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

In the Matter of the Accusation Against: GARY WARNECKE 4005 San Antonio Road Yorba Linda, CA 92686 Pharmacist License No. 38265 Respondent.	Case No. 2851 OAH No. L-2005110117

DECISION AND ORDER

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

This Decision shall become effective on July 11, 2007.

It is so ORDERED June 11, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

BILL LOCKYER, Attorney General
of the State of California
KATHLEEN B.Y. LAM, State Bar No. 95379
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Attorneys for Complainant

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

In the Matter of the Accusation Against: GARY WARNECKE 4005 San Antonio Road Yorba Linda, CA 92686 Pharmacist License No. 38265 Respondent.	Case No. 2851 OAH No. L-2005110117 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. At the time the Accusation was filed, Patricia F. Harris ("Complainant") was 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 Kathleen B.Y. Lam, Deputy Attorney General.

2. Respondent Gary Warnecke ("Respondent") is represented in this proceeding by attorney Michael F. Burns, whose address is 3842 Myers Street, Riverside, CA

92503.

3. On or about November 3, 1983, the Board of Pharmacy issued Pharmacist License No. 38265 to Respondent Gary Warnecke. The license was in full force and effect at all times relevant to the charges brought in Accusation No. 2851, and will expire on November 30, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2851 was filed before the Board of Pharmacy, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 14, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2851 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2851. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his 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 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his 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.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2851.

9. Respondent agrees that his Pharmacist license is subject to discipline and he agrees to be bound by the Board of Pharmacy's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. 38265 issued to Respondent Gary Warnecke is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Actual Suspension - Pharmacist.** License Number38265, issued to Respondent Gary Warnecke is suspended for a period of ninety (90) days. Respondent will not be able to return to work as a pharmacist until approved by the Pharmacist Recovery Program ("PRP").

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, **or** be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of

pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

3. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. **Interview with the Board.** Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

5. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

6. **Continuing Education.** Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

7. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2851 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2851.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2851 in advance of the Respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the Respondent is considered an employee or independent contractor.

8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

9. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $8,000. Respondent shall make quarterly payments until the costs are paid in full.

The filing of bankruptcy by Respondent shall not relieve Respondent of his

responsibility to reimburse the Board its costs of investigation and prosecution.

10. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

11. **Status of License**. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

If Respondent's license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

13. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

14. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code."

15. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and 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 violation of probation, to terminate probation, and to impose the penalty which was stayed.

16. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

17. **Rehabilitation Program - Pharmacists Recovery Program (PRP).** Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The costs for PRP participation shall be borne by the

Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

18. **Random Drug Screening.** Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the Respondent.

20. **Supervised Practice.** Respondent shall practice only under the supervision of a pharmacist not on probation with the Board. Respondent shall not practice

until the supervisor is approved by the Board. The supervision shall be, as required by the Board, either:

Continuous - 75% to 100% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the Board in writing stating the supervisor has read the decision in case number 2851 and is familiar with the level of supervision as determined by the Board.

If Respondent changes employment, Respondent shall have his new supervisor, within 15 days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 2851 and is familiar with the level of supervision as determined by the Board.

Within 10, days of leaving employment, Respondent shall notify the Board in writing.

21. **No Ownership of Premises.** Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael F. Burns. I understand the stipulation and the effect it will have on my 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: 9/12/06.

GARY WARNECKE
Respondent

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

DATED: 9/13/06.

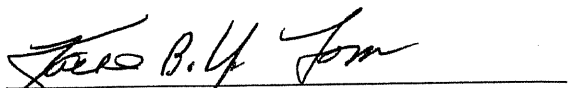
MICHAEL F. BURNS
Attorney for Respondent

ENDORSEMENT

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

DATED: 9/13/06.

BILL LOCKYER, Attorney General
of the State of California



KATHLEEN B.Y. LAM
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2005700362
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Exhibit A

Accusation No. 2851

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Attorneys for Complainant

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

In the Matter of the Accusation Against: GARY WARNECKE 4005 San Antonio Rd Yorba Linda, CA 92686 RPH No. 38265 Respondent.	Case No. 2851 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about November 3, 1983, the Board of Pharmacy issued Original Pharmacist License No. RPH 38265 to Gary Warnecke (Respondent). The original pharmacist license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4301 of the Code states:

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

5. Section 4059 (a) of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

6. Section 4060 of the Code states, in pertinent part, that a person may not possess any controlled substance except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

7. This Accusation is also brought before the Board under the authority of title 16, California Code of Regulations (CCR) section 1714(d) which requires, in pertinent part, that each pharmacist, while on duty, be responsible for the security of the prescription department, including provisions for effective control against theft of dangerous drugs.

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8. This Accusation is also brought before the Board under the authority of the following sections of the California Health and Safety Code:

A. Health and Safety Code section 11170 provides:

> No person shall prescribe, administer, or furnish a controlled substance for himself.

B. Health and Safety Code section 11171 provides:

> No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.

C. Health and Safety Code section 11173 (a) provides:

> (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

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

10. **DRUG CLASSIFICATIONS**

A. Vicodin is a brand name for Hydrocodone/APAP, a pain medication, classified as a Schedule III controlled substance per Health and Safety Code Section 11056(e)(4), and a dangerous drug per Business and Professions Code section 4022.

B. Fioricet is a brand name for Butalbital/APAP, a pain medication, classified as a Schedule IV controlled substance per Health and Safety Code Section 11057(d)(2), and a dangerous drug per Business and Professions Code section 4022.

C. Penicillin is a generic name for oral antibiotics, an anti-infection agent and a dangerous drug per Business and Professions Code section 4022.

D. Ibuprofen is a generic name for an anti-inflammatory agent and a dangerous drug per Business and Professions Code section 4022.

CHARGES AND ALLEGATIONS

11. On or about and between February 2004 and May 2004, Respondent served as the Director of Pharmacy at the Coastal Communities Hospital in Santa Ana, California.

12. On or about and between February 2004 and May 2004, Pharmacy Director, Respondent, took controlled substances Vicodin and Fioricet, as well as oral antibiotics and anti-inflammatory drugs from his employer Coastal Community Hospital.

13. In or about December 2004, pharmacy staff at Coastal Community Hospital noted inventory discrepancies with drugs including hydrocodone, modafinil and butalbital. The staff reported it to Respondent, the Director of Pharmacy.

14. On or about May 7, 2004, Respondent placed hydrocodone in his pocket at the pharmacy and left the pharmacy. In the parking lot of the pharmacy Respondent was found by the Coastal Community Hospital Security Operations to have hydrocodone on his person.

15. On or about May 7, 2004, Respondent was unable to explain a finding by Respondent's employer of approximately 35 hydrocodone tablets, 52 butalbital tablets, and 5 empty packets of hydrocodone in Respondent's desk at the Coastal Community Hospital.

16. On or about May 13, 2004, Respondent's employment at Coastal Community Hospital was terminated due to the unexplained drugs found on Respondent's person in the hospital parking lot, and in his desk at the hospital.

17. On or about August 6, 2004, the Board Inspector sent a letter to Respondent requesting an explanation of the above incidents which were undergoing an investigation by the Board.

18. On or about August 20, 2004, a letter response dated August 15, 2004 ending in a signature over Respondent's name, was received by the Board. The letter included, in part, the following statements: "The drugs found in my office were hydrocodone (Vicodin) and

Fioricet (butalbital). Those were the only controlled substances that I removed although I had been removing them throughout the course of my employment there." "I had also removed small quantities of oral antibiotics and anti-inflammatory agents over time for personal and family use." "These drugs were taken for personal use."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption - § 4301(f))

19. Respondent is subject to disciplinary action under section 4301(f) for moral turpitude, dishonesty, fraud, and deceit in that he created a fraudulent scheme to obtain controlled substances and dangerous drugs, as more particularly alleged above and incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Controlled Substance Law - § 4301(j) + H&S §§ 11170, 11171, & 11173(a))

20. Respondent is subject to disciplinary action under section 4301(j) in conjunction with Health and Safety Code sections 11170, 11171, and 11173(a) in that he violated Health and Safety Code sections 11170, 11171, and 11173(a) by illegally obtaining controlled substances, as more particularly alleged above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Unauthorized Furnishing - § 4301(o) + § 4059 (a))

21. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4059 (a) in that he furnished[1] dangerous drugs without the prescription of a physician, as more particularly alleged above and incorporated herein by reference.

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1. " ' Furnish' means to supply by any means, by sale or otherwise." (Code § 4026.)

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Unauthorized Possession - § 4301(o) + § 4060)

22. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4060 in that he possessed controlled substances without the prescription of a physician, as more particularly alleged above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Violation of Board Regulation - § 4301(o) + CCR § 1714(d))

23. Respondent is subject to disciplinary action under section 4301 (o) in conjunction with CCR section 1714 (d) in that he, as a pharmacist and while on duty, was responsible for the security of the prescription department, including provisions for effective control against theft and diversion of dangerous drugs, and failed to maintain the security of the pharmacy, as more particularly alleged above and incorporated herein by reference.

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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:

A. Revoking or suspending RPH Number 38265, issued to Gary Warnecke;

B. Ordering Gary Warnecke 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;

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

DATED: 9/28/05

P. F. Harris

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

Complainant

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