

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2336

13 CAREMARK PHYSICIAN SERVICES, INC.
14 dba FRIENDLY HILLS HEALTHCARE
15 NETWORK PHARMACY, WEST COVINA
16 1300 S. Sunset Ave.

17 West Covina, CA 91791

C.A. Lance Piccolo, Director

James G. Connelly III, President

Thomas W. Holson, Chief Financial

Officer/Vice President

Thomas R. Shoman, Secretary

Dennis R. Owczarski, Treasurer

DEFAULT DECISION

AND ORDER,

**AS TO CAREMARK PHYSICIAN
SERVICES, INC., dba FRIENDLY
HILLS HEALTHCARE NETWORK
PHARMACY-WEST COVINA, ONLY**

[Gov. Code, §11520]

18 Original Pharmacy Permit No. PHY 41352

19 and

20 CLARENCE ELLIS STELTE, aka CLIFF
21 STELTE

1357 N. 2nd Ave.

Upland, CA 91786

22 Pharmacist-in-Charge

23 Original Pharmacist License No. RPH 29335

24 Respondents.

25
26 FINDINGS OF FACT

27 1. On or about August 23, 2001, Complainant Patricia F. Harris, in her
28 official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer

1 Affairs, State of California, filed Accusation No. 2336 against Caremark Physician Services,
2 Inc., dba Friendly Hills Healthcare Network Pharmacy, West Covina, C.A. Lance Piccolo,
3 Director; James G. Connelly II, President; Thomas W. Holson, Chief Financial Officer/Vice
4 President; Thomas R. Shoman, Secretary; Dennis R. Owczarski, Treasurer; ("Respondent")
5 before the Board of Pharmacy ("Board").

6 2. On or about January 6, 1996, the Board of Pharmacy issued Original
7 Pharmacy Permit No. PHY 41352 to Respondent. The Original Pharmacy Permit was in full
8 force and effect until June 7, 2000, at which time said permit was canceled due to a change of
9 ownership and new permit number PHY44675 was issued.

10 3. On or about September 5, 2001, Judith A. Baerresen, an employee of the
11 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
12 2336, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
13 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
14 which was and is 1300 South Sunset Avenue, West Covina, CA 91791. A copy of the
15 Accusation, the related documents, and Declaration of Service are incorporated herein by
16 reference.

17 4. Service of the Accusation was effective as a matter of law under the
18 provisions of Government Code section 11505, subdivision (c).

19 5. Business and Professions Code section 118 states, in pertinent part:

20 "(b) The suspension, expiration, or forfeiture by operation of law of a license
21 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
22 board or by order of a court of law, or its surrender without the written consent of the board, shall
23 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
24 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
25 any ground provided by law or to enter an order suspending or revoking the license or otherwise
26 taking disciplinary action against the license on any such ground."

27 ///

28 ///

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 2336.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, finds that the allegations in Accusation No. 2336 are true.

10. The total costs for investigation and enforcement are \$5703.50 as of March 17, 2002.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Caremark Physician Services, Inc., dba Friendly Hills Healthcare Network Pharmacy, West Covina, C.A. Lance Piccolo, Director; James G. Connelly II, President; Thomas W. Holson, Chief Financial Officer/Vice President; Thomas R. Shoman, Secretary; Dennis R. Owczarski, Treasurer, has subjected its Original Pharmacy Permit No. PHY 41352 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are incorporated herein by reference.

///

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Original Pharmacy Permit based upon the following violations alleged in the Accusation:

a. Business and Professions Code sections 4081(a) and (b), 4332, and 16 California Code of Regulations, section 1718, in that Respondent failed to maintain accurate and available records regarding the acquisition and disposition of dangerous drugs;

b. Business and Professions Code sections 4300, 4301(j), (n), and (o), 4332, 4081(a), and 16 California Code of Regulations, section 1718, in that Respondent failed to maintain a complete accountability of inventory.

c. Business and Professions Code sections 4300, 4301, 4113(b), 4115(a) and (f), and 4116(a), in that Respondent failed to maintain adequate visual supervision of a former pharmacy technician, resulting in losses of controlled substances.

ORDER

IT IS SO ORDERED that Original Pharmacy Permit No. PHY 41352, heretofore issued to Respondent Caremark Physician Services, Inc., dba Friendly Hills Healthcare Network Pharmacy, West Covina, C.A. Lance Piccolo, Director; James G. Connelly II, President; Thomas W. Holson, Chief Financial Officer/Vice President; Thomas R. Shoman, Secretary; Dennis R. Owczarski, Treasurer, is revoked.

///

///

///

///

///

///

///

///

///

1 Pursuant to Government Code section 11520, subdivision (c), Respondent may
2 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
3 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
4 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
5 statute.

6 This Decision shall become effective on May 23, 2002.

7 It is so ORDERED April 23, 2002

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

12 By: 

13 STEVE LITSEY
14 Board President
15
16
17
18
19
20
21
22
23
24
25
26
27

BILL LOCKYER, Attorney General
of the State of California
CHRISTINA M. NEBELING, State Bar No. 171168
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2557
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 2336

CAREMARK PHYSICIAN SERVICES, INC.,
dba FRIENDLY HILLS HEALTHCARE
NETWORK PHARMACY, WEST COVINA
1300 S. Sunset Ave.

A C C U S A T I O N

West Covina, CA 91791

C.A. Lance Piccolo, Director
James G. Connelly III, President
Thomas W. Holson, Chief Financial
Officer/Vice-President

Thomas R. Shoman, Secretary
Dennis R. Owczarski, Treasurer

Original Pharmacy Permit No. PHY 41352

and

Clarence Ellis Stelte, aka Cliff Stelte
1357 N. 2nd Ave.
Upland, CA 91786
Pharmacist-in-Charge

Original Pharmacist License No. RPH
29335

Respondents.

\\

\\

1 Complainant alleges:

2 PARTIES

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

6 2. On or about January 6, 1996, the Board of Pharmacy issued
7 Original Pharmacy Permit Number PHY 41352 to Caremark Physician Services, Inc., a
8 corporation, doing business as Friendly Hills Healthcare Network Pharmacy, West
9 Covina ("Respondent Friendly Hills"). The address of record being 1300 South Sunset
10 Avenue, West Covina, CA 91791. The corporate officers, since January 6, 1996, are
11 shown as C.A. Lance Piccolo, Director of the Board; James G. Connelly III, President;
12 Thomas W. Holson, Chief Financial Officer and Vice-President; Thomas R. Shoman,
13 Secretary; and Dennis R. Owczarski, Treasurer. The Original Pharmacy Permit
14 Number was in full force and effect at all times relevant to the charges brought herein
15 until June 7, 2000, at which time said permit was canceled due to a change of
16 ownership and new permit number PHY44675 was issued.

17 On or about June 7, 2000 the Board of Pharmacy issued Original
18 Pharmacy Permit Number PHY 44675 to Familymeds, Inc., a corporation, doing
19 business as Familymeds Pharmacy. The address of record being 1300 South Sunset
20 Avenue, West Covina, CA 91791. The corporate officers, since June 7, 2000, are
21 shown as Edgardo Mercadante, President; Peter Evans, Vice-President; Gregg W.
22 Montgomery, Vice President; and Chester L. Latin, Vice President/Treasurer. Said
23 permit is in full force and effect until June 7, 2001.

24 On or about January 9, 1975, the Board of Pharmacy issued Original
25 Pharmacist License Number RPH 29335 to Clarence Ellis Stelte, also known as Cliff
26 Stelte (Respondent "Stelte") to practice pharmacy. Between January 6, 1996 through
27 June 23, 2000, Respondent Stelte was the Pharmacist-in-Charge. The original

1 Pharmacist License Number was in full force and effect at all times relevant to the
2 charges brought herein and will expire on February 28, 2002, unless renewed.

3 Further, as of June 7, 2000, Robert Terasawa, RPH 37268, has been the
4 Pharmacist-in-Charge.

5 STATUTES AND REGULATIONS

6 3. Business and Professions Code^{1/} section 118(b) provides that the
7 suspension, expiration, or forfeiture by operation of law of a license does not deprive
8 the Board of authority or jurisdiction to institute or continue with disciplinary action
9 against the license or to order suspension or revocation of the license, during the period
10 within which the license may be renewed, restored, reissued or reinstated.

11 4. Section 4300^{2/} of the Code (formerly section 4350) permits the
12 Board to take disciplinary action to suspend or revoke a license.

13 5. Pursuant to section 4301 of the Code (formerly section 4350.5) the
14 Board shall take action against any holder of a license who is guilty of unprofessional
15 conduct. Unprofessional conduct includes, but is not limited to:

16 (j) The violation of any of the statutes of California or of the United
17 States regulating controlled substances and dangerous drugs.

18 (n) Violating or attempting to violate, directly or indirectly, or assisting
19 in or abetting the violation of or conspiring to violate any provision or term of this
20 chapter or of the applicable federal and state laws and regulations governing pharmacy,
21 including the regulations established by the Board.

22
23 1. All further statutory references will be to the Business and Professions Code
24 unless otherwise specified.

25 2. The Pharmacy Act was reenacted and recodified effective January 1, 1997
26 (C.890, Stats. 1996). Sections 4350 and 4350.5 of the Business and Professions
27 Code were recodified as sections 4300 and 4301. All references are to the new
Code sections. Section 4 of Chapter 890 provides that the recodification of the
Pharmacy Law is to be construed as a continuation of the previous version of
Chapter 9 of the Code.

1 (o) Actions or conduct that would have warranted denial of a license.

2 6. Section 125.3 provides, in part, that the Board may request the
3 administrative law judge to direct any licensee found to have committed a violation or
4 violations of the Licensing Act, to pay the Board a sum not to exceed the reasonable
5 costs of the investigation and enforcement of the case.

6 **CONTROLLED SUBSTANCE**

7 7. "Vicodin" is a brand name combination of Hydrocodone 5 mg. with
8 Acetaminophen 500 mg. It is a Schedule III narcotic controlled substance as defined by
9 Health and Safety Code section 11056(e)(4) and is categorized as a "dangerous drug"
10 pursuant to section 4022 of the Code.

11 8. "Vicodin ES" is a brand name combination of Hydrocodone 7.5 mg.
12 with Acetaminophen 750 mg. It is a Schedule III narcotic controlled substance as
13 defined by Health and Safety Code section 11056(e)(4) and is categorized as a
14 "dangerous drug" pursuant to section 4022 of the Code.

15 **FAILURE TO MAINTAIN RECORDS**

16 9. Section 4081(a) (formerly section 4232) of the Code, provides in
17 pertinent part, that all records of manufacture and of sale, purchase or disposition of
18 dangerous drugs or devices shall be at all times, during business hours, open to
19 inspection by authorized officers of the law, and shall be preserved for at least three
20 years from the date of making. Section 4081(a) provides that a pharmacy which
21 maintains a stock of dangerous drugs must maintain a current inventory. Section
22 4081(b) further provides that the owner or officer of any pharmacy shall be jointly
23 responsible for maintaining the records and inventory required under Section 4081.

24 10. Section 4332 of the Code provides, in pertinent part:

25 "Any person who fails, neglects, or refuses to maintain the records
26 required by Section 4081 or who, when called upon by an authorized officer or a
27 member of the Board, fails, neglects, or refuses to produce or provide the records within

1 a reasonable time, or who willfully produces or furnishes records that are false, is guilty
2 of a misdemeanor."

3 11. Section 1718 of Title 16, California Code of Regulations, provides
4 that "current inventory" within the meaning of Code section 4081 includes the complete
5 accountability for all the pharmacy's acquisitions and dispositions. Board regulation
6 1718 further provides that the controlled substance inventories required by Title 21,
7 Code of Federal Regulations, section 1304 shall be available for inspection upon
8 request for at least three (3) years after the date of the inventory.

9 12. Respondents and each of them, are subject to discipline pursuant to
10 Business and Professions Code sections 4300, 4301, and 4332 for unprofessional
11 conduct within the meaning of Code sections 4301 (j), 4301 (n), and 4301 (o), by
12 reasons of violations of Code section 4081(a) and Board Regulation 1718, for failing to
13 maintain a complete accountability of inventory in the following manner:

14 A. On or about June 30, 2000, the Board requested that an audit be
15 conducted to determine the actual amounts of missing controlled substances during the
16 period of May 1, 1999, to October 21, 1999.

17 B. On or about July 18, 2000, a copy of DEA inventory taken on
18 October 21, 1999, was provided to the Board by Pharmacy District Manager, C.S. along
19 with a diskette containing information that was reformatted and reprinted. Only the
20 format of the information was changed and none of the values or numbers were altered.
21 However, the names of the prescribers were omitted from the prescription list of Vicodin
22 usage.

23 C. The DEA inventory taken May 1, 1999 to October 21, 1999
24 showed the total purchases of generic and brand-name Vicodin products (attached as
25 Exhibit "A" (Board's Exhibit "12")) and the complete list of prescriptions filled for generic
26 and brand-name Vicodin products. (Attached as Exhibit "B" (Board's Exhibit "13")). In
27 addition, the DEA inventory revealed the purchases and amounts dispensed on

1 prescription and the amounts of missing generic and brand-name Vicodin. (Attached
2 as Exhibit "C" (Board's Exhibit "14")). Additionally, the DEA inventory showed that
3 18,776 tablets of generic Hydrocodone 5 mg./Acetaminophen 500 mg. were
4 unaccounted for. Furthermore, 1,849 tablets of generic Vicodin ES (Hydrocodone 7.5
5 mg./Acetaminophen 750 mg.) were also unaccounted for.

6 D. On July 21, 2000, a Violation Notice was issued to Respondents
7 for violations found during the investigation.

8 E. On October 13, 2000, a new DEA-106 Loss Report Form from
9 Respondent Friendly Hills was submitted with a date of August 10, 2000. The drugs on
10 the form did not match the audit results.

11 F. On October 16, 2000, an explanation was requested to clarify why
12 the losses on the second DEA-106 Loss Report were different than those submitted for
13 the investigation. District Manager O.S. responded with an explanation that the drugs
14 were "rounded" to the nearest 500-count bottle.

15 **FAILURE TO MAINTAIN ADEQUATE SUPERVISION**

16 13. Respondents and each of them, are subject to discipline pursuant
17 to Business and Professions Code sections 4300 and 4301, for unprofessional conduct
18 within the meaning of Code sections 4113(b), 4115(a), 4115(f) and 4116(a), in that
19 Respondents failed to maintain adequate visual supervision of former Pharmacy
20 Technician Julian Rubi, III, thereby resulting in losses of controlled substances as
21 follows:

22 A. From on or about October 10, 1999, to on or about October 16,
23 1999, former Pharmacy Technician, Julian Rubi, III, stole approximately 4 x 1000
24 generic Vicodin tablets (Hydrocodone 5 mg./Acetaminophen 500 mg.).

25 B. On or about June 29, 2000, the DEA loss report estimated an
26 amount of losses for generic Vicodin (5mg.) (6 x 500 - tablet size bottles = 3,000
27 tablets).

WHEREFORE, Complainant prays that a hearing be held and that following said hearing, the Board of Pharmacy make its Order:

1. Revoking or suspending Original Pharmacist License No. RPH 29335 issued to Respondent Stelte.
2. Revoking or suspending Permit No. PHY 41352 issued to Respondent Friendly Hills.
3. Prohibiting Respondent Stelte from serving as an officer, director, associate or partner or any licensee, permittee or registrant for a period of five years or until the license or permit is reissued or reinstated.
4. Issue an Order compelling the Respondents to reimburse the Board for the reasonable costs of its investigation, enforcement, and prosecution of this matter, up to the day of hearing.
5. Taking such other and further action as the Board deems necessary and proper.

DATED: 8/23/01

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