BILL LOCKYER, Attorney General
of the State of California
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California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against: MORRIS HYMAN CODY 20350 Ventura Blvd., #220 Woodland Hills, CA 91364 Pharmacist License No. RPH 25302 and JENNIFER HOERRNER 15585 Corte Montanoso San Diego, CA 92127 Pharmacist License No. RPH 52366 Respondents.	Case No. 2724 OAH No. L-2004060710 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** **(Jennifer Hoerrner Only)**

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

PARTIES

1. Patricia F. Harris ("Complainant") is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board"). 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 Linda L. Sun, Deputy Attorney General.

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2. This Stipulated Settlement and Disciplinary Order ("Stipulation") pertains to Jennifer Hoerrner ("Respondent") only. Respondent is represented in this proceeding by attorney John P. Murphy, whose address is 625 Broadway, Suite 1400, San Diego, CA 92101.

3. On or about March 26, 2001, the Board issued Pharmacist License No. RPH 52366 to Respondent. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2724 and will expire on March 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2724 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 26, 2004. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2724 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2724. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulation.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

ADMISSIONS

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2724.

9. Respondent agrees that her Pharmacist License is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

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

11. The parties understand and agree that facsimile copies of this Stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 52366 issued to Respondent Jennifer Hoerrner is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

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

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and

federal controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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

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

4. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of her probation. Failure to comply shall be considered a violation of probation.

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

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Case No. 2724, and the terms, conditions and restrictions imposed on Respondent by the decision. Within thirty (30) days of the effective

date of this decision, and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in Case No. 2724.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of the decision in Case No. 2724 in advance of Respondent commencing work at each pharmacy.

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

7. **No Preceptorships, Supervision of Interns, or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor or consultant.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of two-thousand dollars ($2,000) in installments as determined by the Board during the period of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

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

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

If Respondent's license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and

conditions of this probation not previously satisfied.

11. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender her license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish her pocket license to the Board within (ten) 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

12. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within ten (10) days of a change in name, mailing address or phone number.

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. Upon petition by the Respondent, the Board shall have the discretion to determine whether it is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of

the Business and Professions Code.

14. **Public Letter**. Respondent has written and signed a Board-approved letter attached hereto as Exhibit B, and agrees that the Board may publish it in the Board's newsletter and send it to all pharmacy schools in the State of California. Respondent relinquishes all rights in and to said letter.

15. **Video Tape**. Within thirty (30) days from the effective date of the decision, Respondent shall provide the Board an audio/video recording, in a format as designated by the Board, of Respondent reading the content of the letter described in paragraph 14, which the Board may send to all pharmacy schools in the State of California. Respondent relinquishes all rights in and to said audio/video recording.

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

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John P. Murphy. I understand the Stipulation and the effect it will have on my 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: 5/4/05.

JENNIFER HOERRNER
Respondent

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

DATED: 5-1-05.

JOHN P. MURPHY
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: 5-9-05.

BILL LOCKYER, Attorney General
of the State of California

LINDA L. SUN
Deputy Attorney General

Attorneys for Complainant

Exhibit A: Accusation
Exhibit B: Public Letter

DOJ Matter ID: LA2003601197/50029395.wpd

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

In the Matter of the Accusation Against: **JENNIFER HOERRNER** 15585 Corte Montanoso San Diego, CA 92127 Pharmacist License No. RPH 52366 Respondent.	Case No. 2724 OAH No. L-2004060710

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 September 2, 2005.

It is so ORDERED August 3, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2724

BILL LOCKYER, Attorney General
of the State of California
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Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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

In the Matter of the Accusation Against: MORRIS HYMAN CODY 20350 Ventura Blvd., #220 Woodland Hills, CA 91364 Pharmacist License No. RPH 25302 and JENNIFER HOERRNER 15585 Corte Montanoso San Diego, CA 92127 Pharmacist License No. RPH 52366 Respondents.	Case No. 2724 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about November 28, 1967, the Board issued Pharmacist License No. RPH 25302 to Morris Hyman Cody (Respondent Cody). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on February

Board
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28, 2005, unless renewed.

3. On or about March 26, 2001, the Board issued Pharmacist License No. RPH 52366 to Jennifer Hoerrner (Respondent Hoerrner). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2005, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 496 states:

"A board may deny, suspend, revoke, or otherwise restrict a license on the ground that an applicant or licensee has violated Section 123 pertaining to subversion of licensing examinations."

6. Section 123 states:

"It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

"(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any

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portion of a future, current, or previously administered licensing examination.

. . . .

"In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars ($10,000) and the costs of litigation."

7. Section 4300 states, in pertinent part:

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

8. Section 4301 states:

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

. . . .

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

. . . .

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

"(p) Actions or conduct that would have warranted denial of a license."

9. California Code of Regulations, title 16, section 1723.1 states:

"Board of Pharmacy Examination questions are confidential, and any applicant for any license, permit or exemption certificate issued by the Board who removes all or part of any qualifying examination from the examination room or area, or who conveys or exposes all or part of any qualifying examination to any other person may be disqualified as a candidate for the license, permit or exemption certificate for which the applicant applies."

10. Section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

RESPONDENT MORRIS HYMAN CODY

11. Respondent Cody is a licensed pharmacist in California and a partner of Morris Cody and Associates, Inc. (MCA) since 1971, a company located at 6345 Balboa Boulevard, Building 4, Suite 188, Encino. MCA offers review courses to applicants who qualify to take the Board's pharmacist licensure examination. As part of the review course, students enrolled in MCA are provided with test booklets which contain sample test questions and answers.

FIRST CAUSE FOR DISCIPLINE

(Subverting Licensing Examination)

12. Respondent Cody is subject to disciplinary action under sections 4300, subdivision (a) and 496 for violating section 123 of the Code, in that Respondent Cody engaged in acts which subverted the Board's pharmacist licensure examinations as follows:

a. From in or before January 2001 to about June 2002, Respondent Cody obtained and received examination questions from candidates who took the Board's pharmacist licensure examinations; had unauthorized reproduction of portions of the actual licensure examinations; used the unlawfully obtained questions for the purpose of instructing or preparing other applicants for the Board's pharmacist licensure examinations; and distributed or had unauthorized possession of portions of previously administered examinations.

b. These portions of illegally obtained licensure examination questions were reconstructed and reproduced in at least two of MCA's test booklets compiled during the time period as mentioned above and distributed to the students of MCA for preparation for the upcoming Board pharmacist licensure examinations.

SECOND CAUSE FOR DISCIPLINE

(Violating Confidentiality of Pharmacist Licensure Examination)

13. Respondent Cody is subject to disciplinary action under section 4301, subdivision (o) of the Code, on the grounds of unprofessional conduct for violating California Code of Regulations, title 16, section 1723.1, in that Respondent Cody assisted in, abetted and/or conspired with students at MCA and/or candidates of the Board's pharmacist licensure examinations to convey, expose or otherwise compromise all or part of the Board's qualifying examination. The circumstances are as more fully set forth in paragraph 12 above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Acts Involving
Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

14. Respondent Cody is subject to disciplinary action under section 4301, subdivision (f) of the Code, on the grounds of unprofessional conduct, in that Respondent Cody committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption. The circumstances are as more fully set forth in paragraph 12 above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Conduct Which Would Have Warranted Denial of License)

15. Respondent Cody is subject to disciplinary action under section 4301, subdivision (p) of the Code, on the grounds of unprofessional conduct, in that Respondent Cody's conduct would have warranted denial of a license pursuant to sections 496 and 123 of the Code. The circumstances are as more fully set forth in paragraph 12 above.

PRIOR DISCIPLINE

16. To determine the degree of penalty to be imposed on Respondent Cody, if any, Complainant makes the following allegations:

a. On June 3, 1988, Board Accusation No. 1399 was filed against Codyfore Corporation, d.b.a. Bay Rex Pharmacy in which Respondent Cody was President and against Respondent Cody's Pharmacist License No. PS 25302.

b. In or about May, 1989, Respondent Cody, individually and on behalf of

Codyfore Corporation, d.b.a. Bay Rex Pharmacy, entered into a stipulation in which Respondent Cody's Pharmacist License No. PS 25302 was subject to a 10 day stayed suspension and a 2 year probation.

c. The Board adopted the Stipulation as its Decision which became effective on August 24, 1989.

RESPONDENT JENNIFER HOERRNER

17. Respondent Hoerrner was a former student of MCA and a candidate for the Board's pharmacist licensure examination administered in January 2001. On or about January 9, 2001, before the commencement of the Board's examination, Respondent Hoerrner signed the examination instruction sheet acknowledging the confidentiality nature of the examination questions. On or about March 26, 2001, the Board issued Pharmacist License No. RPH 52366 to Respondent Hoerrner.

FIRST CAUSE FOR DISCIPLINE

(Subverting Licensing Examination)

18. Respondent Hoerrner is subject to disciplinary action under sections 4300, subdivision (a) and 496 for violating section 123 of the Code, in that Respondent Hoerrner engaged in acts which subverted the Board's pharmacist licensure examinations as follows:

a. On or about March 25, 2001, Respondent Hoerrner wrote Respondent Cody a letter and without the Board's authorization, revealed more than 30 questions from the January 2001 Board examination in the letter.

b. These portions of illegally removed licensure examination questions were subsequently reconstructed and reproduced in at least one of MCA's test booklets compiled between March 2001 to June 2002 and distributed to the students of MCA for preparation for the upcoming Board pharmacist licensure examinations.

SECOND CAUSE FOR DISCIPLINE

(Violating Confidentiality of Pharmacist Licensure Examination)

19. Respondent Hoerrner is subject to disciplinary action under section 4301, subdivision (o) of the Code, on the grounds of unprofessional conduct for violating California

Code of Regulations, title 16, section 1723.1, in that while an applicant for the Board's pharmacist licensure examination in January 2001, Respondent Hoerrner illegally removed part of the qualifying examination questions, conveyed and exposed part of that qualifying examination to Respondent Cody. The circumstances are as more fully set forth in paragraph 18 above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

20. Respondent Hoerrner is subject to disciplinary action under section 4301, subdivision (f) of the Code, on the grounds of unprofessional conduct, in that Respondent Hoerrner committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption. The circumstances are as more fully set forth in paragraph 18 above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Conduct Which Would Have Warranted Denial of License)

21. Respondent Hoerrner is subject to disciplinary action under section 4301, subdivision (p) of the Code, on the grounds of unprofessional conduct, in that Respondent Hoerrner's conduct would have warranted denial of a license pursuant to sections 496 and 123 of the Code and California Code of Regulations, title 16, section 1723.1. The circumstances are as more fully set forth in paragraph 18 above.

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:

A. Revoking or suspending Pharmacist License No. RPH 25302, issued to Morris Hyman Cody;

B. Revoking or suspending Pharmacist License No. RPH 52366, issued to Jennifer Hoerrner;

C. Ordering Morris Hyman Cody and Jennifer Hoerrner 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;

D. Taking such other and further action as deemed necessary and proper.

DATED: 4/20/04

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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Board
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Exhibit B

Letter from Jennifer Hoerrner

JENNIFER HOERRNER

Pharmacy Students & Examines
State Of California

Dear Students & Examines:

Recently, I was disciplined by the California Board of Pharmacy for sharing confidential examination information.

Like most of you, I took an examination preparation course in order to update my knowledge. One of the teachers who worked at the school asked students to share with him any exam questions that they recalled. Naively, I shared this information which I later realized was a great mistake as the exam information was confidential.

I violated the Business and Professions Code and now have a record of discipline. This experience has taught me several lessons. Also, it has reminded me that it is important to read what I sign and reinforced my commitment to uphold the integrity of the profession.

I have learned from this mistake and that it is important that the integrity and confidentiality of the pharmacist licensure examination is protected. If you discover yourself in a similar situation, never share confidential exam questions and contact the Board of Pharmacy if you have any concerns.

Sincerely,

Jennifer Hoerrner