

1 BILL LOCKYER, Attorney General
of the State of California
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3 California Department of Justice
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San Diego, CA 92186-5266
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Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

12 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2730

13 BRIAN DOUGLAS SILVERTHORNE, RPH
14 P. O. Box 704
Bonsall, CA 92003

**DEFAULT DECISION
AND ORDER**

15 Pharmacist License No. RPH 27464

[Gov. Code, §11520]

16 Respondent.
17

18 FINDINGS OF FACT

19 1. On or about February 11, 2004, Complainant Patricia F. Harris, in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs, filed Petition to Revoke Probation No. 2730 against Brian Douglas Silverthorne, RPH
22 (Respondent) before the Board of Pharmacy.

23 2. On or about August 5, 1971, the Board of Pharmacy (Board) issued
24 Pharmacist License No. RPH 27464 to Respondent. The Pharmacist License expired on March
25 31, 2003, and has not been renewed. Respondent's license was subjected to discipline as of June
26 13, 2002, per Decision No. 2419.

27 3. On or about February 17, 2004, Tess Bautista, an employee of the
28 Department of Justice, served by Certified and First Class Mail a copy of the Petition to Revoke

1 Probation No. 2730, Statement to Respondent, Notice of Defense, Request for Discovery, and
2 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
3 with the Board, which was and is P. O. Box 704, Bonsall, CA 92003. Copies were also served
4 on Respondent at 1584 Red Hill Drive, Upland, CA 91786. The Petition to Revoke Probation,
5 the related documents, and the Declaration of Service are attached as exhibit A, and are
6 incorporated herein by reference.

7 4. Service of the Petition to Revoke Probation was effective as a matter of
8 law under the provisions of Government Code section 11505, subdivision (c).

9 5. On or about March 22, 2004, the aforementioned documents were returned
10 by the U.S. Postal Service marked "Unclaimed" or "Moved, Not at This Address." The postal
11 returned documents are attached hereto as exhibit B, and are incorporated herein by reference.

12 6. On or about March 22, 2004, Tess Bautista, an employee of the
13 Department of Justice, served by Certified and First Class Mail a copy of the Petition to Revoke
14 Probation No. 2730, Statement to Respondent, Notice of Defense, Request for Discovery, and
15 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent at 1584 Red Hill N
16 Drive, Upland, CA 91786. A copy of the Petition to Revoke Probation, the related documents,
17 and Declaration of Service are attached as exhibit C, and are incorporated herein by reference.
18 These documents were also returned by the U.S. Postal Service marked "Unclaimed" or "Moved,
19 Not at This Address." The postal returned documents are attached hereto as exhibit D, and are
20 incorporated herein by reference.

21 7. Business and Professions Code section 118 states, in pertinent part:

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

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

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

9. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Petition to Revoke Probation No. 2730.

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

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

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A through D finds that the allegations in Petition to Revoke Probation No. 2730 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Brian Douglas Silverthorne, RPH has subjected his Pharmacist License No. RPH 27464 to discipline for violation of the terms of his probation to the Board.

2. A copy of the Petition to Revoke Probation and the related documents and Declaration of Service are attached.

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

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon his failure to comply with the terms and conditions of his probation.

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ORDER

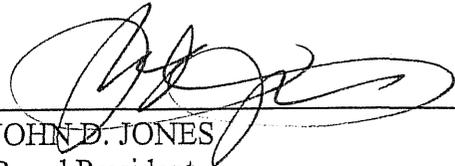
IT IS SO ORDERED that Pharmacist License No. RPH 27464, heretofore issued to Respondent Brian Douglas Silverthorne, RPH, is revoked.

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

This Decision shall become effective on June 24, 2004.

It is so ORDERED May 25, 2004

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
JOHN D. JONES
Board President

Attachments:

- Exhibit A: Petition to Revoke Probation No.2730, Related Documents, and Declaration of Service
- Exhibit B: Postal Return Documents
- Exhibit C: Petition to Revoke Probation No. 2730, Related Documents, and Declaration of Service of March 22, 2004
- Exhibit D: Postal Return Documents from March 22, 2004 Mailing

Exhibit A

Petition to Revoke Probation No. 2730,
Related Documents and Declaration of Service

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
Facsimile: (619) 645-2061
7

8 Attorneys for Complainant

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

11 In the Matter of the Petition to Revoke Probation
12 Against:

Case No. *2730*

13 BRIAN DOUGLAS SILVERTHORNE, RPH
P. O. Box 704
14 Bonsall, CA 92003
and

**PETITION TO REVOKE
PROBATION**

15 1584 Red Hill N Drive
16 Upland, CA 91786
Pharmacist License No. RPH 27464

17 Respondent.
18

19 Complainant alleges:

20 PARTIES

21 1. Patricia F. Harris (Complainant) brings this Petition to Revoke Probation solely in
22 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
23 Consumer Affairs.

24 2. On or about August 5, 1971, the Board of Pharmacy issued Pharmacist License
25 No. RPH 27464 to Brian Douglas Silverthorne, RPH (Respondent). The license expired on
26 March 31, 2003, and has not been renewed.¹

27 _____
28 1. A renewal fee has been received by the Board but no evidence of continuing education necessary to issue
a renewed license.

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

DATED: 2/11/04

P. J. Harris

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

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Exhibit A
Decision and Order
Board of Pharmacy Case No. 2419

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

In the Matter of the Accusation Against:

BRIAN DOUGLAS SILVERTHORNE, RPH
593-A East Elder St.
Fallbrook, CA 92028
Pharmacist License No. RPH 27464

and

Brian D. Silverthorne dba Village Medical
Pharmacy
593 A East Elder St.
Fallbrook, CA 92028
Original Pharmacy Permit No. PHY 24591

and

Donald R. Putnam, RPH
1698 Via Monserate
Fallbrook, CA 92028
Pharmacist No. RPH 21055

Respondents.

Case No. 2419

OAH No. L-2001120473

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 as it relates solely to remaining respondents in this matter, Brian Douglas Silverthorne, RPH and Brian D. Silverthorne dba Village Medical Pharmacy.

This Decision shall become effective on June 13, 2002.

It is so ORDERED May 14, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

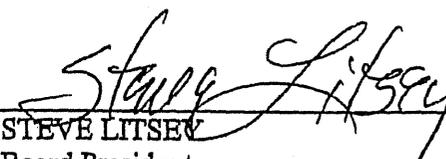
By: 
STEVE LITSEY
Board President

Exhibit 2
11 of 11

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

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San Diego, CA 92186-5266
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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 Brian Douglas Silverthorne, RPH
13 593-A East Elder St.
Fallbrook, CA 92028
14 Pharmacist License No. RPH 27464

15 and

16 Brian D. Silverthorne dba Village Medical
Pharmacy
17 593 A East Elder St.
Fallbrook, CA 92028
18 Original Pharmacy Permit No. PHY 24591

19 and

20 Donald R. Putnam, RPH
1698 Via Monserate
21 Fallbrook, CA 92028
22 Pharmacist No. RPH 21055

23 Respondents.

Case No. 2419

OAH No. L-2001120473

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER RE
RESPONDENTS SILVERTHORNE
AND VILLAGE MEDICAL
PHARMACY**

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

26 PARTIES TO THIS STIPULATION

27 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
28 Pharmacy. She brought this action solely in her official capacity and is represented in this matter

1 2. **No Ownership of Premises.** Silverthorne shall not own, have any legal
2 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
3 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
4 licensed by the board. Silverthorne shall sell or transfer any legal or beneficial interest in any
5 entity licensed by the board (i.e., Village Medical Pharmacy) within 120 days following the
6 effective date of this decision and shall immediately thereafter provide written proof thereof to
7 the board.

8 3. **Obey All Laws.** Silverthorne shall obey all federal and state laws and
9 regulations substantially related to or governing the practice of pharmacy.

10 Silverthorne shall report any of the following occurrences to the board, in writing,
11 within 72 hours of such occurrence:

12 * an arrest or issuance of a criminal complaint for violation of any provision of
13 the Pharmacy Law, state and federal food and drug laws, or state and federal
14 controlled substance laws;

15 * a plea of guilty or nolo contendere in any state or federal criminal proceeding to
16 any criminal complaint, information or indictment;

17 * a conviction of any crime;

18 * discipline, citation, or other administrative action filed by any state or federal
19 agency which involves respondent's pharmacist license or which is related to the practice of
20 pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of
21 any drug, device or controlled substance.

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

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

5 6. **Cooperation with Board Staff.** Silverthorne shall cooperate with the
6 board's inspection program and in the board's monitoring and investigation of his compliance
7 with the terms and conditions of his probation. Failure to cooperate shall be considered a
8 violation of probation.

9 7. **Continuing Education.** Silverthorne shall provide evidence of efforts to
10 maintain skill and knowledge as a pharmacist as directed by the board.

11 8. **Notice to Employers.** Silverthorne shall notify all present and
12 prospective employers of the decision in case No. 2419 and the terms, conditions and restrictions
13 imposed on him by the decision. Within 30 days of the effective date of this decision, and within
14 15 days of Silverthorne undertaking new employment, he shall cause his direct supervisor,
15 pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer
16 has read the decision in case no. 2419.

17 If Silverthorne works for or is employed by or through a pharmacy employment
18 service, he must notify the direct supervisor, pharmacist-in-charge, and/or owner at every
19 pharmacy of the fact and terms of the decision in case no. 2419 in advance of Silverthorne
20 commencing work at the pharmacy.

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

24 9. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
25 **Charge.** Silverthorne shall not supervise any intern pharmacist or perform any of the duties of a
26 preceptor, nor shall he be the pharmacist-in-charge of any entity licensed by the board unless
27 otherwise specified in this order.

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11/10/11

1 10. **Reimbursement of Board Costs.** Silverthorne shall pay to the board
2 within the first year of probation its costs of investigation and prosecution in the amount of
3 \$8,442.00. Respondent shall make quarterly payments with his quarterly reports to the board.

4 Any filing of bankruptcy by Silverthorne shall not relieve him of his
5 responsibility to reimburse the board its costs of investigation and prosecution.

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

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

13 If Silverthorne's license expires by operation of law or otherwise, upon renewal or
14 reapplication, his license shall be subject to all terms of this probation not previously satisfied.

15 13. **License Surrender While on Probation/Suspension.** Following the
16 effective date of this decision, should Silverthorne cease practice due to retirement or health, or
17 be otherwise unable to satisfy the terms and condition of probation, respondent may tender his
18 license to the board for surrender. The board shall have the discretion whether to grant the
19 request for surrender or take any other action it deems appropriate and reasonable. Upon formal
20 acceptance of the surrender of the license, Silverthorne will no longer be subject to the terms and
21 conditions of probation.

22 Upon acceptance of the surrender, respondent shall relinquish his pocket license
23 to the board within 10 days of notification by the board that the surrender is accepted.
24 Silverthorne may not reapply for any license from the board for three years from the effective
25 date of the surrender. He shall meet all requirements applicable to the license sought as of the
26 date the application for that license is submitted to the board.

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1 14. **Notification of Employment/Mailing Address Change.** Silverthorne
2 shall notify the board in writing within 10 days of any change in employment. Said notification
3 shall include the reasons for leaving and/or the address of the new employer, supervisor or owner
4 and the work schedule, if known. Silverthorne shall notify the Board in writing within 10 days
5 of a change in name, mailing address, or phone number.

6 15. **Tolling of Probation.** Silverthorne shall work at least 40 hours in each
7 calendar month as a pharmacist and at least an average of 80 hours per month in any six
8 consecutive months. Failure to do so will be a violation of probation. If Silverthorne has not
9 complied with this condition during the probationary term, and he has presented sufficient
10 documentation of his good faith efforts to comply with this condition, and if no other conditions
11 have been violated, the board, in its discretion, may grant an extension of respondent's probation
12 period up to one year without further hearing in order to comply with this condition.

13 16. **Violation of Probation.** If Silverthorne violates probation in any respect,
14 the board, after giving Silverthorne notice and an opportunity to be heard, may revoke probation
15 and carry out the disciplinary order which was stayed. If a Petition to Revoke Probation or an
16 Accusation is filed against Silverthorne during probation, the board shall have continuing
17 jurisdiction, and the period of probation shall be extended, until the petition to revoke probation
18 is heard and decided. If Silverthorne has not complied with any term or condition of probation,
19 the board shall have continuing jurisdiction over him, and probation shall automatically be
20 extended until all terms and conditions have been met or the board has taken other action as
21 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
22 probation, and to impose the penalty which was stayed.

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

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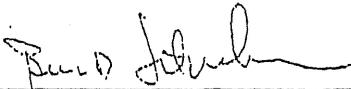
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1 IT IS HEREBY FURTHER ORDERED that Original Pharmacy Permit No. PHY
2 24591 issued to Brian D. Silverthorne dba Village Medical Pharmacy is hereby revoked,
3 however, that revocation is stayed for 120 days from the effective date of the decision.

4 ACCEPTANCE

5 I have carefully read the above Stipulated Settlement and Disciplinary Order and
6 have fully discussed it with my attorney, Stephen K. Henderson. I understand the stipulation and
7 the effect it will have on my pharmacist license and that my pharmacy permit will be revoked
8 outright 120 days from the effective date of the board's decision, should it adopt this stipulation .
9 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
10 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

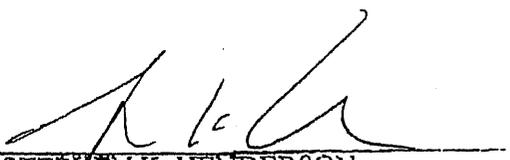
11 DATED: 4-4-02

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13 
14 BRIAN DOUGLAS SILVERTHORNE, RPH
15 Respondent

16 I have read and fully discussed with Respondent Brian Douglas Silverthorne,
17 RPH the terms and conditions and other matters contained in the above Stipulated Settlement and
18 Disciplinary Order. I approve its form and content.

19 DATED: 4/5/2002

20
21 HENDERSON & HENDERSON

22
23
24 By: 
25 STEPHEN K. HENDERSON
Attorney for Respondents

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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: 4/5/02.

BILL LOCKYER, Attorney General
of the State of California



SUSAN FITZGERALD
Deputy Attorney General

Attorneys for Complainant

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7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:)
13 BRIAN DOUGLAS SILVERTHORNE, RPH)
593-A East Elder St.)
14 Fallbrook, CA 92028)
15 Pharmacist License No. RPH 27464,)
16 Brian D. Silverthorne dba VILLAGE MEDICAL)
PHARMACY)
17 593 A East Elder Street)
Fallbrook, CA 92028)
18 Original Pharmacy Permit No. PHY 24591,)
19 and)
20 DONALD R. PUTNAM, RPH)
21 1698 Via Monserate)
Fallbrook, CA 92028)
22 Pharmacist No. RPH 21055,)
23 Respondents.)
24

Case No. 2419

ACCUSATION

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1 Complainant alleges:

2 PARTIES

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

5 2. On or about August 5, 1971, the Board of Pharmacy issued Pharmacist License No.
6 RPH 27464 to Brian Douglas Silverthorne, RPH ("Silverthorne"). The pharmacist license was in
7 full force and effect at all times relevant to the charges brought herein and will expire on March
8 31, 2003, unless renewed.

9 3. On or about December 15, 1987, the Board of Pharmacy issued Original Pharmacy
10 Permit No. PHY 24591 to Brian D. Silverthorne dba Village Medical Pharmacy ("Pharmacy").
11 The Original Pharmacy Permit was in full force and effect at all times relevant to the charges
12 brought herein and will expire on December 1, 2001, unless renewed.

13 4. On or about February 13, 1959, the Board of Pharmacy issued Pharmacist No. RPH
14 21055 to Donald R. Putnam ("Putnam"). The pharmacist license was in full force and effect at
15 all times relevant to the charges brought herein and will expire on April 30, 2002, unless
16 renewed.

17 JURISDICTION

18 5. This Accusation is brought before the Board of Pharmacy ("Board"), under the
19 authority of the following sections of the Business and Professions Code ("Code"):

20 A. Section 4300 (formerly 4350) provides that every certificate, license, permit,
21 registration or exemption issued by the Board may be suspended or revoked.

22 B. Section 4301 provides that the Board shall take action against a licensee for acts of
23 unprofessional conduct, which acts include, but are not limited to:

24 "...

25 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
26 corruption, whether the act is committed in the course of relations as a licensee or
27

1 otherwise, and whether the act is a felony or misdemeanor or not;

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

4 "...

5 "(o) Violating..., directly or indirectly,...any provision...of the
6 applicable...state...regulations governing pharmacy, including regulations established by
7 the board;

8 "..."

9 C. Section 4059 of the Code states in pertinent part that no person shall furnish any
10 dangerous drug except upon the prescription of a physician, dentist, podiatrist, or veterinarian.

11 D. Section 4081 of the Code states that:

12 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
13 or dangerous devices shall be at all times during business hours open to inspection by
14 authorized officers of the law, and shall be preserved for at least three years from the date
15 of making. A current inventory shall be kept by every...pharmacy...hospital, institution or
16 establishment holding a currently valid and unrevoked certificate, license, permit,
17 registration...who maintain a stock of dangerous drugs or dangerous devices.

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

21 E. Section 4105 of the Code states in pertinent part that:

22 "(a) All records or other documentation of the acquisition and disposition of
23 dangerous drugs and dangerous devices by any entity licensed by the board shall
24 be retained on the licensed premises in a readily retrievable form.

25 "...

26 "(c) The records required by this section shall be retained on the licensed premises
27

1 for a period of three years from the date of making.

2 "(d) Any records that are maintained electronically shall be maintained so that the
3 pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on
4 duty,...shall, at all times during which the licensed premises are open for business,
5 be able to produce a hard copy and electronic copy of all records of acquisition or
6 disposition or other drug or dispensing-related records maintained electronically."

7 F. Section 4113 states in pertinent part that:

8 "...

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

11 G. Section 4333 of the Code states in pertinent part that:

12 "(a) All prescriptions filled by a pharmacy and all other records required by Section 4081
13 shall be maintained on the premises and available for inspection by authorized officers of
14 the law for a period of at least three years. In cases where the pharmacy discontinues
15 business, these records shall be maintained in a board-licensed facility for at least three
16 years.

17 "..."

18 H. Code section 125.3 provides that the Board may request the administrative law
19 judge to direct any licentiate found to have committed a violation or violations of the licensing
20 act to pay the Board a sum not to exceed the reasonable costs of investigation and enforcement of
21 the case.

22 6. This Accusation is brought before the Board under the authority of the following
23 sections of Title 16, California Code of Regulations ("CCR"):

24 A. CCR section 1716 states in pertinent part that:

25 "Pharmacists shall not deviate from the requirements of a prescription except upon the
26 prior consent of the prescriber or to select the drug product in accordance with Section
27

1 4073 of the Business and Professions Code.

2 "..."

3 B. CCR section 1709 states in pertinent part that each pharmacy permit must show,
4 among other things, who the pharmacist-in-charge is, the ownership of the pharmacy, and that
5 any changes in ownership and/or the pharmacist-in-charge must be reported to the board within
6 30 days.

7 C. CCR section 1709.1 states in pertinent part that "the pharmacist-in-charge shall be
8 employed in that [pharmacy] location and shall have responsibility for the daily operation of the
9 pharmacy."

10 DRUGS

11 7. All drugs named in this Accusation and billed by respondents to Prescriptions
12 Solutions (identified further below) are dangerous drugs under Business & Professions Code
13 section 4022.

14 CHARGES AND ALLEGATIONS

15 8. Prescription Solutions is a California company that is a third party prescription
16 provider that provides pharmacy benefit management for insurance companies and/or other
17 insurance plans.

18 9. At all times relevant herein, respondents utilized two separate computer systems for
19 their pharmacy business. One system generated hard copies of prescriptions, the other system
20 generated electronic claims. The two systems did not correlate with each other. The oldest
21 computer system was the "Filling System;" the newer computer system was the "Billing
22 System."

23 10. The Billing System was used to bill third party claims only.

24 11. The Filling System, even after the Billing System was in place, was used to fill
25 prescriptions and print hard copies, labels, and receipts.

26 12. The "new" Billing System was installed in 1992.

1 13. In 1998, Heritage Information Systems ("Heritage") was hired by Prescription
2 Solutions to audit respondent Pharmacy. It audited 344 randomly sampled claims by respondent
3 Pharmacy. It found, generally, that both prescription numbers and dates of service were
4 inconsistent between the two computer systems, claims were made where no drugs were ever
5 dispensed to the patients and claims were made for unauthorized prescriptions. The audit found
6 a 49.23% error rate in the randomly selected claims it examined.

7 Re Respondent Silverthorne

8 FIRST CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct: Dishonesty, Fraud)

10 14. Respondent Silverthorne, RPH, is subject to disciplinary action under Code section
11 4301(f) in that he billed for the prescriptions ("Rx") that were not dispensed to patients or
12 dispensed in smaller amounts than prescribed, as follows:

13 A. Patient K.D. - 2 Rxs for Claritin 10 mg on 11/27/97 and 12/26/97 (Rx# 11743);

14 B. Patient E.L. - 3 Rxs for Acyclovir on 7/9/97, 9/5/97, and 12/1/97 (Rx# 10275);

15 C. Patient E.R. - received 30 capsules of Lescol on 8/7/97 and 9/5/97 but respondent's
16 claims were for 60 capsules each time; and

17 D. Patient R.S. - 5 refills for Flonase Spray on 6/30/97, 9/03/97, 9/28/97, 10/27/97, and
18 12/7/97;

19 E. Patient F.P. - received 10 Claritin 10 mg tables on 2/16/99 but respondent's claim
20 was for 30 tablets.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct: Dishonesty, Fraud)

23 15. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
24 section 4301(f) in that the following Rxs were fraudulent because they were entirely
25 unauthorized by the prescriber:

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- 1 A. The Rxs for Claritin for patient K.D.;
- 2 B. The Rxs for Acyclovir for patient E.L. on 7/9/97, 9/5/97, and 12/1/97;
- 3 C. An Rx for patient E.R. for Lescol on 10/7/97; and
- 4 D. The Rxs for Flonase Spray for patient R.S.

5 THIRD CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct: Dishonesty, Fraud)

7 16. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
8 section 4301(f) in that he substituted more expensive, and different drugs, on certain Rxs, as
9 follows:

10 A. Patient J.M - Amoxil 500 mg was billed for Floxin 500 mg. prescribed (Rx#
11 6071355); and

12 B. Patient E.P. - Doxycycline 100 mg. was billed for Biaxin 500 mg. prescribed
13 (Rx# 6072211).

14 FOURTH CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct: Furnishing Dangerous Drugs Without a Prescription)

16 17. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
17 section 4301(o) in conjunction with section 4059 for furnishing dangerous drugs without a
18 legitimate Rx, as follows:

19 A. He furnished 12 Floxin 200 mg tablets when the Rx (RX# 6073404, 4/24/98) was
20 for 20 Floxin 400 mg;

21 B. He furnished 30 Pravachol 20 mg tablets when there was no order for Pravachol on
22 the written prescription (RX# 6069666, 10/21/97); and

23 C. He furnished 40 Dicloxacillin 500 mg tablets when there was no order for
24 Dicloxacillin on the written prescription (Rx# 6065222, 2/7/97).

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Knowing Misrepresentation)

3 18. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
4 section 4301(g) for knowingly making or signing insurance claims that falsely represented the
5 existence or non existence of a state of facts, as alleged in paragraphs 14 and 15 above and their
6 subparts, and incorporated herein by reference.

7 SIXTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct: Violation of Code § 4081)

9 19. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
10 section 4301(o) in conjunction with section 4081 in that he failed to maintain records as required
11 by Code section 4081. The circumstances are as follows:

12 A. He deleted the Rxs for Flonase Spray for patient R.S. from the computer(s) while
13 the Rxs, although false, were still required by law to be maintained;

14 B. The billing printout shows Rx Nos. 12565 billed on 6/17/99, 12566 on 6/02/99, and
15 13850 on 7/30/99, all for Prilosec 20 mg. The filling system printout shows no Rx fillings for
16 Prilosec on these dates. The Rx claim printout shows that Rx No. 13850 was billed for 9/13/99,
17 not 7/30/99.

18 C. The billing printout shows Rx No. 13862 billed on 8/30/99 for Sulindac 150 mg.
19 The filling system printout show no Rx for Sulindac for that date.

20 D. The billing printout shows Rx Nos. 9292 billed on 12/23/98 for Cipro 500 mg and
21 Cipro 750 mg billed on 12/26/98. The filling system printout shows no such Rx filling for these
22 dates.

23 E. The billing printout shows Rx No. 9499 billed on 1/5/99 for Cefaclor 500 mg. The
24 filling system printout does not show any such Rx filling for that date.

25 F. The billing printout shows Rx No. 11545 billed on 4/15/99 for Claritin 10 mg. The
26 filling system printout does not show any such Rx filling for that date.

1 G. The billing printout shows Rx No. 13863 billed on 8/30/99 for Cozaar 50 mg. The
2 filling system printout does not show any such Rx filling for that date.

3 H. The billing printout shows Rx No. 113395 billed on 4/5/99, Rx No. 11911 billed on
4 5/9/99 and 8/12/99, and Rx No. 12463 billed on 6/2/99 and 7/1/99, all for Dilacor XR 180 mg.
5 The filling system printout does not show any such Rx fillings for these dates.

6 SEVENTH CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct: Violation of CSR § 1716)

8 20. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
9 section 4301(o) in conjunction with CCR section 1716 in that he deviated from the requirements
10 of the following prescriptions without prior authorization from the prescriber:

11 A. 30 Anusol HC suppositories were prescribed (Rx No. 6080657, 3/19/99) but only
12 12 were dispensed;

13 B. 20 Duratuss G were prescribed (Rx No. 6077420, 11/11/98) but 40 were dispensed;

14 C. 90 Nortriptyline 10 mg were prescribed (Rx No. 6082482, 6/24/97) but 100 were
15 dispensed;

16 D. 90 Megace 40 mg were prescribed (Rx No. 6068606, 8/21/97) but 100 were
17 dispensed; and

18 E. 14 Floxin 300 mg were prescribed (Rx No. 6070477, 12/2/97, 12/2/97) but 28 were
19 dispensed.

20 EIGHTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct: Failure to Maintain Records)

22 21. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
23 section 4301(o) in conjunction with both sections 4081 and 4333 in that he failed to maintain
24 records as required by sections 4081 and 4333. The circumstances are as follows:

25 A. As a result of the Heritage audit, the Board initiated its own investigation of
26 respondents during which time a Board inspector, among other things, requested various hard
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1 copies of Rx's listed on certain requested patient profiles. This request was in late 2000.

2 B. Over 50% of the hard copies requested by the Board inspector were not produced by
3 the respondents, despite the fact that the Rx's were for 1998 and 1999, well within the three year
4 period required to maintain such records.

5 NINTH CAUSE FOR DISCIPLINE

6 (Unprofessional Conduct: Violation of Code § 4105)

7 22. Respondent Silverthorne, RPH, is further subject to disciplinary action under Code
8 section 4301(o) in conjunction with section 4105 in that his two computer systems rendered Rx's
9 at his pharmacy not readily retrievable.

10 Re Respondent Putnam

11 FIRST CAUSE FOR DISCIPLINE

12 23. Respondent Putnam is subject to disciplinary action under section 4113 in that he,
13 as the pharmacist-in-charge, is responsible for the pharmacy's compliance with laws and
14 regulations applicable to the practice of pharmacy. As such, he is equally responsible for the
15 following violations charged above:

16 A. For furnishing dangerous drugs without a legitimate Rx, as alleged in the Fourth
17 Cause for Discipline above and incorporated herein by reference;

18 B. For violating Code section 4301(o) in conjunction with Code § 4081, as alleged in
19 the Sixth Cause for Discipline above and incorporated herein by reference;

20 C. For violating Code section 4301(o) in conjunction with CCR § 1716, as alleged in
21 the Seventh Cause for Discipline above and incorporated herein by reference;

22 D. For violating Code section 4301(o) in conjunction with both section 4081 and 4333,
23 as alleged in the Eighth Cause for Discipline above and incorporated herein by reference; and

24 E. For violating Code section 4301(o) in conjunction with section 4105, as alleged in
25 the Ninth Cause for Discipline above and incorporated herein by reference.

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Re Respondent Pharmacy

FIRST CAUSE FOR DISCIPLINE

24. By virtue of respondent/pharmacist/pharmacy owner Silverthorne's own violations of pharmacy law and regulations and in his function as a fill-in pharmacist-in-charge when respondent Putnam was absent at relevant times, respondent pharmacy is also liable under Code section 4301(o) in conjunction with section 4081(b) for failure to maintain the records and inventory required for all dangerous drugs.

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:

1. Revoking or suspending Pharmacist License No. RPH 27464, issued to Brian Douglas Silverthorne, RPH;
2. Revoking or suspending Original Pharmacy Permit No. PHY 24591, issued to Brian D. Silverthorne dba Village Medical Pharmacy;
3. Revoking or suspending Pharmacist License No. RPH 21055, issued to Donald R. Putnam, RPH;
4. Ordering Brian Douglas Silverthorne, RPH, and/or Brian D. Silverthorne dba Village Medical Pharmacy to pay the Board of Pharmacy the reasonable costs of investigation and enforcement of this case, pursuant to Business & Professions Code section 125.3;
5. Taking such other and further action as deemed necessary and proper.

Dated: 11/9, 2001.

P. F. Harris

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