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

11 In the Matter of the Accusation Against:

Case No. 3279

12
13 **STEVEN'S PHARMACY**
1525 Mesa Verde Drive East
14 Costa Mesa, CA 92626

A C C U S A T I O N

15 Permit No. PHY 37415,

16 **and**

17 **CHARLES TERRANCE BONNER, RPH**
1525 Mesa Verde Drive East
18 Costa Mesa, CA 92626

19
20 **Pharmacist License No. RPH 39398**

21 Respondents.

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23 Complainant alleges:

24 **PARTIES**

- 25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 27 2. On or about September 12, 1991, the Board of Pharmacy issued pharmacy permit
28 number PHY 37415 to Harbor Drug Co., Inc. dba Steven's Pharmacy. (Respondent). The

1 pharmacy permit was in full force and effect at all times relevant to the charges brought herein
2 and will expire on September 1, 2009 unless renewed.

3 3. On or about October 26, 1986, the Board of Pharmacy issued pharmacist license
4 number RPH 39398 to Charles Terrance Bonner (Respondent Bonner). Charles T. Bonner has
5 been the President and Pharmacist-in-Charge of Steven's Pharmacy since September 12, 1991.
6 The pharmacist license was in full force and effect at all times relevant to the charges brought
7 herein and will expire on September 30, 2010 unless renewed.

8 **JURISDICTION**

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

12 5. Section 4300 of the Code states:

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

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

17 "(1) Suspending judgment.

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

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

20 "(4) Revoking his or her license.

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

23 "..."

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

1 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
2 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

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

10 10. Section 4113 of the Code states in part:

11 "...

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

14 "..."

15 11. Title 16, California Code of Regulations, section 1714 provides:

16 "...

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

21 "...

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

26 "..."

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1 12. Title 16, California Code of Regulations, section 1718 provides:

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 13. Code section 4306.6 provides:

6 "If the Board disciplines a pharmacist-in-charge for the violation of a state or federal law or
7 regulation committed by another person and the pharmacist-in-charge reported to the board that
8 the violation or suspected violation, the board shall use the report as a mitigating factor if all of
9 the following conditions are met:

10 "(a) The pharmacist-in-charge did not engage, either directly or indirectly, in any conduct
11 that violated any state or federal law or regulation pertaining to the practice of pharmacy.

12 "(b) The pharmacist-in-charge did not permit, encourage, approve of, either tacitly or
13 implicitly or through willful ignorance, any conduct committed by another person that violated
14 state or federal law or regulation pertaining to the practice of pharmacy.

15 "(c) The pharmacist-in-charge reported the violation, or suspected violation, of any state
16 or federal law or regulation pertaining to the practice of pharmacy to the board as soon as
17 reasonably possible following the discovery of the violation.

18 "(d) The pharmacist-in-charge took all actions reasonably necessary to stop and remedy
19 the violation, or suspected violation, of any state or federal law or regulation pertaining to the
20 practice of pharmacy as soon as reasonably possible following the discovery of the violation."

21 **COST RECOVERY**

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

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1 DRUGS

2 15. **Hydrocodone bitartate/acetaminophen**, also known by the brand names Vicodin,
3 Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
4 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
5 and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone
6 is used as a narcotic analgesic in the relief of pain.

7 16. **Oxycodone**, also sold under the brand name OxyContin, is a Schedule II controlled
8 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is a
9 dangerous drug pursuant to Business and Professions Code section 4022.

10 FACTS

11 17. On or about August 29, 2007, Respondent Bonner, received a telephone call from his
12 relief pharmacist-in-charge while he was out of town on vacation. The relief pharmacist-in-
13 charge reported an attempted theft and stated she found six bottles of hydrocodone wrapped
14 inside a plastic baggy in the trash bin inside the store. Pharmacy staff was looking for a broken
15 bottle of a drug for return when an employee, J.B., found a trash bag near the back door waiting
16 to be taken to the dumpster. J.B. found empty bottles in the trash bag as well as full bottles. The
17 relief pharmacist-in-charge advised Respondent Bonner that she suspected an employee of
18 stealing from the pharmacy.

19 18. When Respondent Bonner returned from vacation, he reviewed surveillance
20 videotapes and inventory. Respondent Bonner learned that someone had made two orders of
21 hydrocodone. Each order consisted of 10 bottles of 500-count pills. These orders were delivered
22 on Saturday, August 25, 2007. Because of the surplus of bottles, these two orders could not be
23 placed in a locked container and were placed on an overflow shelf for return to the vendor on
24 Monday, August 27, 2007.

25 19. The videotape of August 27th showed a pharmacy technician, JG, taking bottles of
26 hydrocodone from the overflow shelf and placing them inside his lab coat pockets shortly after
27 the pharmacy opened. JG walked back to the compounding area, which was not covered by the
28

1 surveillance video, and several minutes later the videotape showed him taking out the trash after
2 three separate trips from the overflow shelves to the compounding area.

3 20. The surveillance videotape of August 29, 2007, showed JG filling an empty bin with
4 bottles of hydrocodone, and then taking a trash bag outside.

5 21. Respondent Bonner confronted JG after another employee stated JG admitted to
6 taking hydrocodone from the pharmacy. JG did not admit taking the hydrocodone, but offered to
7 pay Respondent Bonner \$5,000 for the loss.

8 22. JG later admitted to a DEA Special Agent that he had been diverting drugs from
9 Respondent Steven's Pharmacy for 1.5 years. JG stated the pharmacist at Steven's always left the
10 keys out for the controlled substances and that everyone in the pharmacy had access to them. JG
11 admitted that he would take bottles off the "overage" shelf and put them in the garbage, and then
12 take the garbage out when no one was looking.

13 23. After an audit of the pharmacy's drug inventory and records of compliance by the
14 Board's inspector for the period June 11, 2003 through September 24, 2007, Respondents could
15 not account for shortages of about 379,469 dosage units of hydrocodone/acetaminophen (multiple
16 strengths) and 21,552 dosage units of oxycodone (multiple strengths). Respondent also could
17 not account for overages of about 596 dosage units of hydrocodone/acetaminophen 5 mg/325mg,
18 245 dosage units of Vicodin and 1043 dosage units of oxycodone 10 mg.

19 24. On September 24, 2007, Respondent Bonner reported the attempted theft of
20 hydrocodone/acetaminophen by technician JG to the Board of Pharmacy.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unprofessional conduct Against Respondent Steven's Pharmacy for**
23 **Violation of Laws Concerning Dangerous Drugs)**

24 25. Respondent Steven's Pharmacy is subject to disciplinary action under Code section
25 4301(o) for violating title 16, California Code of Regulations, section 1714(b) by failing to
26 maintain security of the prescription department in that on August 27 and 29, 2009 pharmacy
27 technician JG diverted hydrocodone from the pharmacy's unlocked "overage" shelf and admitted
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1 to diverting drugs from the pharmacy for 1.5 years as set forth more fully in paragraphs 17-24
2 above.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional conduct Against Respondent Steven's Pharmacy
5 Failure to Maintain Current Inventory)**

6 26. Respondent Steven's Pharmacy is subject to disciplinary action under Code sections
7 4301(j) and (o) for violating Code section 4081(a) by failing to maintain a current inventory of all
8 controlled substances and/or dangerous drugs as defined by title 16, California Code of
9 Regulations, section 1718 in that an audit of the pharmacy's drug inventory and records of
10 compliance by the Board's inspector for the period June 11, 2003 through September 24, 2007,
11 revealed that Respondent Steven's Pharmacy could not account for shortages of about 379,469
12 dosage units of hydrocodone/acetaminophen (multiple strengths) and 21,552 dosage units of
13 oxycodone (multiple strengths). Respondent also could not account for overages of about 596
14 dosage units of hydrocodone/ acetaminophen 5 mg/325mg, 245 dosage units of Vicodin and 1043
15 dosage units of oxycodone 10 mg.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct Against Respondent Charles Bonner for
18 Violation of Laws Concerning Dangerous Drugs)**

19 27. Respondent Bonner is subject to disciplinary action under Code sections 4301(o) for
20 violating title 16, California Code of Regulations, section 1714(d) by failing to maintain security
21 of the prescription department and provide effective controls to prevent theft or diversion of
22 controlled substances and/or dangerous drugs in that on August 27 and 29, 2009 pharmacy
23 technician JG diverted hydrocodone from the pharmacy's unlocked "overage" shelf and admitted
24 to diverting drugs from the pharmacy for 1.5 years as set forth more fully in paragraphs 17-24
25 above.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct Against Respondent Charles Bonner

Failure to Maintain Current Inventory)

28. Respondent Bonner is subject to disciplinary action under Code sections 4301(j) and (o) for violating Code section 4113(b) by failing to maintain a current inventory of all controlled substances and/or dangerous drugs as defined by title 16, California Code of Regulations, section 1718 in that an audit of the pharmacy's drug inventory and records of compliance by the Board's inspector for the period June 11, 2003 through September 24, 2007, revealed that Respondent could not account for shortages of about 379,469 dosage units of hydrocodone/acetaminophen (multiple strengths) and 21,552 dosage units of oxycodone (multiple strengths). Respondent also could not account for overages of about 596 dosage units of hydrocodone/ acetaminophen 5 mg/325mg, 245 dosage units of Vicodin and 1043 dosage units of oxycodone 10 mg.

MITIGATING FACTORS

29. Respondent Bonner reported the attempted theft of hydrocodone/acetaminophen by technician JG to the Board of Pharmacy on September 24, 2007.

PRAYER

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

1. Revoking or suspending Permit Number PHY 37415, issued to Steven's Pharmacy;
2. Revoking or suspending Pharmacist License Number RPH 39398, issued to Charles Terrance Bonner;
3. Ordering Steven's Pharmacy and Charles Terrance Bonner 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;

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