).)

9 FIFTH CAUSE FOR DISCIPLINE

10 (Failure to Maintain Correct Inventory)

11 23. Respondent Lino has subjected his Pharmacist License to discipline under Code
12 section 4301, subdivisions (j) and (o), in that he failed to maintain a correct inventory of
13 dangerous drugs as pharmacist-in-charge of Respondent Kaiser. Respondent Lino was
14 pharmacist-in-charge of Respondent Kaiser from January 30, 2010, to August 2, 2016.
15 Additional circumstances are described above in paragraph 19. (Bus. & Prof. Code, § 4081, subd.
16 (a), Cal. Code Reg., tit. 16, § 1718.)

17 SIXTH CAUSE FOR DISCIPLINE

18 (Receipt of Dangerous Drugs)

19 24. Respondent Lino has subjected his Pharmacist License to discipline under Code
20 section 4301, subdivisions (j) and (o), in that he failed to provide pharmacist supervision of
21 pharmacy technician T. M. including maintenance of appropriate pharmacy records. Video
22 surveillance of the pharmacy showed of pharmacy technician T. M. receiving dangerous drugs
23 without the supervision of a pharmacist. (Cal. Code Reg., tit. 16, § 1793.7, subd. (b).)

24 DISCIPLINE CONSIDERATIONS

25 25. To determine the degree of discipline, if any, to be imposed on Respondent Kaiser,
26 Complainant alleges that on or about February 4, 2014, in a prior action, the Board of Pharmacy
27 issued Citation Number CI 2012 56806 and ordered Respondent to pay a fine of \$3,000.00. That
28 Citation is now final and is incorporated by reference as if fully set forth.

1 26. To determine the degree of discipline, if any, to be imposed on Respondent Kaiser,
2 Complainant alleges that on or about February 4, 2014, in a prior action, the Board issued
3 Citation Number CI 2012 56806 and ordered Respondent Kaiser to pay a fine of \$2,750.00. That
4 Citation is now final and is incorporated by reference as if fully set forth.

5 27. To determine the degree of discipline, if any, to be imposed on Respondent Kaiser,
6 Complainant alleges that on or about July 18, 2016, in a prior action, the Board issued Citation
7 Number CI 2016 7186 and ordered Respondent Kaiser to pay a fine of \$5,000.00. That Citation
8 is now final and is incorporated by reference as if fully set forth.

9 28. To determine the degree of discipline, if any, to be imposed on Respondent Lino,
10 Complainant alleges that on or about February 4, 2014, in a prior action, the Board issued
11 Citation Number CI 2013 59753 and ordered Respondent Lino to pay a fine of \$1,250.00. That
12 Citation is now final and is incorporated by reference as if fully set forth.

13 PRAYER

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

- 16 1. Revoking or suspending Original Permit Number HSP 6602, issued to Kaiser
17 Foundation Hospital Inpatient/Out Patient Pharmacy;
- 18 2. Revoking or suspending Original Pharmacist License Number RPH 42290, issued to
19 Charles C. Lino;
- 20 3. Ordering Kaiser Foundation Hospital Inpatient/Out Patient Pharmacy and Charles C.
21 Lino to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of
22 this case, pursuant to Business and Professions Code section 125.3; and,

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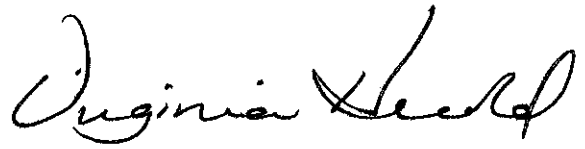
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4. Taking such other and further action as deemed necessary and proper.

DATED: 2/1/18



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

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