

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN FITZGERALD, State Bar No. 112278
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2066
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 EVAN BERT STEIN, RPH
13 RPH License No. RPH 25919
and
14 EVAN STEIN PHARMACY, INC., a California
corporation
15 Evan Stein, President
Barbara Stein, Secretary
16 Original Pharmacy Permit No. PHY 43747

Case No. 2547

OAH No. L-2002090396

**STIPULATED REVOCATION AND
DISCIPLINARY ORDER**

17
18 Respondents.
19

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

22 PARTIES

23 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
24 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
25 by Bill Lockyer, Attorney General of the State of California, by Susan Fitzgerald, Deputy
26 Attorney General.

27 2. Evan Bert Stein (Respondent Stein) and Evan Stein Pharmacy, Inc.
28 (Respondent Pharmacy) are represented in this proceeding by Ronald S. Marks, Esq., 6320

1 Canoga Avenue, Suite 1550, Woodland Hills, CA 91367. Respondent Stein has discussed each
2 and every term and condition of this Stipulated Revocation and Disciplinary Order and the
3 ramifications of it with Mr. Marks and knowingly, voluntarily, and intelligently enters into this
4 stipulation.

5 3. On or about November 8, 1968, the Board of Pharmacy issued Pharmacist
6 No. RPH 25919 to Respondent. The pharmacist license was in full force and effect at all times
7 relevant to the charges brought in Accusation No. 2547 and will expire on October 31, 2003,
8 unless renewed. On or about July 3, 1998, the Board issued Original Pharmacy Permit No. PHY
9 43747 to Respondent Pharmacy, with Evan Bert Stein as President and Barbara Stein as
10 Secretary. On August 20, 2002, the permit was canceled through a change of ownership.

11 JURISDICTION

12 4. First Amended Accusation No. 2547 was filed before the Board of
13 Pharmacy (Board), Department of Consumer Affairs, and is currently pending against
14 Respondents. The First Amended Accusation, together with all other statutorily required
15 documents were properly served on Respondents on October 25, 2002. Respondents had
16 previously timely filed their Notice of Defense contesting the original Accusation. A copy of
17 First Amended Accusation No. 2547 is attached as exhibit A and incorporated herein by
18 reference.

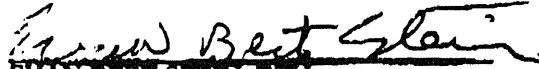
19 ADVISEMENT AND WAIVERS


20 5. Respondents have carefully read, and understand the charges and
21 allegations in the First Amended Accusation. Respondents also have carefully read, and
22 understands the effects of this Stipulated Revocation and Disciplinary Order.

23 6. Respondents are fully aware of their legal rights in this matter, including
24 the right to a hearing on the charges and allegations in the First Amended Accusation; the right to
25 confront and cross-examine the witnesses against them; the right to present evidence and to
26 testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of
27 witnesses and the production of documents; the right to reconsideration and court review of an
28 adverse decision; and all other rights accorded by the California Administrative Procedure Act

1 enter into this Stipulated Revocation and Disciplinary Order voluntarily, knowingly, and
2 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

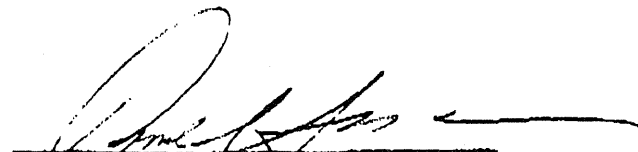
3 DATED: April 14, 2003.

4
5 
6 EVAN BERT STEIN, RPH
Respondent

7
8 By: 
9 EVAN BERT STEIN, President
Evan Stein Pharmacy, Inc.
Respondent Pharmacy

10 I have read and fully discussed with Respondent Evan Bert Stein, RPH the terms
11 and conditions and other matters contained in the above Stipulated Revocation and Disciplinary
12 Order. I approve its form and content.

13 DATED: April 16, 2003.


14
15 
16 RONALD S. MARKS,
17 Attorney for Respondent

18 **ENDORSEMENT**

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

21
22 DATED: April 17, 2003.

23 BILL LOCKYER, Attorney General
of the State of California

24
25 
26 SUSAN FITZGERALD
Deputy Attorney General

27 Attorneys for Complainant

28

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

In the Matter of the Accusation Against:

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Original Pharmacy Permit No. PHY 43747

Case No. 2547

OAH No. L-2002090396

Respondents.

DECISION AND ORDER

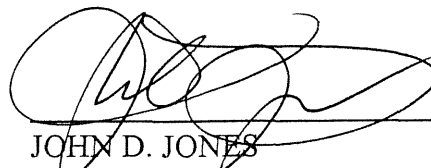
The attached Stipulated Revocation and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 2, 2003.

It is so ORDERED May 22, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

Exhibit A

First Amended Accusation No. 2547

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN FITZGERALD, State Bar No. 112278
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
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7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 2547

13 EVAN BERT STEIN, RPH
10092 Crailet Drive
14 Huntington Beach, CA 92646

**FIRST AMENDED
ACCUSATION**

15 Original Pharmacist License No. RPH 25919

16 and

17 EVAN STEIN PHARMACY, INC., a California
Corporation
18 EVAN STEIN, President; BARBARA STEIN,
Secretary
19 400 Newport Center Dr., #106
Newport Beach, CA 92660

20 Original Pharmacy Permit No. PHY 43747

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

25 1. Patricia F. Harris (Complainant) brings this First Amended Accusation
26 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of
27 Consumer Affairs. This pleading supersedes the Accusation filed on August 2, 2002.

28 ///

1 "(g) Knowingly making or signing any certificate or other document that falsely
2 represents the existence or nonexistence of a state of facts.

3 "(h) The administering to oneself, of any controlled substance, or the use of any
4 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
5 dangerous or injurious to oneself, to a person holding a license under this chapter,
6 or to any other person or to the public, or to the extent that the use impairs the
7 ability of the person to conduct with safety to the public the practice authorized by
8 the license.

9 "(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving
10 away, or administering or offering to sell, furnish, give away, or administer any
11 controlled substance to an addict.

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

14 "...

15 "(l) The conviction of a crime substantially related to the qualifications, functions,
16 and duties of a licensee under this chapter. The record of conviction of a violation
17 of Chapter 13 (commencing with Section 801) of Title 21 of the United States
18 Code regulating controlled substances or of a violation of the statutes of this state
19 regulating controlled substances or dangerous drugs shall be conclusive evidence
20 of unprofessional conduct. In all other cases, the record of conviction shall be
21 conclusive evidence only of the fact that the conviction occurred. The board may
22 inquire into the circumstances surrounding the commission of the crime, in order
23 to fix the degree of discipline or, in the case of a conviction not involving
24 controlled substances or dangerous drugs, to determine if the conviction is of an
25 offense substantially related to the qualifications, functions, and duties of a
26 licensee under this chapter. A plea or verdict of guilty or a conviction following a
27 plea of nolo contendere is deemed to be a conviction within the meaning of this
28 provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting
2 probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under Section 1203.4 of the Penal Code allowing the person to
4 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
5 the verdict of guilty, or dismissing the accusation, information, or indictment.

6 "...

7 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
8 abetting the violation of or conspiring to violate any provision or term of this
9 chapter or of the applicable federal and state laws and regulations governing
10 pharmacy, including regulations established by the board.

11 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation
12 of the board.

13 "..."

14 C. Section 4081 of the Code states:

15 "(a) All records of manufacture and of sale, acquisition, or disposition of
16 dangerous drugs or dangerous devices shall be at all times during business hours
17 open to inspection by authorized officers of the law, and shall be preserved for at
18 least three years from the date of making. A current inventory shall be kept by
19 every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
20 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
21 or establishment holding a currently valid and unrevoked certificate, license,
22 permit, registration, or exemption under Division 2 (commencing with Section
23 1200) of the Health and Safety Code or under Part 4 (commencing with Section
24 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
25 of dangerous drugs or dangerous devices.

26 "(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
27 food-animal drug retailer shall be jointly responsible, with the

28 ///

1 pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this
2 section.

3 "...

4 "..."

5 D. Section 4302 of the Code states:

6 " The board may deny, suspend, or revoke any license of a corporation where
7 conditions exist in relation to any person holding 10 percent or more of the
8 corporate stock of the corporation, or where conditions exist in relation to any
9 officer or director of the corporation that would constitute grounds for disciplinary
10 action."

11 E. Section 4116 of the Code states in pertinent part:

12 "(a) No person other than a pharmacist, an intern pharmacist, an authorized officer
13 of the law, or a personal authorized to prescribe shall be permitted in that area,
14 place, or premises described in the license issue by the board wherein controlled
15 substances or dangerous drugs or dangerous devices are stored, possessed,
16 prepared, manufactured, derived, compounded, dispensed, or repackaged. . .

17 "..."

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

22 G. Section 118, subdivision (b), of the Code provides that the
23 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
24 jurisdiction to proceed with a disciplinary action during the period within which the license may
25 be renewed, restored, reissued or reinstated.

26 5. This Accusation is also brought before the Board under the authority of
27 the following sections of the California Code of Regulations (CCR):

28 ///

1 A. Title 16, section 1718, states:

2 "Current Inventory" as used in Section 4232 of the Business and Professions Code
3 shall be considered to include complete accountability for all dangerous drugs
4 handled by every licensee enumerated in Section 4232.

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

8 B. Title 16, section 1714 states in pertinent part that each pharmacy licensed
9 by the board shall maintain its premises so that drugs are safely and properly secured and that
10 each pharmacist while on duty shall be responsible for the security of the prescription department
11 against theft or diversion of dangerous drugs.

12 6. This Accusation is also brought before the Board under the authority of
13 section 11171 of the California Health & Safety Code (H&S Code), which provides that no one
14 shall prescribe, administer, or furnish a controlled substance except as provided for in the
15 Uniformed Controlled Substances Act.

16 **Drugs**

17 7. "OxyContin" is a brand name for oxycodone, a narcotic painkiller, a
18 dangerous drug under Code section 4022, and a Schedule II controlled substance pursuant to
19 H&S Code section 11055(b).

20 **CHARGES AND ALLEGATIONS**

21 8. In mid-October, 2001, Respondent Stein, while in a substance abuse
22 rehabilitation center for alcohol abuse, left the facility with two other patients of the facility,
23 known to him to be heroin addicts. They left the facility in order to "party." At that time,
24 Respondent Stein was under a restraining order from the court not to be near or in Respondent
25 Pharmacy, which he owned jointly with his wife, who was divorcing him. Respondent Stein and
26 his friends from the rehabilitation center went to Respondent Pharmacy immediately on leaving
27 the rehabilitation center. Respondent Stein broke into the pharmacy through a door that was not
28 secured properly and which he had known for some time was not secured properly. He invited

1 his friends to take whatever drugs they wanted, indicating to them where the OxyContin was.
2 Respondent Stein stole cash from the cash register and the three men left. They proceeded to a
3 local bar, which they were thrown out of, then to a liquor store, where they bought Peppermint
4 Schnapps and beer. They then went to a local motel where Respondent Stein rented a room. In
5 the room, they proceeded to drink the purchased liquor and his two companions also ingested
6 OxyContin with Respondent Stein's knowledge. One of the men passed out. When Respondent
7 and the other companion could not waken him up, they then left the motel, telling the clerk to
8 call "911." Respondent Stein returned to Respondent Pharmacy to put back some of the
9 OxyContin that had been taken. He and his remaining companion then returned to the
10 rehabilitation facility and went to bed. Their other companion, left at the motel, died of a drug
11 overdose, despite efforts of medical personnel to save him.

12 9. On or about January 27, 2002, Respondent Stein lied to the Board in a
13 letter he sent to it in response to its inquiry concerning the circumstances of his report of theft of
14 controlled substances from his pharmacy. Further, on or about February 28 and again on or
15 about March 29, 2002, Respondent Stein lied to the Board's inspector and the DEA agent
16 regarding the events of October, 2001.

17 10. On or about February 28, 2002, a DEA agent and a Board inspector
18 conducted an audit at Respondent Pharmacy of OxyContin in various strengths for the period
19 from May 20, 1999 through December 12, 2001. The audit results showed a shortage of 1,838
20 20mg tablets, a shortage of 2,714 80mg tablets, and a shortage of 10 160 mg. tablets.
21 Respondent Stein could not explain the shortages and could not produce all of the required
22 records.

23 11. On or about March 29, 2002, the DEA agent returned to Respondent
24 Pharmacy and conducted an audit of OxyContin in various strengths for the period from
25 December 12, 2001 to March 29, 2002. Respondent Pharmacy had an additional shortage of 306
26 20 mg tablets and an overage of 32 80 mg. tablets.

27 12. As a result of his actions in mid-October outlined above, Respondent Stein
28 was charged criminally with involuntary manslaughter and furnishing controlled substances.

1 Thereafter, in *People v. Evan Bert Stein*, Orange County Superior Court (West Justice Center)
2 Case No. 02WF0267, Respondent Stein was convicted of both charges on or about August 8,
3 2002.

4 13. On or about September 27, 2001, respondent entered a plea of nolo
5 contendere in Humboldt County Superior Court, *People v. Evan Bert Stein*, case no. CR14068S,
6 to misdemeanor assault, a violation of Penal Code section 240. The facts and circumstances
7 surrounding this case are that on or about September 11, 2001, respondent assaulted a
8 correctional officer in Eureka, California while respondent was resisting arrest.

9 **First Cause for Discipline**

10 **(Unprofessional Conduct: Gross Immorality - §4301(a))**

11 14. Respondent Stein is subject to disciplinary action under section 4301 (a)
12 for gross immorality based on the allegations in paragraphs 8 through 12 above, both jointly and
13 severally.

14 **Second Cause for Discipline**

15 **(Unprofessional Conduct: Gross Negligence - §4301(c))**

16 15. Respondent Stein is subject to disciplinary action under section 4301(c)
17 for gross negligence based on the allegations in paragraph 8 above.

18 **Third Cause for Discipline**

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

21 16. Respondent Stein is subject to disciplinary action under section 4301(f) for
22 dishonesty and deceit based on the allegations in paragraphs 8 and 9 above.

23 **Fourth Cause for Discipline**

24 **(Unprofessional Conduct: Knowingly Creating False Document §4301(g))**

25 17. Respondent Stein is subject to disciplinary action under section 4301(g)
26 for knowingly creating a document which falsely represents the existence or non-existence of a
27 state of facts based on the allegation on paragraph 9 above.

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1 **Fifth Cause for Discipline**

2 **(Unprofessional Conduct: Dangerous Self Use of Alcohol and/or Drugs §4301(h))**

3 18. Respondent Stein is subject to disciplinary action under section 4301(h)
4 for administering alcohol to himself to such an extent or in such a manner as to be dangerous to
5 another person or person as alleged in paragraph 8 above.

6 **Sixth Cause for Discipline**

7 **(Unprofessional Conduct: Knowingly Providing Controlled**
8 **Substance to an Addict §4301(i))**

9 19. Respondent Stein is subject to disciplinary action under section 4301(i) for
10 knowingly furnishing or giving away or offering to furnish or give away controlled substances to
11 two different addicts based on the allegations in paragraph 8 above.

12 **Seventh Cause for Discipline**

13 **(Unprofessional Conduct: Violation of Laws re Controlled Substances 4301(j))**

14 20. Respondent Stein s subject to disciplinary action under section 4301(j) in
15 conjunction with H&S Code section 11171 for illegally furnishing a controlled substance based
16 on the allegations in paragraph 8 above.

17 **Eighth Cause for Discipline**

18 **(Unprofessional Conduct: Violation of Board Regulations §4301(o))**

19 21. Respondent Stein is subject to disciplinary action under section 4301(o) in
20 conjunction with title 16, California Code of Regulations as follows:

21 A. Under section 1718 for failure to keep the required current inventory of
22 dangerous drugs and controlled substances as required based on the allegations in paragraphs 10
23 and 11 above.

24 B. Under section 1714 for failure to ensure the security of his pharmacy by
25 failing to provide whole and intact locking mechanisms for the rear doors of the pharmacy based
26 on the allegations in paragraph 8 above.

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1 **Ninth Cause for Discipline**

2 **(Unprofessional Conduct: Conduct Attempting to Subvert Board Investigation §4301(q))**

3 22. Respondent Stein is subject to disciplinary action under section 4301(q)
4 for attempting to subvert the Board's investigation of the events of October, 2001 based on the
5 allegations in paragraphs 8 and 9 above.

6 **Tenth Cause for Discipline**

7 **(Unprofessional Conduct: Violation of Board Law §4301(o))**

8 23. Respondent Stein is subject to disciplinary action under section 4301(o) in
9 conjunction with section 4081 for not complying with Board law concerning record keeping with
10 regard to dangerous drugs and controlled substances based on the allegations in paragraphs 10
11 and 11 above.

12 **Eleventh Cause for Discipline**

13 **(Unprofessional Conduct: Substantially Related Criminal Conviction §4301(l))**

14 24. Respondent Stein is subject to disciplinary action under section 4301(l) for
15 conviction of crimes substantially related to the qualifications, functions, or duties of a
16 pharmacist based on the allegations in paragraphs 8 and 12 above.

17 **Twelfth Cause for Discipline**

18 **(Unprofessional Conduct: Substantially Related Criminal Conviction §4301(l))**

19 25. Respondent Stein is subject to disciplinary action under section 4301(l) for
20 conviction of a crime substantially related to the qualifications, functions, or duties of a
21 pharmacist based on the allegations in paragraph 13 above.

22 **Thirteenth Cause for Discipline**

23 **(Corporate Liability of the Pharmacy)**

24 26. Respondent Evan Stein Pharmacy, Inc., a California corporation, is subject
25 to disciplinary action under section 4302 based on the violations of Board law committed by
26 Respondent Stein, a more than 10% stockholder and the President of Evan Stein Pharmacy, Inc.
27 at all times relevant herein, based on the allegations in paragraphs 8 through 12 above.

28 ///

1 **PRAYER**

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

4 1. Revoking or suspending Original Pharmacist License Number RPH
5 25919, issued to Evan Bert Stein, RPH;

6 2. Revoking or suspending Original Pharmacy Permit Number PHY 43747,
7 issued to Evan Stein Pharmacy, Inc., a California corporation, Evan Stein, President; Barbara
8 Stein, Secretary;

9 3. Ordering Evan Bert Stein, RPH and Evan Stein Pharmacy, Inc., a
10 California corporation to pay the Board of Pharmacy the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

13 DATED: 10/18/08

14
15 P. F. Harris
16 PATRICIA F. HARRIS
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant
22
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26
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