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

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| In the Matter of the Accusation and Petition to Revoke Probation Against:<br><br>THE BEST PHARMACY AND MEDICAL SUPPLY, INC.<br>401 S. Glenoaks Blvd., #102<br>Burbank, CA 91502<br>VREJ OGANESIAN, President<br><br>Pharmacy Permit No. PHY 43638<br><br>and<br><br>VREJ OGANESIAN<br>560 W. Dryden #2<br>Glendale, CA 91202<br><br>Pharmacy Technician Registration No. TCH 34670<br><br>Respondents. | Case No. 2760<br><br>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 Oganesian (Respondent Oganesian) (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 Oganesian 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 Oganesian. 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 Stated 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:

> [Condition] 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.
> . . .
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> [¶] . . . [¶]
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> [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.
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> 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.
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> [¶] . . . [¶]
>
> [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.
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> "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 Oganesian's Attempts to Subvert Investigation*[5]

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 Oganesian 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 Oganesian 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 Oganesian 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.

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[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 Oganesian was in possession of the pharmacy key. The inspector reminded Respondent Oganesian that, regardless of ownership, only a licensed pharmacist could possess a key to the prescription area. Respondent Oganesian 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 Oganesian untruthfully told the inspector that he was unable to contact Patel because Patel was in Las Vegas.[6] The inspector told Respondent Oganesian 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.

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[6] Patel testified credibly that he was not in Las Vegas the weekend of July 19, 2003. Respondent Oganesian'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 Oganesian 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 Oganesian 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 Oganesian 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 Oganesian 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 Oganesian 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 Oganesian. 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 Oganesian 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 Oganesian'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 Oganesian 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.

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[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 Oganesian 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 Oganesian 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 Oganesian 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 Oganesian to see all of the Prior Decision, and Respondent Oganesian 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 Oganesian's Testimony*

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

26b. Respondent Oganesian 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.

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[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 Oganesian 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 Oganesian 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 Oganesian'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 Oganesian'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.

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[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 Oganesian 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 Oganesian, President, is hereby revoked.

2. Pharmacy Technician Registration No. TCH 34670, issued to Vrej Oganesian, 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**
**STATE OF CALIFORNIA**

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| In the Matter of the Accusation Against:<br><br>THE BEST PHARMACY AND MEDICAL SUPPLY INC.<br>401 S Glenoaks Blvd #102<br>Burbank, CA 91502<br>Vrej Oganessian, President<br><br>Pharmacy Permit No. PHY 43638<br><br>snd<br><br>VREJ OGANESSIAN<br>560 W. Dryden #2<br>Glendale, CA 91202<br><br>Pharmacist Technician Registration No. TCH 34670<br><br>Respondent. | Case No. 2760<br><br>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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Attorneys for Complainant

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

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| In the Matter of the Accusation & Petition to Revoke Probation Against:<br><br>**THE BEST PHARMACY AND MEDICAL SUPPLY INC., doing business as THE BEST PHARMACY AND MEDICAL SUPPLY INC.**<br>401 S. Glenoaks Blvd., #102<br>Burbank, CA 91502<br>VREJ OGANESIAN, President<br><br>Pharmacy Permit No. No. PHY 43638<br><br>and<br><br>**VREJ OGANESIAN**<br>560 W Dryden #2<br>Glendale, CA 91202<br><br>Pharmacy Technician Registration No. TCH 34670<br><br>Respondents. | Case No. 2760<br><br>OAH No. L-2005060258<br><br>**FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION** |

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

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

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

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

## JURISDICTION

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

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

6. 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:

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the

/ / /

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

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

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

7. Section 4328 of the Code states:

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

8. Section 4329 of the Code states:

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

9. Section 4330 of the Code states:

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

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

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

. . . .

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

. . . .

"(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

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

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

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

**FIRST CAUSE FOR DISCIPLINE**

(*Access of Non Pharmacist to Pharmacy*)

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

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

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

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## SECOND CAUSE FOR DISCIPLINE

*(Operating the Pharmacy Without a Pharmacist)*

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

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

| DATE | REFILLS | NEW |
|---|---|---|
| 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 |

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

| DATE | NEW PRESCRIPTIONS |
|---|---|
| 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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A review of the refill log showed the following:

| DATE | REFILL |
|---|---|
| July 8, 2003 | 58 |
| July 9, 2003 | 64 |
| July 10, 2003 | 58 |
| July 11, 2003 | 56 |

## THIRD CAUSE FOR DISCIPLINE

*(Attempt to Subvert Investigation)*

16. Respondent Oganesian 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 Oganesian to call him immediately when their temporary pharmacist arrived so that he could conduct an inspection of the prescription area. Respondent Oganesian failed to notify the inspector when the temporary pharmacist began work. On or about July 24, 2003, the inspector called Respondent Oganesian 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's Permit No. PHY 43638 was revoked. However, revocation

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

*Condition 4 of Probation:*

A. Obey All Laws.

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

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

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

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

A conviction of any crime.

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

*Condition 8 of Probation:*

B. 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."

*Condition 12 of probation*

C. Notice to Employees

"Respondent shall, upon or before the effective date of this Decision, ensue 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."

## GROUNDS FOR REVOKING PROBATION

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

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

b. Probation Term No. 8: Reimbursement of Board Costs. Respondent Pharmacy 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 Decision adopting the probationary order.

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

## 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 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.

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

P. F. Harris

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

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

Attorneys for Complainant

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

| | |
|---|---|
| In the Matter of the Accusation & Petition to Revoke Probation Against:<br><br>**THE BEST PHARMACY AND MEDICAL SUPPLY INC., doing business as THE BEST PHARMACY AND MEDICAL SUPPLY INC.**<br>401 S. Glenoaks Blvd., #102<br>Burbank, CA 91502<br>VREJ OGANESIAN, President<br><br>Pharmacy Permit No. No. PHY 43638<br><br>and<br><br>**VREJ OGANESIAN**<br>560 W Dryden #2<br>Glendale, CA 91202<br><br>Pharmacy Technician Registration No. TCH 34670<br><br>Respondents. | Case No. 2760<br><br>**ACCUSATION AND PETITION TO REVOKE PROBATION** |

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.

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

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

established by the board.

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

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

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

**FIRST CAUSE FOR DISCIPLINE**

*(Access of Non Pharmacist to Pharmacy)*

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## SECOND CAUSE FOR DISCIPLINE

*(Operating the Pharmacy Without a Pharmacist)*

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

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## THIRD CAUSE FOR DISCIPLINE

*(Attempt to Subvert Investigation)*

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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

including, but not limited to the following:

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

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

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

A conviction of any crime.

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

*Condition 12 of probation*

B. Notice to Employees

"Respondent shall, upon or before the effective date of this Decision, ensue 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."

## GROUNDS FOR REVOKING PROBATION

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:

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.

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

## 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 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.

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,

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pursuant to Business and Professions Code section 125.3; and

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

DATED: 3/23/05

P. F. Harris

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