

1 BILL LOCKYER, Attorney General
of the State of California
2 LISA S. WIGGINS, State Bar No. 168399
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5652
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2658

12 **HORSNYDER PHARMACY**
1226 A Soquel Avenue
13 Santa Cruz, California 95062

14 Leo Leal, President & Pharmacist-in-Charge;
Charles Lindberg, Vice-President; and
15 Beverly Leal, Secretary.

16 Pharmacy Permit No. PHY 32697

17 and

18 **LEO LEAL**
16370 Bonney Road
19 Watsonville, California 95076

20 Registered Pharmacist License No. RPH 24661

21 Respondents.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

22
23 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the
24 above-entitled proceedings that the following matters are true:

25 **PARTIES**

26 1. Patricia F. Hards ("Complainant") is the Executive Officer of the Board of
27 Pharmacy ("Board"). She brought the action solely in her official capacity and is represented in this
28 matter by Bill Lockyer, Attorney General of the State of California, by Lisa S. Wiggins, Deputy

1 are suspended. However, the suspensions are stayed and each Respondent is placed on probation
2 for one (1) year on the following terms and conditions.

3 **1. Obey All Laws.** Respondents shall obey all state and federal laws and
4 regulations substantially related to or governing the practice of pharmacy.

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

- 7 • an arrest or issuance of a criminal complaint for violation of any provision of the
8 Pharmacy Law, state or federal food and drug laws, or state or federal controlled
9 substances laws;
- 10 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
11 criminal complaint, information, or indictment;
- 12 • a conviction of any crime;
- 13 • discipline, citation, or other administrative action filed by any state or federal agency
14 that involves either of the Respondents' licenses or that is related to the practice of
15 pharmacy or the manufacturing, obtaining, handling, distribution, billing, or charging
16 for any drug, device, or controlled substance.

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

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

26 **4. Cooperation with Board Staff.** Respondents shall cooperate with the
27 Board's inspectional program and in the Board's monitoring and investigation of Respondents'
28 compliance with the terms and conditions of his probation. Failure to comply shall be considered

1 a violation of probation.

2 **5. Continuing Education.** Respondents shall provide evidence of efforts to
3 maintain skill and knowledge as a pharmacist as directed by the Board.

4 **6. Respondent Pharmacist - Notice to Employers.** Respondent Pharmacist
5 shall notify all present and prospective employers of the decision and order in Accusation No. 2658
6 and the terms, conditions, and restrictions imposed on Respondent by the decision. Within 30 days
7 of the effective date of this decision, and within 15 days of Respondent Pharmacist undertaking new
8 employment, Respondent Pharmacist shall cause his direct supervisor, pharmacist-in-charge, and/or
9 owner to report to the Board in writing acknowledging the employer has read the decision and order
10 in Accusation No. 2658.

11 If Respondent Pharmacist works for or is employed by or through a pharmacy
12 employment service, Respondent Pharmacist must notify the direct supervisor, pharmacist-in-charge,
13 and/or owner at every pharmacy of the and terms conditions of the decision in case number
14 Accusation No. 2658 in advance of the Respondent Pharmacist commencing work at each pharmacy.

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

18 **7. Respondent Pharmacy - Notice to Employees.** Respondent Pharmacy shall,
19 upon or before the effective date of this decision, ensure that all employees involved in permit
20 operations are made aware of all the terms and conditions of probation, either by posting a notice of
21 the terms and conditions, circulating such notice, or both. If the notice required by this provision
22 is posted, it shall be posted in a prominent place and shall remain posted throughout the probation
23 period. Respondent Pharmacy shall ensure that any employees hired or used after the effective date
24 of this decision are made aware of the terms and conditions by posting a notice, circulating a notice,
25 or both.

26 "Employees" as used in this provision includes all full-time, part-time, temporary and
27 relief employees and independent contractors employed or hired at any time during
28 probation.

1 **8. No Preceptorships, Supervision of Interns, or Serving as a Consultant.**

2 Respondent Pharmacist shall not supervise any intern pharmacist or perform any of the duties of a
3 preceptor.

4 **9. No Ownership of Premises.** Respondent Pharmacist shall not acquire any
5 new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer,
6 director, trustee, associate, or partner of any additional business, firm, partnership, or corporation
7 licensed by the Board. If Respondent Pharmacist currently owns or has any legal or beneficial
8 interest in, or serves as a manager, administrator, member, officer, director, associate, or partner of
9 any business, firm, partnership, or corporation currently or hereinafter licensed by the Board,
10 Respondent Pharmacist may continue to serve in such capacity or hold that interest, but only to the
11 extent of that position or interest as of the effective date of this decision and order.

12 **10. Owners and Officers: Knowledge of the Law.** Respondent Pharmacy shall
13 provide, within 30 days after the effective date of this decision, signed and dated statements from
14 its owners, including any owner or holder of 10% or more of the interest in Respondent Pharmacy
15 or Respondent Pharmacy's stock, and any officer, stating said individuals have read and are familiar
16 with state and federal laws and regulations governing the practice of pharmacy.

17 **11. Reimbursement of Board Costs.** Respondents shall pay to the Board its
18 costs of investigation and prosecution in the amount of \$13,036.00.

19 The filing of bankruptcy by Respondents shall not relieve Respondents of their
20 responsibility to reimburse the Board its costs of investigation and prosecution.

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

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

28 If either of the Respondents' licenses expires or is canceled by operation of law or

1 otherwise, upon renewal or reapplication, Respondents' licenses shall be subject to all terms and
2 conditions of this probation not previously satisfied.

3 **14. License Surrender while on Probation/Suspension.** Following the effective
4 date of this decision, should either of the Respondents cease practice due to retirement or health, or
5 be otherwise unable to satisfy the terms and conditions of probation, either of the Respondents may
6 tender his/its license to the Board for surrender. The Board shall have the discretion whether to grant
7 the request for surrender or take any other action it deems appropriate and reasonable. Upon formal
8 acceptance of the surrender of the license, the surrendering Respondent will no longer be subject to
9 the terms and conditions of probation, but the non-surrendering Respondent shall continue to be
10 subject to the terms and conditions of probation, unless both Respondents surrender their licenses
11 under this Paragraph.

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

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

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

1 exceeding three years.

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

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

11 If either Respondent has not complied with any term or condition of probation, the
12 Board shall have continuing jurisdiction over Respondent, and probation shall automatically be
13 extended until all terms and conditions have been satisfied or the Board has taken other action as
14 deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation,
15 and to impose the penalty which was stayed.

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

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Dennis M. Warren, Esq. I understand the stipulation and the effect it will have on my Registered 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: 9-21-04


LEO LEAL
Respondent Pharmacist/President of Respondent Pharmacy

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

DATED: 9-27-04


DENNIS M. WARREN, ESQ.
Attorney for Respondent

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: September 27, 2004

BILL LOCKYER, Attorney General
of the State of California


NSA S. WIGGINS
Deputy Attorney General
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 2658

HORSNYDER PHARMACY
1226 A Soquel Avenue
Santa Cruz, California 95062

Leo Leal, President & Pharmacist-in-Charge;
Charles Lindberg, Vice-President; and
Beverly Leal, Secretary.

Pharmacy Permit No. PHY 32697

and

LEO LEAL
16370 Bonney Road
Watsonville, California 95076

Registered Pharmacist License No. RPH 24661

Respondents.

DECISION AND ORDER

The attached 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 December 9, 2004.

It is so ORDERED November 9, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

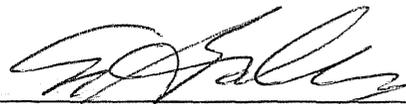
By 
STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2658

1 BILL LOCKYER, Attorney General
of the State of California
2 LISA S. WIGGINS, State Bar No. 168399
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5652
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2658

12 **HORSNYDER PHARMACY**
1226 A Soquel Avenue
13 Santa Cruz, California 95062

ACCUSATION

14 Leo Leal, President & Pharmacist-in-Charge;
15 Charles Lindberg, Vice-President; and
Beverly Leal, Secretary.

16 Pharmacy Permit No. PHY 32697

17 and

18 **LEO LEAL**
16370 Bonney Road
19 Watsonville, California 95076

20 Registered Pharmacist License No. RPH 24661

21

Respondents.

22

23 Complainant alleges:

24

PARTIES

25

26

27

28

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

2. On or about August 12, 1966, the Board issued Registered Pharmacist License

1 Number RPH 24661 to Leo Leal ("Respondent Pharmacist"). The Registered Pharmacist License
2 was in full force and effect at all times relevant to the charges brought herein and will expire on May
3 31, 2004, unless renewed.

4 3. On or about February 21, 1986, the Board issued Pharmacy Permit Number
5 PHY 32697 to Horsnyder Pharmacy ("Respondent Pharmacy"). The Pharmacy Permit was in full
6 force and effect at all times relevant to the charges brought herein and will expire on February 1,
7 2005, unless renewed.

8 **JURISDICTION**

9 4. This Accusation is brought before the Board, under the authority of the
10 following laws.

11 5. Business and Professions Code section 118(b) provides that the suspension,
12 expiration, surrender, and/or cancellation of a license shall not deprive the Board of jurisdiction to
13 proceed with a disciplinary action during the period within which the license may be renewed,
14 restored, reissued or reinstated.

15 6. Business and Professions Code section 4081 provides, in relevant part, that:

16 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous
17 drugs or dangerous devices shall be at all times during business hours open to inspection by
18 authorized officers of the law, and shall be preserved for at least three years from the date of making.
19 A current inventory shall be kept by every . . . pharmacy.

20 "(b) The owner, officer, and partner of any pharmacy. . . shall be jointly responsible,
21 with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in
22 this section."

23 7. Business and Professions Code section 4113(b) states:

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

26 8. Business and Professions Code section 4156 states:

27 "A pharmacy corporation shall not do, or fail to do, any act where doing or failing to
28 do the act would constitute unprofessional conduct under any statute or regulation. In the conduct

1 of its practice, a pharmacy corporation shall observe and be bound by the laws and regulations that
2 apply to a person licensed under this chapter."

3 9. Business and Professions Code section 4300 states:

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

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

8 "(1) Suspending judgment.

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

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

12 "(4) Revoking his or her license.

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

15 10. Business and Professions Code section 4301 states:

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

19 ...

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

22 ...

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

27 11. Business and Professions Code section 4332 states:

28 "Any person who fails, neglects, or refuses to maintain the records required by

1 Respondent Pharmacy's inventory without explanation.

2 d. **OxyContin**[®] 40 mg.: no less than 1166 tablets were lost from the
3 Respondent Pharmacy's inventory without explanation.

4 e. **OxyContin**[®] 80 mg.: no less than 5773 tablets were lost from the
5 Respondent Pharmacy's inventory without explanation.

6 20. Respondent Pharmacist is subject to disciplinary action under Business and
7 Professions Code sections 4301(o) and 4113(b) and California Code of Regulations, title 17, section
8 1714(d) in that between March 19, 2002 and March 15, 2003, Respondent Pharmacist, while acting
9 as Pharmacist-in-Charge at the Respondent Pharmacy, failed to maintain the security of the
10 Respondent Pharmacy from the theft or diversion of dangerous drugs and controlled substances. The
11 circumstances are as follows:

12 a. For generic **hydrocodone** combined with **acetaminophen** 5 mg./500
13 mg.: no less than 6306 tablets were lost from the Respondent Pharmacy's inventory without
14 explanation.

15 b. For generic **hydrocodone** combined with **acetaminophen** 7.5 mg./500
16 mg.: no less than 450 tablets were lost from the Respondent Pharmacy's inventory without
17 explanation.

18 c. For generic **hydrocodone** combined with **acetaminophen** 7.5 mg./750
19 mg.: no less than 3620 tablets were lost from the Respondent Pharmacy's inventory without
20 explanation.

21 d. For generic **hydrocodone** combined with **acetaminophen** 10 mg./500
22 mg.: no less than 5185 tablets were lost from the Respondent Pharmacy's inventory without
23 explanation.

24 e. For **Vicodin**[®] ES (extra strength): no less than 1084 tablets were lost
25 from the Respondent Pharmacy's inventory without explanation.

26 f. For **OxyContin**[®] 10 mg.: no less than 89 tablets were lost from the
27 Respondent Pharmacy's inventory without explanation.

28 g. **OxyContin**[®] 20 mg.: no less than 723 tablets were lost from the

1 inventories for dangerous drugs were lacking during the time period between January 1, 2001 and
2 March 15, 2003.

3 **PRAYER**

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

6 1. Revoking or suspending Registered Pharmacist License Number RPH 24661;
7 issued to Leo Leal;

8 2. Revoking or suspending Pharmacy Permit Number PHY 32697, issued to
9 Horsnyder Pharmacy;

10 3. Prohibiting Leo Leal from serving as an officer, director, associate, or partner
11 of any licensee, permittee, or registrant for a period of five years or until the license or permit is re-
12 issued or reinstated.

13 4. Ordering Leo Leal and Horsnyder Pharmacy to pay the Board of Pharmacy
14 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3;

16 5. Taking such other and further action as deemed necessary and proper.

17 DATED: 3/10/04

18
19 *P. J. Harris*

20 PATRICIA F. HARRIS
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

23 03583110-SF2003400315

24 leal accusation.wpd

25 lsw - 12/23/03

26

27

28

29

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

In the Matter of the Accusation Against: Leo Leal

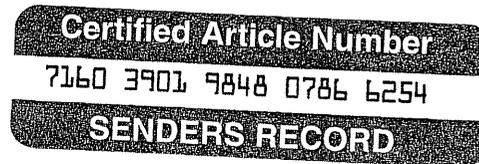
Agency Case No. 2002 23893

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 19, 2004, I served the attached **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

Leo Leal
16370 Bonney Road
Watsonville, California 95076



I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 19, 2004, at San Francisco, California.

A. WARITH

Typed Name

Signature