

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

In the Matter of the Accusation Against:

**BEVERLY HILLS MEDICAL PLAZA
PHARMACY**

150 N. Robertson Blvd.
Beverly Hills, CA 90211
Original Pharmacy Permit No. PHY 38179
PAUL R. GOLDSTEIN, Non-Licensed
Owner,

RX UNLIMITED

8641 Wilshire Blvd #120
Beverly Hills, CA 90211
Original Pharmacy Permit No. PHY 40827
PAUL R. GOLDSTEIN, Non-Licensed
Owner,

RONALD A. BARNES

18834 Celtic Street
Northridge, CA 91326
Pharmacist License No. RPH 22924,

RUSSELL D. LUBRANI

8685 Wilshire Blvd., #1
Beverly Hills, CA 90211
Pharmacist License No. RPH 46299,

and

PAUL ALAN CUMMINGS

11967 Nebraska Ave. #4
Los Angeles, CA 90025
Pharmacist License No. RPH 44852

Respondents.

Case No. 2560

OAH No. L-2003010806

DECISION AND ORDER

(Russell D. Lubrani)

The attached First Amended 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 on March 19, 2004.

It is so ORDERED February 18, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHEL W. VALENTINE, State Bar No. 153078
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-1034
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2560

11 **BEVERLY HILLS MEDICAL PLAZA**
12 **PHARMACY**
13 150 N. Robertson Blvd.
Beverly Hills, CA 90211
Original Pharmacy Permit No. PHY 38179
14 PAUL R. GOLDSTEIN, Non-Licensed Owner,

OAH No. L-2003010806

15 **RX UNLIMITED**
16 8641 Wilshire Blvd #120
Beverly Hills, CA 90211
Original Pharmacy Permit No. PHY 40827
17 PAUL R. GOLDSTEIN, Non-Licensed Owner,

FIRST AMENDED
STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER

(Russell D. Lubrani)

18 **RONALD A. BARNES**
19 18834 Celtic Street
Northridge, CA 91326
Pharmacist License No. RPH 22924,

20 **RUSSELL D. LUBRANI**
21 8685 Wilshire Blvd., #1
Beverly Hills, CA 90211
Pharmacist License No. RPH 46299,

22 and

23 **PAUL ALAN CUMMINGS**
24 11967 Nebraska Ave. #4
Los Angeles, CA 90025
25 Pharmacist License No. RPH 44852

Respondents.

26
27 IT IS HEREBY STIPULATED AND AGREED by and between the parties
28 to the above-entitled proceedings that the following matters are true:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

1. Patricia F. Harris (Complainant) is 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 Michel W. Valentine, Deputy Attorney General.

2. Respondent Russell D. Lubrani (Respondent Lubrani) is represented in the proceeding by attorney Edgardo Gonzalez whose address is 1300 Clay Street, Suite 600, Oakland, CA 94612.

3. On or about August 10, 1993, the Board of Pharmacy issued Pharmacist License No. RPH 46299 to Russell D. Lubrani (Respondent Lubrani). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2560 and will expire on February 28, 2005, unless renewed.

JURISDICTION

4. Accusation No. 2560 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 19, 2002. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2560 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent Lubrani has carefully read, fully discussed with counsel Edgardo Gonzalez, and understands the charges and allegations in Accusation No. 2560. Respondent Lubrani has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

///
///

1 CONTINGENCY

2 11. This stipulation shall be subject to approval by the Board of
3 Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of
4 the Board of Pharmacy may communicate directly with the Board regarding this stipulation
5 and settlement, without notice to or participation by Respondent or his counsel. By signing
6 the stipulation, Respondent understands and agrees that he may not withdraw his agreement
7 or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If
8 the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
9 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
10 inadmissible in any legal action between the parties, and the Board shall not be disqualified
11 from further action by having considered this matter.

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

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

18
19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that:

21 1. The Board of Pharmacy withdraw its Accusation No. 2560 filed
22 against Respondent.

23 2. The Board of Pharmacy issue a citation to Russell D. Lubrani,
24 Pharmacist License No. RPH 46299, with civil penalties in the amount of \$2,500.00.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

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

DATED: 1/6/04

BILL LOCKYER, Attorney General
of the State of California



MICHEL W. VALENTINE
Deputy Attorney General
Attorneys for Complainant

DOJ DN: 03583110-LA2002AD1353

Valentine-Bev Hills-Lubrani-stip1stAm-withdrawal-citation.wpd

Exhibit A
Accusation No. 2560

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHEL W. VALENTINE, State Bar No. 153078
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-1034
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2560

11 BEVERLY HILLS MEDICAL PLAZA
12 PHARMACY
150 N. Robertson Blvd
13 Beverly Hills, CA 90211
Original Pharmacy Permit Number PHY 38179
14 PAUL R. GOLDSTEIN, Owner

ACCUSATION

15 and

16 RX UNLIMITED
8641 Wilshire Blvd., #120
17 Beverly Hills, CA 90211
Original Pharmacy Permit Number PHY 40827
18 PAUL R. GOLDSTEIN, Non-Licensed Owner

19 and

20 RONALD BARNES
188834 Celtic Street
21 Northridge, CA 91326
Pharmacist License Number RPH 22924

22 and

23 RUSSELL D LUBRANI
8685 Wilshire Blvd., #1
24 Beverly Hills, CA 90211
Pharmacist License Number RPH 46299

26 and

27 ///

28 ///

1 PAUL ALAN CUMMINGS
11967 Nebraska Avenue, #4
2 Los Angeles, CA 90025
Pharmacist License Number RPH 44852

3 and

4 JORGE ALVAREZ
5 423 Laxford Street
Glendora, CA 91740
6 Pharmacy Technician License Number TCH 15209

7
8 Respondents.

9 Complainant alleges:

10 PARTIES

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

14 2. On or about February 2, 1993, the Board of Pharmacy issued Pharmacy
15 Permit Number PHY 38179 to Paul R. Goldstein, owner, to do business as Beverly Hills
16 Medical Plaza Pharmacy, ("Respondent Beverly Hills"). Ronald A. Barnes is the Pharmacist-in-
17 Charge since December 27, 1999. The Pharmacy Permit was in full force and effect at all times
18 relevant to the charges brought herein and will expire on February 1, 2003, unless renewed.

19 3. On or about May 12, 1995, the Board of Pharmacy issued Pharmacy
20 Permit Number PHY 40827 to Paul R. Goldstein, owner, to do business as RX Unlimited,
21 ("Respondent RX Unlimited"). From on or about November 2, 1998 through August 5, 2000,
22 Russell Lubrani was the Pharmacist-in-Charge. On or about August 7, 2000 through May 16,
23 2001, Paul Alan Cummings was the Pharmacist-in-Charge. On or about July 2, 2001 to present,
24 Irwin Reiner has been the Pharmacist-in-Charge. The Pharmacy Permit was in full force and
25 effect at all times relevant to the charges brought herein and will expire on February 1, 2003,
26 unless renewed.

27 4. On or about July 22, 1963, the Board of Pharmacy issued Pharmacist
28 License Number RPH 22924 to Ronald A. Barnes ("Respondent Barnes"). The Pharmacist

1 applicable federal and state laws and regulations governing pharmacy, including regulations
2 established by the board.

3 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation
4 of the board.

5 10. Section 4051(a) of the Code states:

6 “Except as otherwise provided in this chapter, it is unlawful for any person to
7 manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to
8 dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she
9 is a pharmacist under this chapter.”

10 11. Section 4081 of the Code states:

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

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

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

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. Section 4113(b) of the Code states:

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

13. Section 4332 of the Code states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

14. California Code of Regulations, title 16 (“CCR”), section 1709.1, states, in pertinent part:

The pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

15. California Code of Regulations, title 16, section 1717, states:

“(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial the prescription to identify him or herself.

“All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing.

“Chart orders as defined in Section 4036.1 of the Business and Professions Code are not subject to the provisions of this subsection.

“(e) No licensee shall participate in any arrangement or agreement, whereby prescriptions, or prescription medications, may be left at, picked up from, accepted by, or delivered to any place not licensed as a retail pharmacy.

16. California Code of Regulations, title 16, section 1718, states:

“Current Inventory” as used in Section 4232 of the Business and Professions

1 Code shall be considered to include complete accountability for all dangerous drugs handled by
2 every licensee enumerated in Section 4232.

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

5 17. California Code of Regulations, title 16, section 1793.1 states, in pertinent
6 part:

7 Only a registered pharmacist, or an intern pharmacist acting under the
8 supervision of a registered pharmacist, may:

9 (a) Receive a new prescription order orally from a prescriber or other
10 person authorized by law.

11 18. California Code of Regulations, title 22, section 51478 states, in pertinent
12 part:

13 "No provider shall offer, give, furnish, or deliver any rebate, refund, commission
14 preference, patronage dividend, discount, or any other gratuitous consideration, in connection
15 with the rendering of health care service to any Medi-Cal beneficiary. No provider shall solicit,
16 request, accept, or receive, any rebate, refund, commission, preference, patronage dividend,
17 discount, or any other gratuitous consideration, in connection with the rendering of health care
18 service to any Medi-Cal beneficiary."

19 19. California Code of Regulations, title 22, section 51479 states, in pertinent
20 part:

21 "No provider shall dispense prescription drugs or devices in an amount
22 different from that prescribed without the prescriber's authorization."

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

27 ///

28 ///

1 DRUG CLASSIFICATION

2 21. Serostim (generic Somatropin) is a dangerous drug pursuant to Business
3 and Professions Code section 4022, and is a human growth hormone used in the treatment of
4 protein wasting in advanced cases of AIDS.

5 FIRST CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct - Failure to Keep Records)

7 22. Respondents Beverly Hills, RX Unlimited, Barnes, Cummings and
8 Lubrani are subject to disciplinary action under section 4301(o) and (q) and 4081 for
9 unprofessional conduct, in that they failed to have acquisition and disposition records available
10 for inspection and failed to have a current inventory available. The circumstances are described
11 below in as follows:

12 a. On or about June 13, 2001, Board Inspector Venegas requested the
13 following documents from both RX Unlimited and Beverly Hills: all acquisition and disposition
14 records of Serostim, the dispensing log for Serostim and hard copies of Serostim prescriptions
15 from October 1, 1999 to June 13, 2001, and patient profiles for all patients on the dispensing log.

16 b. On or about June 19, 2002, Inspector Grimm returned to Respondent
17 Beverly Hills to inspect the requested documents. Respondent provided to the inspector: no
18 Bergen Brunswig invoices, a printout from Cardinal Health and six months of invoices,
19 prescriptions, dispensing logs for Serostim 4, 5, and 6 mg and patient profiles.

20 c. On or about June 19, 2002, Inspector Venegas returned to Respondent RX
21 Unlimited to inspect the requested documents. Respondent provided to the inspector:
22 prescriptions, a printout from Bergen Brunswig for October 1, 1999 through April 1, 2001, a
23 printout from Cardinal Health, patient profiles, one page of a dispensing log for Serostim for a
24 period not indicated and no original invoices from the wholesalers. On June 20, 2002, Inspector
25 Venegas returned to Respondent Beverly Hills and obtained additional patient profiles.

26 d. Since the acquisition records (invoices from wholesalers) provided by
27 Respondent Beverly Hills were incomplete, Inspector Venegas used the invoices from March 1,
28 2000 to December 31, 2000 and the patient profiles to tabulate inventory discrepancies. During

1 that specific period, Respondent Beverly Hills was unable to account for the following amounts
2 for various Serostim inventories:

3 Serostim 4mg

4	Purchased	3,318
5	Dispensed	4,524
6	On-hand inventory	105
7	Short	1,311

8 Serostim 5mg

9	Purchased	112
10	Dispensed	56
11	On-hand inventory	91
12	overage	35

13 Serostim 6mg

14	Purchased	19,530
15	Dispensed	23,521
16	On-hand inventory	595
17	short	4,586

18 e. Since the acquisition records (invoices from wholesalers) provided by
19 Respondent RX Unlimited were incomplete, Inspector Venegas used the invoices from March 1,
20 2000 to December 31, 2000 and the patient profiles to tabulate inventory shortages. During that
21 specific period, Respondent RX Unlimited was unable to account for the following amounts for
22 various Serostim inventories:

23 Serostim 4mg

24	Purchased	364
25	Dispensed	513
26	On-hand inventory	14
27	Short	163

28 ///

///

1 missing vials of Serostim when they picked up the dispensed vials at the doctor's office.
2 Respondent Lubrani also stated that he was authorized by Respondent RX Unlimited's owner's
3 wife to dispense the number of vials patients complained they did not receive, which he complied
4 with.

5 FOURTH CAUSE FOR DISCIPLINE

6 (Failure to Show Complete Accountability for a Dangerous Drug) .

7 25. Respondents Beverly Hills, RX Unlimited, Barnes, Cummings and
8 Lubrani are subject to disciplinary action under California Code of Regulations, title 16, sections
9 1718, in that they failed to show complete accountability for a dangerous drug. The
10 circumstances are described above in paragraph 23(d) and (e).

11 FIFTH CAUSE FOR DISCIPLINE

12 (Wrongful Participation With A Non-Licensed Retail Pharmacy to Dispense Drugs)

13 26. Respondents Beverly Hills, RX Unlimited, Barnes, Cummings and
14 Lubrani are subject to disciplinary action under CCR section 1717(e), in that they participated in
15 an arrangement with Doctor Del Rosario and his employees. The circumstances are described
16 above in paragraph 24 (a) and (b), as well as on or about June 20, 2001, in review of patient
17 profiles obtained from Respondents Beverly Hills and RX Unlimited, Inspector Venegas noted
18 that addresses for patients were listed as doctors' offices. Respondent Barnes stated to the
19 inspector that an arrangement had been made for the dangerous drugs to be delivered to the
20 doctors' offices and left for the patients.

21 SIXTH CAUSE FOR DISCIPLINE

22 (Improper Dispensing of a Dangerous Drug)

23 27. Respondents RX Unlimited and Cummings are subject to disciplinary
24 action under section 4301(f) and (o) of the Code in conjunction with California Code of
25 Regulations, title 22, sections 51478 and 51479, in that they dispensed lesser amounts of drugs
26 than prescribed on the prescription. The circumstances are that on or about September 19, 2001,
27 Respondent Cummings authored a letter to Board Inspector Venegas stating that Respondent RX
28 Unlimited had an arrangement with an AIDs patient who was unable to pay the co-pay amounts

1 for their prescriptions of Serostim. Respondents would dispense lesser amounts of the drug to
2 cover the co-pay amount.

3 SEVENTH CAUSE FOR DISCIPLINE

4 (Improper Handling of a Telephonic Prescription)

5 28. Respondents Beverly Hills Medical Plaza Pharmacy, Barnes and Alvarez
6 are subject to disciplinary action under section 4301(o) of the Code in conjunction with
7 California Code of Regulations, title 16, sections 1717(c) and 1793.1, in that Respondents failed
8 to properly reduce telephonic prescriptions into writing. The circumstances are that on or about
9 June 13, 2001, Respondent Alvarez, a pharmacy technician, identified to Board Inspector
10 Venegas, three telephonic prescriptions which were written in his personal handwriting.
11 Respondent Barnes, the Pharmacist-in-Charge failed to transcribe the orally transmitted
12 prescription into writing.

13 EIGHTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct)

15 29. Respondents Barnes, Cummings and Lubrani are subject to disciplinary
16 action under sections 4301(o), 4113 of the Code for unprofessional conduct in conjunction with
17 CCR section 1709, in that Respondents failed to be responsible for the pharmacies' compliance
18 with state and federal laws and their daily activities. The circumstances are those described
19 above in paragraphs 22 through 28.

20 PRAYER

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

23 1. Revoking or suspending Pharmacy Permit Number PHY 38179, issued to
24 Beverly Hills Medical Plaza Pharmacy, Paul Goldstein, Owner;

25 2. Revoking or suspending Pharmacy Permit Number PHY 40827, issued to
26 RX Unlimited, Paul Goldstein, Owner;

27 3. Revoking or suspending Pharmacist License Number RPH 22924, issued
28 to Ronald A. Barnes;

