

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

**In the Matter of the Accusation and Petition to
Revoke Probation Against:**

**THE BEST PHARMACY AND MEDICAL
SUPPLY, INC.**

401 S. Glenoaks Blvd., #102

Burbank, CA 91502

VREJ OGANESIAN, President

Pharmacy Permit No. PHY 43638

and

VREJ OGANESIAN

560 W. Dryden #2

Glendale, CA 91202

Pharmacy Technician Registration

No. TCH 34670

Respondents.

Case No. 2760

OAH No. L2005060258

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on September 26 and 27, 2005, and April 28, 2006, in Los Angeles, California. Complainant was represented by Barry G. Thorpe, Deputy Attorney General. The Best Pharmacy and Medical Supply, Inc. (Respondent Pharmacy), and Vrej Oganessian (Respondent Oganessian) (collectively Respondents) were represented by

Asbet A. Issakhanian, Attorney at Law.¹

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on April 28, 2006.

FACTUAL FINDINGS

1. On March 23, 2005, Complainant Patricia F. Harris (Complainant) filed the Accusation and Petition to Revoke Probation while acting in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. On July 22, 2005, Complainant Filed the First Amended Accusation and Petition to Revoke Probation while acting in her official capacity.

2a. On August 27, 1998, the Board issued Original Pharmacy Permit No. PHY 43638 to Respondent Pharmacy. The Original Pharmacy Permit is in full force and effect and will expire on August 1, 2006, unless renewed.

2b. From August 27, 1998, Respondent Ogenesian was and is the President of Respondent Pharmacy. From August 27, 1998, through January 17, 2003, Sofik Nazarian was the Secretary of Respondent Pharmacy.

3. On September 19, 2000, the Board issued Original Pharmacy Technician Registration No. TCH 34670 to Respondent Ogenesian. The Pharmacy Technician Registration was in full force and effect at all relevant times and will expire on May 31, 2006, unless renewed.

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¹ Respondents' counsel asserted that The Best Pharmacy and Medical Supply, Inc. had filed for Chapter 7 bankruptcy and that the United States Trustee was "technically the owner" of the pharmacy and its pharmacy permit. However, no evidence was offered to establish the bankruptcy filing or transferred ownership. Moreover, at issue in this proceeding was whether the pharmacy permit should be disciplined. Since that permit cannot be transferred upon the transfer of ownership of the pharmacy (See, Bus. & Prof. Code §4110; Cal. Code Regs., title 16, §1709.), the administrative hearing proceeded, with Respondent Pharmacy as the holder of the permit.

Prior Discipline of Respondent Pharmacy's Pharmacy Permit

4. Effective January 22, 2003, in Case No. 2420, entitled *In the Matter of the Accusation against The Best Pharmacy and Medical Supply, Inc., et al.* (Prior Decision), the Board revoked Respondent Pharmacy's Pharmacy Permit No. 43638. However, the revocation was stayed and Respondent Pharmacy was placed on probation for three years under terms and conditions which included the following:

[¶] 4. **Obey All Laws.**

Respondent Best Pharmacy shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

...

[¶] ... [¶]

[Condition] 8. **Reimbursement of Board Costs.**

Respondent Best Pharmacy shall pay to the Board its costs of investigation and prosecution in the amount of six thousand dollars (\$6,000.00) within 24 months of the effective date of the Decision adopting this order. . . . If Respondent Best Pharmacy fails to make any payment in accordance with this schedule, it may be considered a violation of probation subjecting the license to the revocation of the stay and imposition of the discipline of revocation of the permit.

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

[¶] ... [¶]

[Condition] 12. **Notice to Employees.**

Respondent shall, upon or before the effective date of this Decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent Best Pharmacy shall ensure that any employees hired or used after the effective date of this Decision are made aware of the terms and conditions by posting a notice, circulating a notice, or both.

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

Respondent Pharmacy's Pharmacist in Charge

5a. From October 14, 2002, until July 15, 2003, Rajesh J. Patel (Patel), RPH 52738, was the Pharmacist in Charge (PIC) at Respondent Pharmacy.²

5b. Linda Nguyen, RPH 48563 became the PIC at Respondent Pharmacy on August 11, 2003.

5c. There was no PIC for Respondent Pharmacy from July 15, 2003, until August 11, 2003.

6. As of July 1, 2003, Patel ceased working during business hours at Respondent Pharmacy. As of that date, he began working at another pharmacy during business hours as a staff pharmacist. However, he stayed on as PIC at Respondent Pharmacy until July 15, 2003, visiting Respondent Pharmacy after business hours on July 3 and 10 to review and sign prescriptions, refill logs and daily logs.³

7. In July of 2003, Patel was not present at Respondent Pharmacy during any business hours.

8. Patel testified credibly regarding the facts set forth in Factual Findings 5, 6 and 7. His statements were corroborated by other evidence, and no admissible evidence contradicted his testimony.⁴

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² On July 12, 2003, Patel signed and sent to the Board a notice of disassociation, which was received by the Board on July 15, 2003.

³ There was no evidence that a PIC at one pharmacy cannot hold employment as a pharmacist at another pharmacy, nor was there evidence that a PIC must physically be at a pharmacy at all times. Until his official disassociation, Patel was the PIC at Respondent Pharmacy.

⁴ To contradict and discredit Patel's testimony, Respondent's counsel asserted that Patel was paid for working at Respondent Pharmacy through the end of July 2003. However, no admissible evidence proved this assertion. Moreover, even if Patel received payment in July 2003, such payment does not establish his presence at the pharmacy during work hours, since payment could have been for his after-hours work.

Allegations re: Respondent Pharmacy Allowing Non Pharmacist Access to Pharmacy and Allegations re: Respondent Ogenesian's Attempts to Subvert Investigation⁵

9a. On July 19, 2003, a Board inspector conducted a routine probation monitoring inspection of Respondent Pharmacy, arriving about 15 minutes prior to the pharmacy's scheduled opening time. The inspector observed Respondent Ogenesian enter the prescription area of Respondent Pharmacy, which is separate from the front, over-the-counter area of the pharmacy. After about 10 to 15 minutes, Respondent Ogenesian left the prescription area, but returned for about two or three minutes. There was no pharmacist present at this time.

9b. The inspector knocked on the door of Respondent Pharmacy, displayed her badge and gained entrance. Upon entering the pharmacy, the inspector told Respondent Ogenesian that she had seen him entering the prescription area without a pharmacist present. He informed her that he entered the prescription area to turn on the air conditioning and that the air conditioning controls were in the prescription area.

⁵ To establish many of the allegations in the First Amended Accusation, Complainant offered the credible testimony of the Board inspector who conducted the inspections as a routine part of her duties as a member of the probation monitoring team. The inspector discontinued her Board employment on March 1, 2006. The inspector testified that she is currently starting a business as a private consultant to pharmacies regarding compliance with Board rules and regulations. Respondent is a defendant in a criminal proceeding involving the same facts and circumstances surrounding the instant administrative case, and the former inspector is a potential witness in that matter. Respondent's counsel's inquiries on cross examination regarding the location of the former inspector's place of business and the names of her clientele elicited relevance objections from Complainant's counsel, along with argument that the questions were solely intended to determine the witness's current address in order to subpoena her to testify in the criminal case. Respondent's counsel asserted that the witness's current business address and the names of her clientele were relevant because her testimony in this case could be motivated by a goal to drive Respondents out of business and to benefit her current clients. The offer of proof that the witness's business location and names of clientele could be relevant to prove the witness's motive to lie was vague and nebulous, and therefore insufficient. There was no evidence (or argument) that, at the time of the inspections and inspection reports four years ago, the inspector was involved in her current consulting business. Since her testimony did not differ from her prior statements in her inspection reports, her current address and the names of her current clientele were not relevant to show her motivation to lie regarding Respondents' violations. Complainant's relevance objection was sustained with regard to questioning about the former inspector's current business address and the names of her clients. However, Respondent was allowed to inquire about the nature of the witness's current employment to determine if her current employment provided any motivation for untruthful testimony. Upon cross examination, no bias or motive for dishonesty were established.

9c. The inspector observed that Respondent Oganessian was in possession of the pharmacy key. The inspector reminded Respondent Oganessian that, regardless of ownership, only a licensed pharmacist could possess a key to the prescription area. Respondent Oganessian surrendered the key, and the inspector sealed it in an envelope.

9d. When the inspector was sealing the key, the Saturday pharmacist, Nazareth Khorozian (Khorozian), reported to work. He was in possession of a key to the pharmacy.

10a. On July 19, 2003, the Board inspector assumed that Rajesh Patel was still the PIC, since she had not yet seen the July 15, 2003 notice of disassociation. She requested that the PIC be called to come to Respondent Pharmacy. Respondent Oganessian untruthfully told the inspector that he was unable to contact Patel because Patel was in Las Vegas.⁶ The inspector told Respondent Oganessian that she needed to talk to Patel when he returned.

10b. Since many documents requested by the inspector could not be located on July 19, 2003, the inspector requested that they be faxed to her when Patel returned.

11. On July 20, 2003, Patel was notified by Respondent Pharmacy's employee, Sofik Nazarian (Nazarian)⁷ about the Board inspector's July 19 visit.

12a. At 8:20 a.m., on July 21, 2003, Patel went to Respondent Pharmacy prior to business hours. Since he had been the PIC for the period of the last probation self-assessment report, he reviewed, corrected and initialed the report. He faxed to the Board the documents requested by the Board inspector and then left Respondent Pharmacy. Upon leaving, he returned the key to the prescription area in a sealed envelope.

12b. On July 21, 2003, after faxing the documents, Patel also left the inspector a voicemail message, informing her that he was no longer PIC at Respondent Pharmacy.

12c. In response to Patel's message, the inspector called Respondent Pharmacy and spoke to Sofik Nazarian (Nazarian). Nazarian untruthfully told the inspector that Patel was in the restroom and placed the inspector on hold. The inspector remained on hold for five minutes until the call was disconnected.

⁶ Patel testified credibly that he was not in Las Vegas the weekend of July 19, 2003. Respondent Oganessian's misstatement to the inspector constituted an attempt to subvert a Board investigation in violation of Business and Professions Code sections 4301, subdivision (q), and 4330, subdivision (b). However, this misstatement was not alleged in the First Amended Accusation as a basis for discipline.

⁷ As a result of the Prior Decision, Nazarian's pharmacy technician license was revoked, and she was removed as owner and corporate officer of Respondent Pharmacy. However, Respondent Oganessian allowed Nazarian to continue to work at Respondent Pharmacy as a clerk and answering phone calls.

12d. About half an hour later, the inspector received a call from Patel, stating that he received a message from Nazarian that the inspector needed to speak to him. Patel told the inspector that he was not at Respondent Pharmacy when she called.

12e. There was no evidence to establish that Respondent Oganessian had knowledge of the July 21, 2003 phone call or that he instructed Nazarian to make the misstatement to the inspector.

13a. That day, after speaking with Patel, the Board inspector conducted another inspection of Respondent Pharmacy to verify the presence of a pharmacist in the prescription area. When she arrived, the prescription area of Respondent Pharmacy was closed, and no pharmacist was on the premises.

13b. The inspector observed that the key she had secured on July 19, 2003 was still sealed in the envelope. However, she observed near the cash register another unsealed key for the prescription area. When the inspector asked Respondent Oganessian about the unsealed key in his possession, he misleadingly told her that Patel had thrown the key at him and left without any explanation.⁸ The inspector sealed the unsecured key.

14. On July 21, 2003, no pharmacist arrived at Respondent Pharmacy during the inspector's visit. When she left the premises, the inspector asked Respondent Oganessian to call her upon the arrival of a temporary pharmacist, so that she could conduct an inspection of the prescription area.

15a. On July 23, 2003, Emil Marcarian (Marcarian) began working as a relief pharmacist at Respondent Pharmacy.

15b. Respondent Oganessian failed to notify the Board inspector when the temporary pharmacist began work.

15c. On July 24, 2003, the inspector called Respondent Pharmacy and spoke to Respondent Oganessian. When she asked if a pharmacist was working at the pharmacy, he told her that a temporary pharmacist had begun work the day before. When she asked why Respondent Oganessian had not contacted her previously to inform her about the temporary pharmacist, he told her that they "were too busy."

15d. There was no evidence to establish that Respondent Oganessian's failure to notify the Board inspector was an attempt to subvert an investigation, as opposed to an oversight.

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⁸ Respondent's statement to the inspector was contradicted by Patel's credible testimony.

Allegations re: Respondents Dispensing Prescriptions without a Pharmacist

16a. From July 1, 2003, until July 18, 2003, there was no pharmacist on the premises at Respondent Pharmacy during business hours, except on Saturdays (July 5 and 12, 2003), when Khorazian worked.

16b. From July 1, 2003, until July 18, 2003, Respondent Oganessian worked at Respondent Pharmacy and was the manager of the pharmacy.

17a. On July 24, 2003, the Board inspector obtained from Respondent Pharmacy copies of new prescriptions, pages of the refill log, daily reports and patient receipts which were used as hard copies of the orally transmitted prescriptions. The documents covered the time period July 1 through July 18, 2003.⁹

17b. The documents obtained by the inspector revealed the following were dispensed at Respondent Pharmacy:

- (1) On July 1, 2003 - 15 new prescriptions.
- (2) On July 3, 2003 - 5 new prescriptions.
- (3) On July 7, 2003 - 110 refills and 52 new prescriptions.
- (4) On July 8, 2003 - 58 refills and 8 new prescriptions.
- (5) On July 9, 2003 - 64 refills and 3 new prescriptions.
- (6) On July 10, 2003 - 58 refills and 9 new prescriptions.
- (7) On July 11, 2003 - 56 refills and 4 new prescriptions.
- (8) On July 14, 2003 - 89 refills and 59 new prescriptions.
- (9) On July 16, 2003 - 54 refills and 52 new prescriptions.
- (10) On July 17, 2003 - 37 refills and 38 new prescriptions.

⁹ Only a sample of these documents were presented at the administrative hearing. According to the Board inspector's investigative report, the remainder was placed in the Board's evidence locker. Since the entire set of documents was not produced at hearing, there was no way to corroborate the number of dispensed prescriptions reported by the inspector in her testimony and her investigative report. However, Respondent did not dispute the number of prescriptions allegedly dispensed between July 1 and 18, 2003, set forth in Factual Finding 17b.

(11) On July 18, 2003 - 71 refills and 66 new prescriptions.

18. The totality of the evidence established that the prescriptions dispensed on July 1, 3, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 2003, were filled by someone other than a pharmacist.

Allegations re: Respondent Pharmacy's Failure to Pay Costs

19a. As of July 18, 2005, Respondent Pharmacy had not paid the Board any of its costs of investigation and prosecution, as ordered in the Prior Decision.

19b. No explanation for the non-payment of costs was given.

Allegations re: Respondent Pharmacy's Failure to Ensure Notice of Probation Terms and Conditions to All Employees

20. Patel worked at Respondent Pharmacy from October 2002 until July 15, 2003. In January of 2003, Nazarian informed him that Respondent Pharmacy would be on suspension for two weeks due to a previous violation. During the two weeks that Respondent Pharmacy was closed, a notice of suspension was posted on the window. Patel did not learn that Respondent Pharmacy was on probation until Respondent Ogenesian took him to attend a probationary office conference in March of 2003, to review the terms and conditions of the pharmacy's probation.

21. Khorozian worked at Respondent Pharmacy from 2002 until 2005. After Respondent Pharmacy completed its two-week suspension in January 2003, Respondent Ogenesian informed Khorozian that Respondent Pharmacy was on probation and showed Khorozian a "paper." One "paper" was posted under the licenses in Respondent Pharmacy, and later Respondent Ogenesian put a "paper" in a conspicuous location outside the entrance of Respondent Pharmacy. Khorozian was not shown the entire Prior Decision, just one "paper." After speaking to the Board inspector in August 2003, Khorozian asked Respondent Ogenesian to see all of the Prior Decision, and Respondent Ogenesian complied with his request.

22. Jeff Goad (Goad) worked as a temporary pharmacist at Respondent Pharmacy for one day at the beginning of August 2003. While Goad was at Respondent Pharmacy, he did not receive any information, either oral or written, that Respondent Pharmacy was on probation. He did not see any notice posted on the wall regarding the terms and conditions of probation. However, he admitted that it could have been posted on the wall, and that he did not look for any notice posted on the wall. He stated that, if a notice was posted on the wall indicating that Respondent Pharmacy was on probation, he may not have noticed it because he had never seen one before.

23. Karina Keshishian filled in as a temporary pharmacist for Respondent Pharmacy at the end of July 2003. While she was there, she was not informed that

Respondent Pharmacy was on probation, and she saw no posted notices in the pharmacy indicating that Respondent Pharmacy was on probation. She admitted that it was possible she did not see a posted notice, since there were lots of papers posted on the wall and she was not looking for a note that said the pharmacy was on probation.

24. When Marcarian worked as a relief pharmacist at Respondent Pharmacy on July 23 and 24, 2003, he was not informed that Respondent Pharmacy was on probation until the Board inspector told him on July 24, 2003.

25. The totality of the evidence established that Respondent Pharmacy failed to ensure that all employees were made aware of the terms and conditions of probation, as ordered by the Prior Decision. Respondent Pharmacy did not circulate a notice of the terms and conditions of probation to all of its employees, nor did Respondent Pharmacy post a notice of the terms and conditions in a “prominent place,” since several of its employees were unaware of such a notice. Furthermore, there was no evidence submitted to establish that a notice of the terms and conditions of probation was posted, prominently or otherwise.

Respondent Oganessian’s Testimony

26a. Respondent Oganessian declined to take the stand to testify on his own behalf. Pursuant to Government Code section 11513, subdivision (b), Complainant called Respondent Oganessian to the witness stand to testify on cross examination. Except for stating his name, Respondent Oganessian refused to answer any questions under oath, instead invoked his Fifth Amendment privilege.

26b. Respondent Oganessian provided no testimony to contradict any of the allegations against him or Respondent Pharmacy.¹⁰

Alleged Bases for Discipline

27. In the Accusation, Complainant alleged several bases for discipline, some of which were established and some of which were not. The specific allegations are addressed individually as follows:

(a) Complainant established, by clear and convincing evidence, that Respondent Pharmacy engaged in unprofessional conduct in that it allowed a non-pharmacist to be in possession of the key to the prescription areas.

¹⁰ Contrary to Complainant’s assertion, no inference may be drawn from a witness’s invoking a privilege. (Evid. Code §913; See, *Garrity v. New Jersey* (1967) 385 U.S. 493, 17 L.Ed.2d 562, 87 S.Ct. 616; *Spevack v. Klein* (1967) 385 U.S. 511, 17 L.Ed.2d 574, 87 S.Ct. 625.) However, note can be taken of Respondent’s failure to explain or deny evidence against him. (Evid. Code §413.)

(b) Complainant established, by clear and convincing evidence, that Respondent Pharmacy and its manager Respondent Oganessian engaged in unprofessional conduct in that Respondent Pharmacy dispensed prescriptions without a pharmacist on the premises.

(c) Complainant did not establish, by clear and convincing evidence, the allegations in the First Amended Accusation, paragraph 16, regarding Respondent Oganessian attempting to subvert a probation monitoring inspection conducted by the Board.

Alleged Bases to Revoke Probation

28. In the Petition to Revoke Probation, Complainant alleged several bases for revocation of probation based on Respondent Pharmacy's failure to comply with the terms and conditions of probation. All of the bases for revocation of probation were established as follows:

(a) Complainant established, by clear and convincing evidence, that Respondent Pharmacy violated probationary condition number 4 of the Prior Decision in that Respondent Pharmacy failed to obey the laws governing the practice of pharmacy when it dispensed prescriptions without a pharmacist on the premises and when it allowed a non-pharmacist to be in possession of the key to the prescription area.

(b) Complainant established, by clear and convincing evidence, that Respondent Pharmacy violated probationary condition number 8 in that it failed to pay the Board its costs of investigation and prosecution in the amount of \$6,000.00 within 24 months of the effective date of the Prior Decision.

(c) Complainant established, by clear and convincing evidence, that Respondent Pharmacy violated probationary condition number 12 in that it failed to ensure that all of its employees were made aware of the terms and conditions of probation, as ordered by the Prior Decision.

Costs of Investigation and Prosecution

29. Complainant submitted evidence of the following costs of investigation of this matter:

(a) The Bureau submitted a Certification of Costs, indicating that inspector's costs incurred through September 21, 2005, were \$1,901.25, based upon 29.25 hours at a rate of \$65.00 per hour.

(b) The Board inspector did not submit any declaration or provide any testimony breaking down the 29.25 hours into specific tasks or issues.

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30. Complainant submitted evidence of the following costs of prosecution of this matter:

(a) The Deputy Attorney General (DAG) submitted a declaration, documenting the time billed by the Department of Justice, Office of the Attorney General (DOJ) for this case. The declaration set forth the following amounts billed:

- (1) Deputy Attorney General Costs:
Fiscal year 2003/2004: .50 hours @ \$120 (subtotal \$60);
Fiscal year 2003/2004: 2.75 hours @ \$132 (subtotal \$363);
Fiscal year 2004/2005: 10.75 hours @ \$139 (subtotal \$1,494.25);
Fiscal year 2005/2006: 28.25 hours @ \$146 (subtotal \$4,124.50).
- (2) Legal Assistant Costs:
Fiscal year 2003/2004: 9.75 hours @ \$91 (subtotal \$887.25);
Fiscal year 2004/2005: .25 hours @ \$91 (subtotal \$22.75).
- (3) Total Costs incurred: \$6,961.75

(b) The DAG's declaration stated that the DOJ costs included payment for the following tasks:

- (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; (3) drafting pleadings, subpoenas, correspondence, memoranda, and other case-related documents; (4) researching relevant points of law and fact; (5) locating and interviewing witnesses and potential witnesses; (6) consulting and/or meeting with colleague deputies, supervisory staff, experts, client staff, and investigators; (7) communicating and corresponding with Asbet A. Issakhanian, Respondents's (sic) counsel; (8) requesting discovery; (9) preparing for and attending trial setting, status, prehearing and settlement conferences, as required; and (10) preparing for hearing.

(c) The DOJ costs were not broken down by issue or cause for discipline.

(d) The DAG's declaration indicated that, although the DOJ began handling this case in the fiscal year 2003/2004, he was not assigned to handle the case until June 2, 2005. This connotes some overlap of tasks performed by the previously and currently assigned DAGs. However, the DOJ costs were not broken down by specific DAG.

31. The evidence established that Complainant incurred total costs of **\$8,863.00** in the investigation and prosecution of this matter. Since some overlap of case preparation is

indicated, a portion of the costs for prosecuting this matter are duplicative and should be disallowed. Given the amount of evidence presented at hearing, eight hours of DAG time at \$146 per hour, totaling \$1,168.00, will be disallowed. Pursuant to Government Code section 11425.50, subdivision (c), and California Code of Regulations, title 1, section 1042, subdivision (c), the Administrative Law Judge deems \$5,793.75 of DOJ costs and all of the inspector's costs to be reasonable. Thus, Complainant is awarded a total cost recovery of \$7,695.00.¹¹

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent Pharmacy's pharmacy permit, pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (o) and (p), and California Code of Regulations, title 16, section 1714, subdivision (d), for unprofessional conduct in that it allowed a non-pharmacist to be in possession of the key to the prescription area, as set forth in Factual Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 26 and 27.

2. Cause exists to revoke or suspend Respondent Pharmacy's pharmacy permit, pursuant to Business and Professions Code sections 4300, 4301, subdivisions (o) and (p), 4328 and 4330, for unprofessional conduct in that it dispensed prescriptions without a pharmacist on the premises, as set forth in Factual Findings 5, 6, 7, 8, 16, 17, 18, 26 and 27.

3. Cause exists to revoke or suspend Respondent Ogenesian's pharmacy permit, pursuant to Business and Professions Code sections 4300, 4301, subdivisions (o) and (p), 4328, 4329 and 4330, for unprofessional conduct in that, as manager of Respondent Pharmacy, he permitted the dispensing of prescriptions without a pharmacist on the premises, as set forth in Factual Findings 5, 6, 7, 8, 16, 17, 18, 26 and 27.

4. Cause does not exist to revoke or suspend Respondent Ogenesian's pharmacy permit, pursuant to Business and Professions Code sections 4300, 4301, subdivision (q), and 4330, subdivision (b), in that the evidence did not establish that he attempted to subvert a probation monitoring inspection, as set forth in Factual Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 26 and 27.

5. Cause exists to revoke Respondent Pharmacy's probation and reimpose the order of revocation of Respondent Pharmacy's pharmacy permit, in that Respondent Pharmacy failed to comply with Probation Term Number 1 (Obey All Laws), as set forth in Factual Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 26 and 28.

¹¹ Although the allegations pertaining to attempted subversion of a Board investigation (third cause for discipline) were not sustained, the time spent on that portion of the investigation and prosecution necessarily overlapped and was subsumed into the investigation and prosecution pertaining to the other allegations. Consequently, the costs will not be reduced based upon the failure to sustain the allegations in the third cause for discipline.

6. Cause exists to revoke Respondent Pharmacy's probation and reimpose the order of revocation of Respondent Pharmacy's pharmacy permit, in that Respondent Pharmacy failed to comply with Probation Term Number 8 (Reimbursement of Board Costs), as set forth in Factual Findings 4, 19, 26 and 28.

7. Cause exists to revoke Respondent Pharmacy's probation and reimpose the order of revocation of Respondent Pharmacy's pharmacy permit, in that Respondent Pharmacy failed to comply with Probation Term Number 12 (Notice to Employees), as set forth in Factual Findings 4, 20, 21, 22, 23, 24, 25, 26 and 28.

8. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of **\$7,695.00**, as set forth in Factual Findings 29, 30 and 31.

9. Since Respondent Oganessian provided no testimony regarding the allegations against him or Respondent Pharmacy, no mitigation was established and no assurance of future compliance with probationary terms was provided. Consequently, probation in this matter would not be appropriate and would not ensure adequate public protection.

ORDER

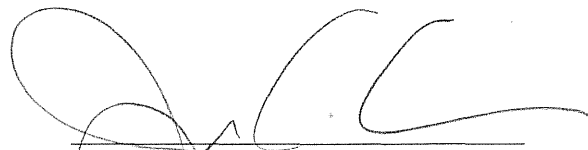
WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Pharmacy Permit No. PHY 43638, issued to The Best Pharmacy and Medical Supply, Inc., Vrej Oganessian, President, is hereby revoked.

2. Pharmacy Technician Registration No. TCH 34670, issued to Vrej Oganessian, is hereby revoked.

3. Within 90 days of the effective date of this Decision, Respondents, jointly and severally, shall reimburse the Board the sum of **\$7,695.00** for its costs of investigation and prosecution.

DATED: May 16, 2006



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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THE BEST PHARMACY AND MEDICAL SUPPLY INC.
401 S Glenoaks Blvd #102
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Vrej Oganessian, President

Pharmacy Permit No. PHY 43638

snd

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560 W. Dryden #2
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Pharmacist Technician Registration No. TCH 34670

Respondent.

Case No. 2760

OAH No. L2005060258

DECISION

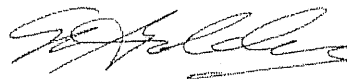
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on June 30, 2006.

It is so ORDERED on May 31, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

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6 Attorneys for Complainant

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

10 In the Matter of the Accusation & Petition to
Revoke Probation Against:

Case No. 2760

OAH No. L-2005060258

11 **THE BEST PHARMACY AND**
12 **MEDICAL SUPPLY INC., doing business**
13 **as THE BEST PHARMACY AND**
14 **MEDICAL SUPPLY INC.**
401 S. Glenoaks Blvd., #102
Burbank, CA 91502
VREJ OGANESIAN, President

**FIRST AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

15 Pharmacy Permit No. No. PHY 43638

16 and

17 **VREJ OGANESIAN**
18 560 W Dryden #2
19 Glendale, CA 91202

20 Pharmacy Technician Registration
No. TCH 34670

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

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

28 ///

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

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

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

6 7. Section 4328 of the Code states:

7 “Except as otherwise provided in this chapter, any person who permits the
8 compounding or dispensing of prescriptions, or the furnishing of dangerous drugs in his or her
9 pharmacy, except by a pharmacist, is guilty of a misdemeanor.”

10 8. Section 4329 of the Code states:

11 “Any nonpharmacist who takes charge of or acts as manager of any pharmacy or
12 who compounds or dispenses a prescription or furnishes dangerous drugs except as otherwise
13 provided in this chapter is guilty of a misdemeanor.”

14 9. Section 4330 of the Code states:

15 “(a) Any person who has obtained a license to conduct a pharmacy, who fails to
16 place in charge of the pharmacy a pharmacist, or any person, who by himself or herself, or by any
17 other person, permits the compounding or dispensing of prescriptions, or the furnishing of
18 dangerous drugs, in his or her pharmacy, except by a pharmacist, or as otherwise provided in this
19 chapter, is guilty of a misdemeanor.

20 “(b) Any nonpharmacist owner who commits any act that would subvert or tend to
21 subvert the efforts of the pharmacist-in-charge to comply with the laws governing the operation
22 of the pharmacy is guilty of a misdemeanor.”

23 10. California Code of Regulations, title 16, section 1714, states:

24

25 “(b) Each pharmacy licensed by the board shall maintain its facilities, space,
26 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and
27 distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the
28 safe practice of pharmacy.

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“(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.”

11. California Code of Regulations, title 16, section 1774, states:

“(a) Unless otherwise directed by the Board, any pharmacy permit which is on probation to the Board shall be subject to the following conditions:

“(1) Obey all laws and regulations substantially related to the practice of pharmacy;

“(2) The permit, through its officer, partners or owners, shall report to the Board or its designees quarterly, either in person or in writing as directed; if the final probation report is not made as directed, the period of probation shall be extended until such time as the final report is made;

“(3) Cooperate with the Board in its inspectional program;

“(4) Post or circulate notice of conditions of probation so that they are available to all employees involved in pharmacy operations;

“(5) Submit the operation of the pharmacy to peer review if deemed necessary by the Board;

“(6) Provide evidence that owners or officers are knowledgeable in the laws pertaining to pharmacy if deemed necessary by the Board.

“(b) When the circumstances of the case so require, the Board may impose conditions of probation in addition to those enumerated herein by the terms of its decision in an administrative case or by stipulation of the parties.”

12. Business and Professions Code section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or

1 by order of a court of law, or its surrender without the written consent of the board, shall not,
2 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
3 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
4 ground provided by law or to enter an order suspending or revoking the license or otherwise
5 taking disciplinary action against the licensee on any such ground.

6 13. Business and Professions Code section 125.3, subdivision (a), states, in
7 pertinent part:

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 *(Access of Non Pharmacist to Pharmacy)*

15 14. Respondent Pharmacy is subject to disciplinary action under sections 4300
16 and 4301, subdivisions (o) and (p), of the Code on the grounds of unprofessional conduct for
17 violating California Code of Regulations, title 16, section 1714, subdivision (d), in that it
18 allowed a non-pharmacist to be in possession of the key to the prescription areas. The
19 circumstances are as follows:

20 a. On or about July 19, 2003, an inspector for the Board conducted a routine
21 probation monitoring inspection of Respondent Pharmacy. The inspector observed Respondent
22 Oganessian was in possession of the pharmacy key and had gained entrance to the prescription
23 area.

24 b. On or about July 21, 2003, an inspector for the Board made a visit to
25 Respondent Pharmacy and discovered that Respondent Oganessian was in possession of one of
26 the pharmacy keys.

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1 SECOND CAUSE FOR DISCIPLINE

2 *(Operating the Pharmacy Without a Pharmacist)*

3 15. Respondents Pharmacy and Oganesian are subject to disciplinary action
4 under sections 4300 and 4301, subdivisions (o) and (p) of the Code on the grounds of
5 unprofessional conduct for violating sections 4328, 4329 and 4330, subdivision (a) in that they
6 filled and dispensed prescriptions without a pharmacist on the premises. The circumstances are
7 as follows:

8 a. Respondent's pharmacist-in-charge resigned as of July 15, 2003 but
9 physically ceased working at Respondent's pharmacy as of July 1, 2003. A review of the daily
10 reports of Respondent Pharmacy by an inspector for the Board, revealed that from on or about
11 July 1, 2003 to on or about July 18, 2003, prescriptions were filled by someone other than a
12 pharmacist, as follows:

<u>DATE</u>	<u>REFILLS</u>	<u>NEW</u>
July 7, 2003	110	52
July 14, 2003	89	59
July 15, 2003	41	57
July 16, 2003	54	52
July 17, 2003	37	38
July 18, 2003	71	66

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19 A review of the new prescriptions and the computer generated patient receipts used as new orally
20 transmitted prescriptions between July 1, 2003, to on or about July 18, 2003, showed the
21 following:

<u>DATE</u>	<u>NEW PRESCRIPTIONS</u>
July 1, 2003	15
July 3, 2003	5
July 8, 2003	8
July 9, 2003	3
July 10, 2003	9
July 11, 2003	4
July 18, 2003	25

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1 A review of the refill log showed the following:

2	<u>DATE</u>	<u>REFILL</u>
3	July 8, 2003	58
4	July 9, 2003	64
5	July 10, 2003	58
6	July 11, 2003	56

7
8 **THIRD CAUSE FOR DISCIPLINE**

9 *(Attempt to Subvert Investigation)*

10 16. Respondent Oganessian is subject to disciplinary action under sections
11 4300 and 4301, subdivision (q), on the grounds of unprofessional conduct for violating section
12 4330, subdivision (b), in that he attempted to subvert a probation monitoring inspection
13 conducted by the Board, as follows:

14 a. On or about July 21, 2003, the inspector for the Board called Respondent
15 Pharmacy and asked to speak with the pharmacist-in-charge. He was told that the pharmacist-in-
16 charge was in the restroom, and he was then placed on hold. The line was subsequently
17 disconnected. The inspector was able to confirm that the pharmacy did not have a pharmacist-
18 in-charge at the time of the telephone call.

19 b. On or about July 21, 2003, the inspector for the Board made a visit to
20 Respondent Pharmacy and noticed that the pharmacy area was closed. The inspector instructed
21 Respondent Oganessian to call him immediately when their temporary pharmacist arrived so that
22 he could conduct an inspection of the prescription area. Respondent Oganessian failed to notify
23 the inspector when the temporary pharmacist began work. On or about July 24, 2003, the
24 inspector called Respondent Oganessian to inquire if a pharmacist was working at the pharmacy.
25 The inspector was told that the temporary pharmacist had begun work the day before, on July 23,
26 2004.

27 **PETITION TO REVOKE PROBATION**

28 1. Effective January 22, 2003, Respondent The Best Pharmacy and Medical
Supply, Inc. Original Pharmacy's Permit No. PHY 43638 was revoked. However, revocation
///

1 was stayed and Respondent was placed on probation for three (3) years with terms and conditions
2 including, but not limited to the following:

3 Condition 4 of Probation:

4 A. Obey All Laws.

5 “Respondent Best Pharmacy shall obey all state and federal laws and regulations
6 substantially related to or governing the practice of pharmacy.

7 Respondent Best Pharmacy shall report any of the following occurrences to the
8 Board, in writing, within 72 hours of such occurrence;

9 An arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substance
11 laws.

12 A plea of guilty or nolo contendere in any state or federal criminal proceeding to
13 any criminal complaint, information or indictment.

14 A conviction of any crime.

15 Discipline, citation, or other administrative action filed by any state and federal
16 agency which involves Respondent’s license or which is related to the practice of pharmacy or
17 the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device
18 or controlled substance.”

19 Condition 8 of Probation:

20 B. Reimbursement of Board Costs.

21 “Respondent Best Pharmacy shall pay to the Board its costs of investigation and
22 prosecution in the amount of six thousand dollars (\$6,000.00) within 24 months of the effective
23 date of the Decision adopting this order.”

24 Condition 12 of probation

25 C. Notice to Employees

26 “Respondent shall, upon or before the effective date of this Decision, ensure that
27 all employees involved in permit operations are made aware of all the terms and conditions of
28 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.

1 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
2 remain posted throughout the probation period. Respondent Best Pharmacy shall ensure that any
3 employees hired or used after the effective date of this Decision are made aware of the terms and
4 conditions by posting a notice, circulating a notice, or both.

5 “Employees” as used in this provision includes all full-time, part-time, temporary
6 and relief employees, and independent contractors employed or hired at any time during
7 probation.”

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9 **GROUNDS FOR REVOKING PROBATION**

10 1. Grounds exist for revoking probation and reimposing the order of
11 revocation of Respondent Pharmacy’s original pharmacy permit in that it failed to comply with
12 the following terms of probation:

13 a. Probation Term No. 1: Obey All Laws. Respondent Pharmacy failed to
14 obey the laws governing the practice of pharmacy in that there was no pharmacist on the
15 premises and the prescription area was not secured.

16 b. Probation Term No. 8: Reimbursement of Board Costs. Respondent
17 Pharmacy failed to pay the Board its costs of investigation and prosecution in the amount of
18 \$6,000.00 within 24 months of the effective date of the Decision adopting the probationary order.

19 c. Probation Term No. 12: Notice to Employees. Respondent Pharmacy
20 failed to inform all its employees of the terms and conditions of its probation.

21
22 **PRAYER**

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

25 1. Revoking or suspending Original Pharmacy Permit No. PHY 43638,
26 issued to The Best Pharmacy and Medical Supply d.b.a. The Best Pharmacy and Medical Supply
27 Inc. and Vrej Oganessian.

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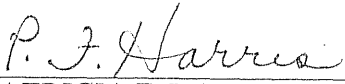
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2. Revoking or suspending Pharmacy Technician Registration No. TCH 34670, issued to Vrej Oganesian.

3. Ordering The Best Pharmacy and Medical Supply and Vrej Oganesian 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; and

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

DATED: 7/22/05



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

1 BILL LOCKYER, Attorney General
of the State of California
2 DESIREE PHILLIPS, State Bar No. 157464
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2578
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation & Petition to
Revoke Probation Against:

Case No. 2760

11 **THE BEST PHARMACY AND**
12 **MEDICAL SUPPLY INC., doing business**
13 **as THE BEST PHARMACY AND**
MEDICAL SUPPLY INC.
401 S. Glenoaks Blvd., #102
14 Burbank, CA 91502
VREJ OGANESIAN, President

ACCUSATION AND PETITION
TO REVOKE PROBATION

15 Pharmacy Permit No. No. PHY 43638

16 and

17 **VREJ OGANESIAN**
18 560 W Dryden #2
Glendale, CA 91202

19 Pharmacy Technician Registration
20 No. TCH 34670

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

28 ///

1 2. On or about August 27, 1998, the Board of Pharmacy issued Original
2 Pharmacy Permit No. PHY 43638 to The Best Pharmacy and Medical Supply to do business as
3 The Best Pharmacy and Medical Supply Inc. (Respondent Pharmacy). The Original Pharmacy
4 Permit is in full force and effect and will expire on August 1, 2004, unless renewed.

5 Vrej Oganessian was the President, Sofik Nazarian was the Secretary and Razmik
6 Issakhani Namagardi was the Vice President from August 27, 1998 through January 17, 2003.

7 Rajesh J. Patel, RPH 52738, was the Pharmacist-in-Charge from October 14, 2002
8 through July 10, 2003. Linda Nguyen, RPH 48563 was and still is the Pharmacist-in-Charge
9 since August 11, 2003.

10 3. On or about September 19, 2000, the Board of Pharmacy issued Original
11 Pharmacy Technician Registration No. TCH 34670 to Vrej Oganessian (Respondent Oganessian).
12 The Pharmacy Technician Registration was in full force and effect at all times relevant to the
13 charges brought herein and will expire on May 31, 2004, unless renewed.

14 **JURISDICTION**

15 4. This Accusation is brought before the Board of Pharmacy (Board),
16 Department of Consumer Affairs, under the authority of the following laws. All section
17 references are to the Business and Professions Code unless otherwise indicated.

18 5. Section 4300 of the Code provides, in pertinent part, that every license
19 issued by the Board is subject to discipline, including suspension or revocation.

20 6. Section 4301 of the Code states:

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

25

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

1 established by the board.

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

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

5 7. Section 4328 of the Code states:

6 "Except as otherwise provided in this chapter, any person who permits the
7 compounding or dispensing of prescriptions, or the furnishing of dangerous drugs in his or her
8 pharmacy, except by a pharmacist, is guilty of a misdemeanor."

9 8. Section 4329 of the Code states:

10 "Any nonpharmacist who takes charge of or acts as manager of any pharmacy or
11 who compounds or dispenses a prescription or furnishes dangerous drugs except as otherwise
12 provided in this chapter is guilty of a misdemeanor."

13 9. Section 4330 of the Code states:

14 "(a) Any person who has obtained a license to conduct a pharmacy, who fails to
15 place in charge of the pharmacy a pharmacist, or any person, who by himself or herself, or by any
16 other person, permits the compounding or dispensing of prescriptions, or the furnishing of
17 dangerous drugs, in his or her pharmacy, except by a pharmacist, or as otherwise provided in this
18 chapter, is guilty of a misdemeanor.

19 "(b) Any nonpharmacist owner who commits any act that would subvert or tend to
20 subvert the efforts of the pharmacist-in-charge to comply with the laws governing the operation
21 of the pharmacy is guilty of a misdemeanor."

22 10. California Code of Regulations, title 16, section 1714, states:

23

24 "(b) Each pharmacy licensed by the board shall maintain its facilities, space,
25 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and
26 distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the
27 safe practice of pharmacy.

28

1 (d) Each pharmacist while on duty shall be responsible for the security of the
2 prescription department, including provisions for effective control against theft or diversion of
3 dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the
4 pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a
5 pharmacist."

6 11. California Code of Regulations, title 16, section 1774, states:

7 (a) Unless otherwise directed by the Board, any pharmacy permit which is on
8 probation to the Board shall be subject to the following conditions:

9 (1) Obey all laws and regulations substantially related to the practice of
10 pharmacy;

11 (2) The permit, through its officer, partners or owners, shall report to the Board
12 or its designees quarterly, either in person or in writing as directed; if the final probation report is
13 not made as directed, the period of probation shall be extended until such time as the final report
14 is made;

15 (3) Cooperate with the Board in its inspectional program;

16 (4) Post or circulate notice of conditions of probation so that they are available to
17 all employees involved in pharmacy operations;

18 (5) Submit the operation of the pharmacy to peer review if deemed necessary by
19 the Board;

20 (6) Provide evidence that owners or officers are knowledgeable in the laws
21 pertaining to pharmacy if deemed necessary by the Board.

22 (b) When the circumstances of the case so require, the Board may impose
23 conditions of probation in addition to those enumerated herein by the terms of its decision in an
24 administrative case or by stipulation of the parties."

25 12. Business and Professions Code section 118, subdivision (b) states:

26 "The suspension, expiration, or forfeiture by operation of law of a license issued
27 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
28 by order of a court of law, or its surrender without the written consent of the board, shall not,

1 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
2 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
3 ground provided by law or to enter an order suspending or revoking the license or otherwise
4 taking disciplinary action against the licensee on any such ground.

5 13. Business and Professions Code section 125.3, subdivision (a), states, in
6 pertinent part:

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

12 **FIRST CAUSE FOR DISCIPLINE**

13 *(Access of Non Pharmacist to Pharmacy)*

14 14. Respondent Pharmacy is subject to disciplinary action under sections 4300
15 and 4301, subdivisions (o) and (p), of the Code on the grounds of unprofessional conduct for
16 violating California Code of Regulations, title 16, section 1714, subdivision (d), in that it
17 allowed a non-pharmacist to be in possession of the key to the prescription areas. The
18 circumstances are as follows:

19 a. On or about July 19, 2003, an inspector for the Board conducted a routine
20 probation monitoring inspection of Respondent Pharmacy. The inspector observed Respondent
21 Oganessian was in possession of the pharmacy key and had gained entrance to the prescription
22 area.

23 b. On or about July 21, 2003, an inspector for the Board made a visit to
24 Respondent Pharmacy and discovered that Respondent Oganessian was in possession of one of
25 the pharmacy keys.

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1 SECOND CAUSE FOR DISCIPLINE

2 *(Operating the Pharmacy Without a Pharmacist)*

3 15. Respondents Pharmacy and Oganesian are subject to disciplinary action
4 under sections 4300 and 4301, subdivisions (o) and (p) of the Code on the grounds of
5 unprofessional conduct for violating sections 4328, 4329 and 4330, subdivision (a) in that they
6 filled and dispensed prescriptions without a pharmacist on the premises. The circumstances are
7 as follows:

8 a. Respondent's pharmacist-in-charge resigned as of July 15, 2003 but
9 physically ceased working at Respondent's pharmacy as of July 1, 2003. A review of the daily
10 reports of Respondent Pharmacy by an inspector for the Board, revealed that from on or about
11 July 1, 2003 to on or about July 18, 2003, prescriptions were filled by someone other than a
12 pharmacist, as follows:

13

<u>DATE</u>	<u>REFILLS</u>	<u>NEW</u>
July 7, 2003	110	52
July 14, 2003	89	59
July 15, 2003	41	57
July 16, 2003	54	52
July 17, 2003	37	38
July 18, 2003	71	66

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19 A review of the new prescriptions and the computer generated patient receipts used as new orally
20 transmitted prescriptions between July 1, 2003, to on or about July 18, 2003, showed the
21 following:

22

<u>DATE</u>	<u>NEW PRESCRIPTIONS</u>
July 1, 2003	15
July 3, 2003	5
July 8, 2003	8
July 9, 2003	3
July 10, 2003	9
July 11, 2003	4
July 18, 2003	25

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1 A review of the refill log showed the following:

2	<u>DATE</u>	<u>REFILL</u>
3	July 8, 2003	58
4	July 9, 2003	64
5	July 10, 2003	58
6	July 11, 2003	56

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THIRD CAUSE FOR DISCIPLINE

(Attempt to Subvert Investigation)

16. Respondent Ogenesian is subject to disciplinary action under sections 4300 and 4301, subdivision (q), on the grounds of unprofessional conduct for violating section 4330, subdivision (b), in that he attempted to subvert a probation monitoring inspection conducted by the Board, as follows:

a. On or about July 21, 2003, the inspector for the Board called Respondent Pharmacy and asked to speak with the pharmacist-in-charge. He was told that the pharmacist-in-charge was in the restroom, and he was then placed on hold. The line was subsequently disconnected. The inspector was able to confirm that the pharmacy did not have a pharmacist-in-charge at the time of the telephone call.

b. On or about July 21, 2003, the inspector for the Board made a visit to Respondent Pharmacy and noticed that the pharmacy area was closed. The inspector instructed Respondent Ogenesian to call him immediately when their temporary pharmacist arrived so that he could conduct an inspection of the prescription area. Respondent Ogenesian failed to notify the inspector when the temporary pharmacist began work. On or about July 24, 2003, the inspector called Respondent Ogenesian to inquire if a pharmacist was working at the pharmacy. The inspector was told that the temporary pharmacist had begun work the day before, on July 23, 2004.

PETITION TO REVOKE PROBATION

1. Effective January 22, 2003, Respondent The Best Pharmacy and Medical Supply, Inc. Original Pharmacy Permit No. PHY 43638 was revoked. However, revocation was stayed and Respondent was placed on probation for three (3) years with terms and conditions

1 including, but not limited to the following:

2 Condition 4 of Probation:

3 A. Obey All Laws.

4 "Respondent Best Pharmacy shall obey all state and federal laws and regulations
5 substantially related to or governing the practice of pharmacy.

6 Respondent Best Pharmacy shall report any of the following occurrences to the
7 Board, in writing, within 72 hours of such occurrence;

8 An arrest or issuance of a criminal complaint for violation of any provision of the
9 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substance
10 laws.

11 A plea of guilty or nolo contendere in any state or federal criminal proceeding to
12 any criminal complaint, information or indictment.

13 A conviction of any crime.

14 Discipline, citation, or other administrative action filed by any state and federal
15 agency which involves Respondent's license or which is related to the practice of pharmacy or
16 the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device
17 or controlled substance."

18 Condition 12 of probation

19 B. Notice to Employees

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

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

1 probation."

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GROUND FOR REVOKING PROBATION

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1. Grounds exist for revoking probation and reimposing the order of revocation of Respondent The Best Pharmacy and Medical Supply, Inc.'s original pharmacy permit in that it failed to comply with the following terms of probation:

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a. Probation Term No. 1: Obey All Laws. Respondent failed to obey the laws governing the practice of pharmacy in that there was no pharmacist on the premises and the prescription was not secured.

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b. Probation Term No. 12: Notice to Employees. Respondent failed to inform all its employees the terms and conditions of its probation.

13

PRAYER

14

15

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:

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1. Revoking or suspending Original Pharmacy Permit No. PHY 43638, issued to The Best Pharmacy and Medical Supply d.b.a. The Best Pharmacy and Medical Supply Inc. and Vrej Oganesian.

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2. Revoking or suspending Pharmacy Technician Registration No. TCH 34670, issued to Vrej Oganesian.

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3. Ordering The Best Pharmacy and Medical Supply and Vrej Oganesian to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,

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1 pursuant to Business and Professions Code section 125.3; and

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

3 DATED: 3/23/05

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P. F. Harris

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