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

In the Matter of the Petition for Reconsideration Against: OLUGBENGA SOLOMON ODUYALE 2209 East 27th Street Yuma, Arizona 85365 Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 OAH No. L20050060385

DECISION AFTER RECONSIDERATION

The Board of Pharmacy hereby adopts the attached Proposed Decision dated May 17, 2006 as its decision in the above-entitled matter with the exception of the following:

Probation condition (R) titled "Supervision" shall be amended by deletion of the following prohibition:

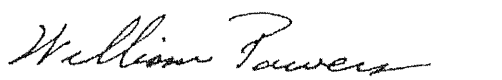
"Respondent shall not supervise any ancillary personnel, including, but not limited to, registered pharmacy technicians or exemptees, of any entity licensed by the board."

All other provisions of probation condition (R) are to remain in full force and effect.

This Decision shall become effective on December 21, 2006

IT IS SO ORDERED November 21, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

WILLIAM POWERS
Board President

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

In the Matter of the Petition for Reconsideration Against: OLUGBENGA SOLOMON ODUYALE 2209 East 27th Street Yuma, Arizona 85365 Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 OAH No. L20050060385 **STAY ORDER**

A stay of execution of the Board of Pharmacy's decision effective August 31, 2006, is hereby ordered until the board renders its decision after reconsideration.

IT IS SO ORDERED this 30th day of August, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

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

In the Matter of the Petition for Reconsideration Against: OLUGBENGA SOLOMON ODUYALE 2209 East 27th Street Yuma, Arizona 85365 Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 OAH No. L20050060385 **ORDER GRANTING RECONSIDERATION**

The Board of Pharmacy having read and considered respondent's Petition for Reconsideration dated August 14, 2006, and good cause appearing, NOW THREFORE IT IS ORDERED that Reconsideration is granted.

The order granting reconsideration is solely on the issue of whether the probation condition of *"Supervision "* should be eliminated.

The board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered a transcript and will notify the parties when the transcript has been prepared and of the date for submission of written argument.

IT IS SO ORDERED this 30th day of August, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

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

In the Matter of the Accusation Against: OLUGBENGA SOLOMON ODUYALE 2209 East 27th Street Yuma, Arizona 85365 Original Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 OAH No. L20050060385

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on August 31, 2006.

It is so ORDERED on August 1, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers

WILLIAM POWERS
Board President

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

In the Matter of the Accusation against: OLUGBENGA SOLOMON ODUYALE 2209 East 27th Street Yuma, Arizona 85365 Original Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 OAH No. L2005060385

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on February 6, 7, and 8, 2006.

Susan Fitzgerald, Deputy Attorney General, California Department of Justice, appeared on behalf of complainant Patricia F. Harris, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Ronald S. Marks, attorney at law, appeared on behalf of respondent Olugbenga Solomon Oduyale who was also present at the hearing.

The record remained open for submission of closing briefs. The record closed and the matter was submitted on March 16, 2006.

FACTUAL FINDINGS

1. Accusation number 2733, dated April 29, 2005, was filed by complainant Patricia F. Harris ("complainant"), in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California against respondent Olugbenga Solomon Oduyale ("respondent"). Respondent filed a special notice of defense dated May 12, 2005 stating objections and requesting a hearing in this matter. Respondent made a motion to have his notice of special defenses heard prior to the full hearing on the merits in this matter.

Thereafter the administrative court ruled that the accusation provided adequate notice to respondent of the allegations against him and that respondent's affirmative defenses were overruled without prejudice to argue the defenses at the hearing on the merits. The proceeding herein followed.

2. Respondent holds original pharmacist license number RPH 42719 issued by the Board of Pharmacy ("the Board") on August 8, 1989. Respondent's pharmacy license will expire on October 31, 2006, unless renewed.

3. The dangerous drugs and controlled substances that are relevant to this matter are defined as follows in Business and Professions Code section 4022 and Health and Safety Code sections 11055, 11056, 11057, and 11058:

A. Oxycontin is a brand name for oxycodone and is a Schedule II controlled substance;

B. Vicodin is a brand name for Hydrocodone and is a Schedule III narcotic controlled substance;

C. Vicodin ES is a brand name for hydrocodone with APAP and is a Schedule III controlled substance;

D. Tylenol with Codeine is a brand name for APAP with codeine and is a Schedule III controlled substance;

E. Xanax is a brand name for alprazolam and is a Schedule IV controlled substance;

F. Ativan is a brand name for lorazepam and is a Schedule IV controlled substance;

G. Luminal is a brand name for Phenobarbital and is a Schedule IV controlled substance;

H. Phenergan with Codeine is a brand name for promethazine with codeine and is a Schedule V controlled substance;

I. Viagra is a dangerous drug;

J. Naprosyn is a dangerous drug;

K. Levaquin is a dangerous drug; and,

L. Floxin is a dangerous drug.

4. In December 2002, respondent was employed as the pharmacist at the Rite-Aid Pharmacy in Calexico, California ("Calexico Rite-Aid"). Respondent worked as the pharmacist-in-charge from March 1997 until January 2003. On December 31, 2002, just after midnight, respondent was driving on Interstate 8 from Calexico to Yuma, Arizona. Respondent was tired from working a very long day at the pharmacy. He was observed by a California Highway Patrol ("CHP") officer driving erratically, drifting across the lanes and the officer pulled him over. During the stop, the officer observed a wooden billyclub with a silver metal end on the floor of the vehicle.

At that point, the officer instructed respondent to open his door and place his hands on the steering wheel so the officer could retrieve the weapon. Then as respondent exited the vehicle, the officer saw two brown prescription bottles in the driver's door pouch. The officer retrieved the weapon and the prescription bottles. The prescription bottles did not have any prescription labels on them. The two unlabeled prescription bottles did have tops with the Rite-Aid name printed on them. Respondent told the officer that he was a pharmacist at the Calexico Rite-Aid and that one of the bottles contained Vicodin and the other contained Xanax and that he was transporting them both to a customer named Mrs. Robinson ("Robinson") in Yuma. Vicodin is a schedule III controlled substance. Xanax is a Schedule IV controlled substance. Respondent was in possession of the Vicodin and Xanax illegally without a valid prescription. The officer observed that one of the bottles had more than one type of medication in it and he asked respondent what were the other medications. Respondent then told the officer that one bottle had Vicodin and the other bottle contained Xanax as well as Viagra, an antibiotic, and Claritin. The officer asked respondent if he had a prescription for these medications and respondent said he did not, but that Robinson did. Respondent explained to the officer that Robinson had contacted him because she was having trouble obtaining the medication she needed. Respondent claimed he had called Robinson's physician, Dr. Kelada, for authorization to fill Robinson's prescription. Respondent told the officer he was bringing this medication to Robinson as a favor.

5. Respondent was in possession of prescription medication without a prescription and in containers without proper labeling. Therefore, the officer arrested respondent for possession of controlled substances and possession of a dangerous weapon. Once the officer arrested respondent, the officer searched respondent. The officer found more pills loose in respondent's pocket, identified as Viagra, Floxin, and Naproxen, which are all prescription medicines. The officer also found $968.00 in cash in respondent's pocket. Respondent informed the officer that the cash was rent money he had collected from a trailer park he owns, but he did not know how much cash he had. In addition, the officer found other prescription medications in the rear floor boards of respondent's car, including an unopened bottle of Viagra, a prescription bottle with no label on it containing more Viagra, two opened bottles of naproxen, and two foil wrapped cards with unidentified pills. In the trunk of the car, the officer found another prescription bottle containing the medication Levaquin labeled for a person in Coachella, California, a duffle bag containing envelopes with $3,734.00 more in cash, and another bag with large quantities of quarters. Respondent told the officer that the cash in the duffle bag was rent money from his rental properties, the quarters were from his trailer park Laundromat and that the billyclub was for protection.

The officer transported respondent to the police station, read respondent his Miranda rights, and questioned respondent. Respondent answered questions regarding the various items found in his possession. He said that he was delivering the Vicodin to a tenant at his trailer park, named Don Brenizer ("Brenizer"). The bottle had 51 Vicodin tablets in it. Respondent stated that Brenizer had serious arthritis and was unable to have his prescription filled at the Rite-Aid in Yuma so Brenizer had called respondent for help. Respondent said he had submitted an insurance form for Brenizer's medication and approval for payment was pending. Respondent indicated that his employer did not know he had taken the medications for Brenizer and Robinson. Respondent also stated the Levaquin was a medication he was taking for a sinus infection and that he had not paid for the Viagra that was for his own personal use. The quantity of Viagra and the Levaquin respondent had in his possession were not prescribed to respondent.

6. In 2002, Brenizer worked for respondent as a property manager at a trailer park in Yuma that respondent owned. Brenizer was a customer of the Rite-Aid in Yuma. Brenizer testified he had a prescription for Vicodin from Dr. Michael Keller ("Dr. Keller") that he had brought to the Rite-Aid in Yuma to be filled. In late December 2002, Brenizer called respondent and asked him for help refilling his prescription. Brenizer told respondent that the Yuma Rite-Aid had lost his prescription and said he needed his medication for his arthritis pain. Brenizer asked for respondent's help in finding the lost prescription in the Rite-Aid computer system.

Respondent searched and found Brenizer's prescription in the Rite-Aid computer and asked it to be transferred to Calexico. He also telephoned Dr. Keller and received verbal authorization to refill the prescription and increase the amount to 100 tablets. He mistakenly told the CHP officer that the prescription was authorized by Dr. Kelada. In fact, the prescription was found listed under the name of Dr. Kelada on the computer when Brenizer's prescription was actually from Dr. Keller. The two names are listed one after the other on the Rite-Aid computer since they are so close alphabetically. When the person making the entry types in the first few letters of a name a full name comes up and sometimes it is the incorrect name. If the person making the entry does not continue typing the full name, the incorrect name is automatically entered.

Respondent also testified that he tried to print a label for Brenizer's prescription bottle that night, but he was unable to do so because the Rite-Aid printer had jammed. Apparently, the printer jammed often, but respondent did not take the time to wait to properly print the label or even hand-write a label as he could have. Respondent also needed to get authorization from Medi-Cal for payment for Brenizer's increased prescription and the clerk at the Rite-Aid did start that process by filling out the necessary paperwork. In the meantime, respondent wanted to get Brenizer his medication so he took what he thought was 50 Vicodin, although it turned out to be 51, from the pharmacy, put them in an unlabeled Rite-Aid prescription bottle and set out to deliver them to Brenizer.

It was not unusual for respondent to deliver medication to customers. Respondent was known by customers and other employees at Rite-Aid to be a pharmacist who always went out of his way for his customers. Respondent did personally deliver medications to customers who were home-bound and had difficulty getting to the pharmacy. However, in this instance respondent cut corners in his effort to help Brenizer and failed to follow proper pharmaceutical protocol for dangerous drugs. There was insufficient evidence to establish that respondent illegally possessed, furnished, or transported the Vicodin or acted fraudulently to create a prescription for Brenizer.

7. Robinson was also a customer of the Rite-Aid in Calexico. In December 2002, respondent agreed to bring her a refill of Xanax. Robinson testified that respondent had often helped her out by delivering medication to her when she needed it. The Xanax was originally prescribed on November 2, 2002 to Robinson by Dr. Sunday. Dr. Sunday is in the same office where Dr. Kelada practices. Subsequently, Dr. Kelada appears to have authorized a refill of the Xanax prescription for Robinson's anxiety and hypertension. This was likely the prescription that respondent was bringing to Robinson on December 31, 2002. However, again it was not properly labeled and it was in a bottle mixed with other medications that respondent admitted were his own personal medications. Respondent's practices regarding these dangerous drugs were at the very least sloppy, but there was insufficient evidence to establish that respondent illegally possessed, furnished, or transported the Xanax or acted fraudulently to obtain the Xanax.

8. In March 2004, the Board conducted an inspection of the Palo Verde Hospital pharmacy ("PVH pharmacy") in Blythe, California. Respondent was employed as the pharmacist-in-charge at PVH pharmacy from January 2003 to March 2005. Board inspector, Valerie Knight ("Knight"), conducted an inspection of records and procedures at the PVH pharmacy. Respondent worked hard to cooperate and he made every effort to comply with Knight's multiple requests for records. However, respondent was not able to provide all records requested and some of the records produced had errors. Some of the records for the period of January through March 2004 regarding acquisition and disposition of drugs were found to contain crossouts, corrections, and ommissions regarding the following drugs: Promethazine/codeine, Carisoprodol, Phenobarbital, Midazolam, Vicodin ES, Tussionex, APAP, Guaifenesin AC, Oxycontin, and Lorazepam. There were also records and inventory indicating the perpetual log maintained in the pharmacy was not accurate in some instances. In addition, respondent was initially unable to produce complete and accurate records for the period of January to March 2003 for the following drugs: APAP, Vicodin ES, Hydrocodone/APAP, Phenobarbital, Carisoprodol, Prometazine/Codeine, Oxycontin, and Lorazepam. Subsequently, respondent was able to produce some of the requested records, but not all of them. The PVH pharmacy was unable to provide complete records of drugs from the Pixis machine. The Pixis machine is an automated drug dispensing machine used at the hospital. It should keep records of what drugs are put into the machine and what drugs are taken out. Knight requested Pixis records for review, but respondent was unable to provide complete and accurate Pixis records. The inspection generally revealed that respondent failed to keep accurate and complete records of the acquisition and disposition of some of the controlled substances at PVH pharmacy.

9. On March 11, 2004, as part of the inspection, Knight asked to review the quality assurance program maintained at PVH pharmacy. Respondent did not seem to know what Knight meant by a quality assurance program. Knight explained to him that it was a medication error reporting system that he was required to maintain. Respondent indicated that the hospital did have such a reporting system, but Knight explained to respondent that he was required to maintain a quality assurance program specifically for the pharmacy. Respondent did not have a quality assurance program in effect just for the pharmacy. The system respondent claimed was the quality assurance program did not properly document medication errors that were attributable to the pharmacy and its personnel. There was no written quality assurance program available in the pharmacy for review by the inspector.

10. Also on March 11, 2004, Knight asked to review the Drug Enforcement Agency ("DEA") Inventory at PVH pharmacy. The DEA requires that the DEA Inventory be maintained for two years. Respondent produced for Knight what he believed to be a DEA Inventory, but it was not a DEA Inventory. It was a perpetual inventory that was maintained by the hospital and was not sufficient to meet the requirements of a DEA Inventory.

11. At the time of the Board inspection of PVH pharmacy in March 2004, drug deliveries were made to the hospital and the majority of the time they were received and signed for by non-pharmacists. As the pharmacist-in-charge, respondent should not have permitted deliveries to be made this way. Knight testified that when she asked respondent about drug deliveries, he told her that only pharmacists accepted drug deliveries at the hospital. However, that is not the case and has not been the case as long as respondent has worked there. Respondent and the other hospital pharmacy employees that testified readily admitted that others often accepted drug deliveries. In fact, respondent acknowledged that the majority of the time drug deliveries were accepted by someone other than the pharmacist. The practice was that the drugs were delivered to the pharmacy from the wholesaler on a delivery truck. The truck driver would come to the back door and knock. Usually the pharmacy technician would come out to receive the delivery and sign for it. The controlled drugs were delivered at the same time as the non-controlled drugs. The technician would then break down the totes of medications, but any controlled drugs were set aside for respondent to check in and lock up. On some occasions when no one is available at the pharmacy, the driver would leave a drug delivery at the nurses' station. Respondent testified that it would have been impractical for him to drop whatever he was doing to go pick up a drug delivery each time a delivery came in since he was the only pharmacist on duty at the hospital. There was no evidence that there was a separate area of the hospital away from the pharmacy where drug deliveries were made. However, respondent testified that at times he was called away to meetings on other floors of the hospital or across the street in another building so accepting all deliveries would be impractical. Respondent admitted he was unaware of the requirement that only the pharmacist is permitted to accept drug deliveries and that in all the pharmacies he has worked there has been no compliance with that requirement. Again, respondent seemed to be ill-informed about the requirements of his job as the pharmacist.

Respondent and Knight did not communicate clearly on this subject. Respondent and Knight discussed numerous items regarding practices at the PVH pharmacy. Respondent testified very credibly that he did not tell Knight that he was the only one that accepted drug deliveries. He did indicate to Knight that he was the only one who received controlled substances at the pharmacy. Knight apparently heard something different when she questioned respondent about this subject. Respondent does have a thick accent when speaking English that made him difficult to understand during his testimony at the hearing. The administrative court had to ask respondent to repeat himself on numerous occasions during his testimony. It is possible that Knight misunderstood what respondent said in response to her questions about the drug delivery practice. In any event, it was simply not established that respondent falsified the information he gave Knight in this regard.

12. There was also insufficient evidence to establish that respondent attempted to subvert the Board investigation in this matter. To the contrary, the evidence shows that respondent made great effort to cooperate with the Board's investigation. However, he often did not have the complete records or information to provide the Board's investigator, not because he was subverting the investigation, but because he appears to be poorly informed about the requirements of his profession and did not follow adequate pharmaceutical practices or record-keeping procedures. Knight did conduct an investigation and the inspection she performed at the PVH pharmacy was part of that investigation.

13. Respondent testified at the hearing that he obtains some of his personal medications in Mexico and therefore he did not need a prescription for them. However respondent may have obtained his personal medications, as a pharmacist respondent should have been well aware of the prohibitions governing possession of prescription medications without a prescription in California. Respondent did present evidence that his physician had prescribed him Naprosyn, Floxin, and Viagra on September 19, 2002. Respondent's prescription called for 60 Naprosyn pills and ten Viagra pills. Respondent's physician did not prescribe any additional medication for respondent after that date. Respondent was found to have these medications in his possession in late December 2002, more than three months after they had been prescribed. Respondent had many more than the ten Viagra pills that had been properly prescribed to him. Respondent was also found in possession of Levaquin that had not been prescribed to him at all.

14. Respondent testified at the hearing and impressed the administrative court as a caring individual who tries to reach out and help those in need. Respondent is known as a pharmacist who always gives all his customers a personal touch. He has a reputation in the medical community as a very good pharmacist who is smart, kind- hearted and helpful to everyone. Respondent has also been very active in volunteer activities in his community. He donated a building to his church so it would have a place to conduct religious activities for people in the Yuma area. He continues to make ongoing financial contributions to the church. He is an active board member of the university he attended in Nigeria and he is helping with an effort to raise funds to build a law school there. At the hearing, respondent was generally very believable in his testimony, but it is apparent that he has played fast and loose with some of the rules when it comes to helping his poor or elderly customers. He has admitted some mistakes,

but he needs to be re-trained so that he understands he cannot bend the rules just because he wants to help someone. It would not be against the public interest to allow respondent to continue to work as a pharmacist subject to strict terms and conditions of probation.

15. Complainant seeks to recover $7,414.00 in costs she incurred for the investigation and prosecution of this case. $3,103.75 of that total amount was incurred for the performance of investigative tasks in this case. The Board's inspector spent 47.75 hours performing investigative tasks in this matter. $4,310.25 of the total amount of costs was incurred for the performance of tasks by the Attorney General's Office. The Attorney General's Office spent 31.40 hours performing the necessary tasks preparing this case for prosecution. The total amount of $7,414.00 in costs should be reduced by one-half to $3,707.00 since complainant prevailed in only one-half of the causes of action alleged against respondent in the accusation. The remaining amount of $3,707.00 is extremely reasonable in light of the nature and complexity of this matter.

LEGAL CONCLUSIONS

1. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivisions (o) and (j), 4060, and Health and Safety Code sections 11350, subdivision (a) and 11377, subdivision (a) in that respondent engaged in unprofessional conduct by possessing controlled substances in violation of applicable state laws and regulations governing possession of controlled substances in containers without correct labeling, as set forth in Findings 2-7 and 13-14.

Respondent's assertion that the police officer's search of respondent's vehicle was unlawful and that the exclusionary rule should apply to the items seized and statements taken by the police officer is rejected. The exclusionary rule does not generally apply to an administrative proceeding. (*Emslie v. State Bar* (1974) 11 Cal.3d 210.) Respondent did not present sufficient facts or argument to support his contention that the exclusionary rule should be applied in this matter. The deterrent effect of applying the exclusionary rule herein is not outweighed by the cost to society so as to warrant the application of the exclusionary rule in this administrative matter.

2. Cause was not established for discipline of respondent's license as a pharmacist under Business and Professions Code section 4301, subdivision (j) and Health and Safety Code section 11171 in that there was insufficient evidence to establish that respondent engaged in unprofessional conduct by illegally prescribing or furnishing hydrocodone with APAP and Xanax, as set forth in Findings 2-7 and 13-14.

3. Cause was not established for discipline of respondent's license as a pharmacist under Business and Professions Code section 4301, subdivision (f) in that there was insufficient evidence to establish that respondent engaged in acts of moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in Findings 2-7 and 13-14.

4. Cause was not established for discipline of respondent's license as a pharmacist under Business and Professions Code section 4301, subdivision (j) and Health and Safety Code section 11173, subdivision (a) in that there was insufficient evidence to establish that respondent obtained hydrocodone with APAP and Xanax by fraud, deceit, misrepresentation, or subterfuge, as set forth in Findings 2-7 and 13-14.

5. Cause was not established for discipline of respondent's license as a pharmacist under Business and Professions Code section 4301, subdivision (j) and Health and Safety Code section 11352, subdivision (a) in that there was insufficient evidence to establish that respondent obtained or transported the generic Vicodin without a legitimate prescription, as set forth in Findings 2-7 and 13-14.

6. Cause was not established for discipline of respondent's license as a pharmacist under Business and Professions Code section 4301, subdivision (j) and Health and Safety Code section 11379, subdivision (a) in that there was insufficient evidence to establish that respondent obtained or transported Xanax without a legitimate prescription, as set forth in Findings 2-7 and 13-14.

7. Cause was not established to discipline respondent's license as a pharmacist pursuant to Business and Professions Code section 4301, subdivision (o) in that there was insufficient evidence to establish that respondent furnished himself Levaquin, Viagra, Naproxen, and Floxin without a prescription, as set forth in Findings 2-7 and 13-14. He was found in possession of these medications, but he had previously been prescribed each of these medications except Levaquin. Respondent claims to have obtained some of his medications in Mexico without a prescription. It was established that these medications were not in properly labeled prescription bottles and that respondent did not have a prescription for the Levaquin, but those violations were not alleged in the accusation.

8. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivision (o) and 4076 in that respondent dispensed prescription drugs in containers not labeled as legally required, as set forth in Findings 2-7 and 13-14.

9. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivision (o) and 4332 in that records of all filled prescriptions at the PVH pharmacy and all records required by Business and Professions Code section 4081 were not readily available for inspection by the Board's inspector, as set forth in Findings 2-4 and 8-14. In mitigation, respondent made every effort to comply with the inspector's requests for records, but he did not seem to have a very good record keeping system at PVH pharmacy and the records he was able to produce for inspection were often incomplete.

10. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivision (o) and 4081, subdivisions (a) and (b) and California Code of Regulations, Title, 16 section 1718, in that respondent failed to have all records of sale, acquisition, or disposition of dangerous drugs open to inspection by the

authorized Board inspector at all times during business hours at the PVH pharmacy as set forth in Findings 2-4 and 8-14. In mitigation, respondent made every effort to comply with the inspector's requests for records, but he did not seem to have a very good record keeping system at PVH pharmacy and the records he was able to produce for inspection were often incomplete.

11. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivision (o) and 4125 and California Code of Regulations, Title 16, section 1711 in that respondent failed to have a quality assurance program in place at PVH pharmacy when inspected on March 11, 2004, as set forth in Findings 2-4 and 8-14.

12. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code section 4301, subdivision (o) and California Code of Regulations, Title 16, section 1718, and 21 Code of Federal Regulations parts 1304.04 and 1304.11 in that respondent did not have an accurate and complete written or printed DEA Inventory at PVH when inspected on March 11, 2004, as set forth in Findings 2-4 and 8-14.

13. Cause exists to discipline respondent's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivision (o) and 4059.5, subdivision (a) in that respondent, as pharmacist-in-charge, regularly allowed non-pharmacists to receive and sign for drug deliveries made to PVH pharmacy, as set forth in Findings 2-4 and 8-14. There was insufficient evidence to support respondent's argument that he was excused from receiving the deliveries himself if the deliveries were made to a central receiving location within the hospital.

14. Cause was not established to discipline respondent under Business and Professions Code section 4301, subdivision (f) in that there was insufficient evidence that respondent knowingly made a false statement to the Board's inspector that only pharmacists received drug deliveries at PVH pharmacy, as set for in Findings 2-4 and 8-14.

15. Cause was not established to discipline respondent under Business and Professions Code section 4301, subdivision (q) in that there was insufficient evidence that respondent attempted to subvert the Board's investigation in this matter, as set forth in Findings 2-4 and 8-14.

16. Cause exists to award costs to complainant in the amount of $3,707.00 pursuant to Business and Professions Code section 125.3 in that this is a reasonable amount of costs that complainant incurred to investigate and prosecute this case, as set forth in Finding 15.

17. Except as set forth in this Proposed Decision, all other allegations in the accusation and all other assertions made by respondent in the notice of defense are unproven or deemed surplusage. All motions, charges, defenses, and arguments not specifically determined herein are found to be not established by the facts or the law.

ORDER

1. License number RPH 42719, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

A. 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 72 hours of such occurrence:

1. 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;

2. a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment;

3. a conviction of any crime;

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

B. 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.

C. 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.

D. 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 his or her probation. Failure to comply shall be considered a violation of probation.

E. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

F. Notice to Employers

Respondent shall notify all present and prospective employers of the decision in case number 2733 and the terms, conditions and restrictions imposed on respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his or 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 number 2733.

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 and terms and conditions of the decision in case number 2733 in advance of the 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.

G. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant

Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

H. Reimbursement of Board Costs

Respondent shall pay to the board its costs of investigation and prosecution in the amount of $3,707.00. Respondent shall make payments as directed by the board.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

I. 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.

J. 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.

K. License Surrender While on Probation

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 his or 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 his or her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three 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.

L. Notification of Employment/Mailing Address Change

Respondent shall notify the board in writing within 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 10 days of a change in name, mailing address or phone number.

M. Tolling of Probation

Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within 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. 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.

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

N. 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.

O. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

P. Examination

Respondent shall take and pass such section(s) of the pharmacist licensure examination as determined appropriate by the board, as scheduled by the board, after the effective date of this decision, at respondent's own expense. If respondent fails to take and pass the examination within six months after the effective of this decision, respondent shall be suspended from practice upon written notice. Respondent shall not resume the practice of pharmacy until he or she takes and passes the same section(s) at a subsequent examination and is notified, in writing, that he or she has passed the examination.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding,

dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until respondent passes the examination and is notified in writing.

Q. Remedial Education

Within 60 days of the effective date of this decision, respondent shall submit to the board, for its prior approval, an appropriate program of remedial education related to the grounds for discipline as required by the board. The program of remedial education shall consist of at least 40 hours, which shall be completed during the period of probation at respondent's own expense. The period of probation shall be extended until such remedial education is successfully completed and written proof, in a form acceptable to the board, is provided to the board. All remedial education shall be in addition to continuing education courses used for license renewal purposes. Failure to complete the remedial education as set forth hereinabove is grounds for the filing of a petition to revoke probation.

Following the completion of each course, the board may administer an examination to test the respondent's knowledge of the course.

R. Supervision

Respondent shall not supervise any ancillary personnel, including, but not limited to, registered pharmacy technicians or exemptees, of any entity licensed by the board.

Respondent shall not supervise any intern pharmacist, perform the duties of a preceptor or serve as a consultant to any entity licensed by the board. In the event that the respondent is currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent consultant at its own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board for its prior approval within 30 days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he or she is not the current PIC. The

board may, in case of an employment change by respondent or for other reasons as deemed appropriate by the board, preclude the respondent from acting as a pharmacist-in-charge.

2. Respondent shall pay complainant $3,707.00 in costs for investigation and prosecution of this case, as directed by the Board.

DATED: May 17, 2006

For

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

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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: OLUGBENGA SOLOMON ODUYALE, RPH 2209 E 27th St Yuma, AZ 85365 Original Pharmacist License No. RPH 42719 Respondent.	Case No. 2733 ACCUSATION

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.

2. On or about August 8, 1989, the Board of Pharmacy issued Original Pharmacist License Number RPH 42719 to Olugbenga Solomon Oduyale, RPH (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following sections of the California Business &

Professions Code:

A. Section 4301 of the Code 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.

". . .

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

". . .

"(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.

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

". . ."

B. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

C. Section 4059.5 states in pertinent part:

"(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and must be delivered to the licensed premises and signed for and received by the pharmacist-in-charge or, in his or her absence,

another pharmacist designed by the pharmacist-in-charge. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

". . ."

D. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

E. Section 4076 of the Code states in pertinent part:

"(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following. . .

". . ."

F. Section 4332 states:

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

G. Section 4125 states in pertinent part:

"(a) Every pharmacy shall establish a quality assurance program that shall, at a

minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel. The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.

". . . ."

H. Section 125.3 of the Code provides, in pertinent part, that 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.

4. This Accusation is also brought under the authority of the following sections of the California Health & Safety Code (H&S Code):

A. H&S Code section 11171 states that "[n]o person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided in this division."

B. H&S Code section 11173 states in pertinent part:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge. . .

". . ."

C. H&S Code section 11350(a) states that it is illegal to possess narcotic Schedule I controlled substances or any narcotic drugs in Schedules II, III, IV, or V without a legitimate prescription.

D. H&S Code section 11352(a) states in pertinent part that it is illegal to transport, sell, furnish, administer, give away or attempt to do any of those things with respect to any narcotic controlled substances unless upon a legitimate written prescription.

E. H&S Code section 11377(a) states in pertinent part that it is illegal to possess any non-narcotic controlled substance without a legitimate prescription.

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F. H&S Code section 11379(a) states in pertinent part that it is illegal to transport, sell, furnish, administer, give away or attempt to do any of those things with respect to any non-narcotic controlled substances unless upon a legitimate prescription.

5. This Accusation is also brought under the authority of the following sections of Title 16, California Code of Regulations (CCR):

A. Section 1711 establishes the requirements for a pharmacy's quality assurance program.

B. Section 1718 states:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section s 4081 and 4332. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

6. This Accusation also refers to Title 21, Code of Federal Regulation, section 1304 et seq. which provides the DEA requirements concerning controlled substance record keeping/inventories.

DRUGS

7. The following are all dangerous drugs, pursuant to Business & Professions Code section 4022 and are also controlled substances, if so identified below:

A. "Oxycontin," a brand name for oxycodone, is a Schedule II controlled substance under H&S Code section 11055(b)(1)(N);

B. Hydrocodone, a narcotic drug, with acetaminophen 5/500 mg, a brand name for which is "Vicodin," is a Schedule III controlled substance under H&S Code section 11056(e)(4);

C. Depo-testosterone is a male hormone and is a Schedule III controlled substance under H&S Code section 11056(f)(30);

D. "Ketalar," a brand name for ketamine, is a Schedule III controlled substance under H&S Code section 11056(g);

E. "Vicodin ES," a brand name for hydrocodone 7.5 mg with APAP, is a Schedule III controlled substance under H&S Code section 11056(e)(4);

F. "Tylenol w/Codeine," a brand name for APAP with codeine, is a Schedule III controlled substance under H&S Code section 11056(e)(2);

G. "Xanax," a brand name for alprazolam, is a Schedule IV controlled substance under H&S Code section 11057(d)(1);

H. "Ativan," a brand name for lorazepam, is a Schedule IV controlled substance under H&S Code section 11057(d)(16);

I. "Luminal," a brand name for phenobarbital, is a Schedule IV controlled substance under H&S Code section 11057(d)(26);

J. "Phenergan w/Codeine," a brand name for promethazine with codeine, is a Schedule V controlled substance under H&S Code section 11058(c)(1);

K. "Soma" is a dangerous drug under Business & Professions Code section 4022;

L. "Lupron" is a dangerous drug under Business & Professions Code section 4022;

M. "Epogen" is a dangerous drug under Business & Professions Code section 4022;

N. "Viagra" is a dangerous drug under Business & Professions Code section 4022;

O. "Naprosyn" is a dangerous drug under Business & Professions Code section 4022;

P. "Levaquin" is a dangerous drug under Business & Professions Code section 4022;

Q. "Floxin" is a dangerous drug under Business & Professions Code section 4022;

CHARGES AND ALLEGATIONS RE 2002 INCIDENT

8. On or about December 31, 2002, Respondent was stopped by the California Highway Patrol while driving on Interstate 8. He was found to have in his possession and control two amber, unlabeled drug prescription bottles, one of which he indicated contained "Vicodin" and the other "Xanax," both for a "Mrs. Robinson." When the highway patrolman noted a variety of different pills in the container Respondent identified as having Xanax in it, Respondent then also said that it contained, additionally, Viagra, an antibiotic, and Claritin. In fact, the bottles contained Vicodin in one bottle and Xanax mixed with Viagra, Floxin, Naproxin and 35 unidentified pills in the other.

9. A further search uncovered the following:

* an amber unlabeled prescription container with 16 ½ Viagra tablets;
* a sealed bottle of Viagra;
* 2 white bottles containing 94 and 100 Naproxen tablets;
* an amber prescription container labeled only "Levaquin" with 5 pills;
* a silver-foil wrapped card containing 8 unidentified pills;
* a gold-foil wrapped card containing 4 unidentified white pills;
* miscellaneous pills in Respondent's pocket: 4 Viagra, 2 Naproxen, 1 Floxin, and one unidentified pill;
* $4,702.00 in cash. $968.00 in Respondent's pocket.

10. Respondent could not produce any prescriptions for any drugs for "Mrs Robinson."

11. Respondent was arrested and "Mirandized," after which he told the highway patrolman that the Vicodin was for a "Don Brenizer" and the Xanax for "Mrs. Robinson."

12. Respondent's then-employer, Rite-Aid Pharmacy #5675 in Calexico, California, did not know Respondent had taken any of the above drugs.

13. Respondent admitted that he was taking the Levaquin himself and did not have a prescription for it.

14. On or about December 30, 2002, Respondent fraudulently created a prescription for Donald Brenizer for 30 tablets of hydrocodone with APAP 5/500 mg. using the name of a doctor in the area. That doctor knew nothing of the prescription and had never treated Donald Brenizer.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Possession of Vicodin)

15. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4060 and, separately, under section 4301(j) in conjunction with H&S Code section 11350(a), in that he illegally possessed hydrocodone with APAP, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Possession of Xanax)

16. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4060 and, separately, under section 4301(j) in conjunction with H&S Code section 11377(a) in that he illegally possessed Xanax, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Prescribing or Furnishing of Controlled Substances)

17. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11171 in that he illegally prescribed and/or furnished hydrocodone with APAP and Xanax in violation of the California Health & Safety Code, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Act of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

18. Respondent is subject to disciplinary action under section 4301(f) for acts of moral turpitude, dishonesty, fraud, deceit, or corruption, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtaining Controlled Substances by Fraud, Deceit, Misrepresentation or Subterfuge)

19. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11173(a) in that he obtained hydrocodone with APAP and Xanax by fraud, deceit, misrepresentation or subterfuge, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

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SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Transporting of Generic Vicodin)

20. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11352(a) in that he transported generic Vicodin without a legitimate prescription, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Illegal Transporting of Xanax)

21. Respondent is subject to disciplinary action under section 4301(j) in conjunction with H&S Code section 11379(a) in that he transported Xanax without a legitimate prescription, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Furnishing Dangerous Drugs to Oneself W/O Prescription)

22. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4059 in that he furnished himself Levaquin, Viagra, Naproxen, and Floxin without a prescription, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Dispensing Dangerous Drugs Without Labeling)

23. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4076 in that he dispensed prescription drugs in containers not labeled at all or not labeled as legally required, as more particularly alleged in paragraphs 8-14 above and incorporated herein by reference.

CHARGES AND ALLEGATIONS RE 2004 PHARMACY INSPECTION/AUDIT

24. At all times relevant to the charges and allegations below and since January 13, 2003, Respondent has been the pharmacist-in-charge (PIC) of the hospital pharmacy at Palo Verde Hospital in Blythe, California.

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25. In March 11, 2004, a Board inspector performed an inspection of Palo Verde Hospital pharmacy. Numerous violations were uncovered.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Provide Records)

26. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4332 for failure to provide, or timely provide records to the Board's inspector, as more particular alleged below:

A. During the inspection and for a reasonable time thereafter, Respondent PIC failed to provide certain invoices for APAP/codeine, carisoprodol, lorazepam, promethazine/codeine, and Vicodin ES when requested by the inspector.

B. During the inspection and for a reasonable time thereafter, Respondent PIC failed to provide accurate and complete dispensing records of dangerous drugs when requested by the inspector.

ELEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain Accurate Records and Complete Accountability of Inventory)

27. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4081(a) and (b) as well as CCR §1718 for failure to maintain accurate records and complete accountability of inventory, as more particular alleged below:

Respondent failed to maintain accurate records of acquisition and disposition of controlled substances at Palo Verde hospital, including complete accountability for all inventory during a specific audit period for carisoprodol, lorazepam and phenobarbital.

TWELFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Implement Quality Assurance Program)

28. Respondent is subject to disciplinary action under section 4301(o) in conjunction with 4125 and CCR §1711 in that on March 11, 2004, Respondent did not have a quality assurance program in place at Palo Verde hospital, as required by law.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Failure to Maintain DEA Inventory)

29. Respondent is subject to disciplinary action under section 4301(o) in conjunction with CCR §1718 and CFR §1304 et seq. in that on March 11, 2004, Respondent did not have a DEA Inventory at Palo Verde hospital. A perpetual inventory maintained by the hospital did not meet the requirements of a DEA inventory and was inaccurate.

FOURTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Allowing Non-Pharmacists to Receive Drug Purchases)

30. Respondent is subject to disciplinary action under section 4301(o) in conjunction with section 4059.5(a) in that while PIC of Palo Verde hospital pharmacy he repeatedly allowed non-pharmacists to receive drug purchases.

FIFTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Act of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

31. Respondent is subject to disciplinary action under section 4301(f) for dishonesty in that on or about March 11, 2004 Respondent knowingly falsely stated to the Board's inspector that only pharmacists received drug deliveries at Palo Verde hospital. In fact, only about 15% of the deliveries between January 13, 2003 and March 11, 2004 were received by Respondent or another pharmacist.

SIXTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Attempting to Subvert a Board Investigation)

32. Respondent is subject to disciplinary action under section 4301(q) for attempting to subvert a Board investigation, as more particularly alleged above in paragraph 31, which is incorporated here by reference.

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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 Original Pharmacist License Number RPH 42719, issued to Olugbenga Solomon Oduyale, RPH;

2. Ordering Olugbenga Solomon Oduyale, RPH 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;

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

DATED: 4/29/05

P. F. Harris

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