

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

In the Matter of the Accusation Against:

Case No. 3035

DAVID WILLIAM RASTOCKY
2230 Lynn Road
Thousand Oaks, CA 91360
Pharmacist License No. RPH 44112

and

DAVID W. RASTOCKY, Pharmacist-in-Charge
WILLIAM RASTOCKY, and
VICTORIA RASTOCKY,
DBA
LOMBARD PHARMACY
2230 Lynn Road
Thousand Oaks, CA 91360
Pharmacy Permit No. PHY 43635

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 8, 2009.

It is so ORDERED on April 8, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2554
Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3035

11 DAVID WILLIAM RASTOCKY
12 2230 Lynn Road
Thousand Oaks, CA 91360

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Origin Pharmacist License No. RPH 44112,
14 and

15 DAVID W. RASTOCKY, Pharmacist-In-Charge
16 WILLIAM RASTOCKY, and
17 VICTORIA RASTOCKY,
DBA
18 LOMBARD PHARMACY
2230 Lynn Road
19 Thousand Oaks, CA 91360

20 Original Pharmacy Permit No. 43635

21 Respondents.

22
23 In the interest of a prompt and speedy settlement of this matter, consistent with
24 the public interest and the responsibility of the Board of Pharmacy of the Department of
25 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
26 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
27 disposition of the Accusation.

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1 PARTIES

2 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
3 Pharmacy (Board). She brought this action solely in her official capacity and is represented in
4 this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Scott J.
5 Harris, Deputy Attorney General.

6 2. Respondents David William Rastocky (Respondent Rastocky) and David
7 W. Rastocky, William Rastocky and Victoria Rastocky, doing business as Lombard Pharmacy,
8 with Respondent Rastocky as Pharmacist-In-Charge (Respondent Lombard Pharmacy), are
9 represented in this proceeding by attorney Carmen A. Trutanich, whose address is 180 E. Ocean
10 Blvd., Ste. 200, Long Beach, California, 90802.

11 3. On or about March 6, 1991, the Board issued Original Pharmacist License
12 Number RPH 44112 to Respondent Rastocky. The Pharmacist License was in full force and
13 effect at all times relevant to the charges brought in Accusation No. 3035, and expired on March
14 21, 2007.

15 4. On or about August 12, 1998, the Board issued Pharmacy Permit Number
16 PHY 43635 to Respondent Lombard Pharmacy. The Pharmacy Permit was in full force and
17 effect at all times relevant to the charges brought in Accusation No. 3035, and expired on August
18 1, 2007.

19 JURISDICTION

20 5. Accusation No. 3035 was filed before the Board, and is currently pending
21 against Respondents. The Accusation and all other statutorily required documents were properly
22 served on Respondents on June 2, 2008. Respondents timely filed their Notice of Defense
23 contesting the Accusation. A copy of Accusation No. 3035 is attached as Exhibit A and
24 incorporated herein by reference.

25 ADVISEMENT AND WAIVERS

26 6. Respondents have carefully read, fully discussed with counsel, and
27 understand the charges and allegations in Accusation No. 3035. Respondents have also carefully

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1 read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and
2 Disciplinary Order.

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

10 8. Respondents voluntarily, knowingly, and intelligently waive and give up
11 each and every right set forth above.

12 CULPABILITY

13 9. Respondents admit the truth of each and every charge and allegation in
14 Accusation No. 3035 except for the charges and allegations contained in paragraphs 24 and 25 of
15 Accusation No. 3035. Further, Respondents understand and agree that if proven at hearing, the
16 charges and allegations contained in paragraphs 24 and 25 of Accusation No. 3035 would be
17 cause for discipline, and agree that the remainder of the charges in Accusation No. 3035 are
18 causes for discipline. Respondents waive their rights to contest the charges and allegations in
19 Accusation No. 3035.

20 10. Respondents agree that Pharmacist License Number RPH 44112 and
21 Original Pharmacy Permit Number PHY 43635 are subject to discipline and they agree to be
22 bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

23 CONTINGENCY

24 11. This stipulation shall be subject to approval by the Board of Pharmacy.
25 Respondents understand and agree that counsel for Complainant and the staff of the Board of
26 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
27 without notice to or participation by Respondents or their counsel. By signing the stipulation,
28 Respondents understand and agree that they may not withdraw from this agreement or seek to

1 admitted by Respondents when the Board determines whether to grant or deny their application
2 or petition.

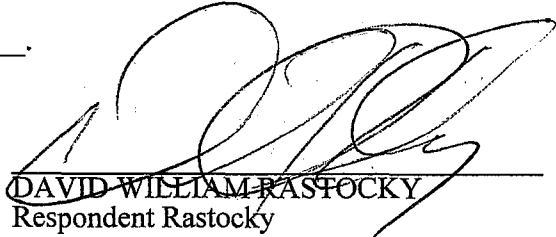
3 4. Respondents shall pay the Board the costs of investigation and
4 enforcement in the amount of \$12,961.75 prior to issuance of a new or reinstated license.

5 5. Respondents shall not apply for reinstatement of a license or
6 permit for three (3) years from the effective date of the Board's final Decision and Order.

7 ACCEPTANCE

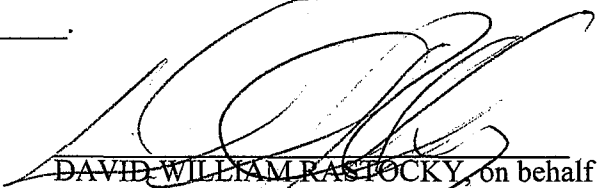
8 I have carefully read the above Stipulated Settlement and Disciplinary Order and
9 have fully discussed it with my attorney, Carmen A. Trutanich. I understand the stipulation and
10 the effect it will have on my Original Pharmacist License. I enter into this Stipulated Settlement
11 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
12 Decision and Order of the Board of Pharmacy.

13 DATED: 1/1/2009.

14 
15 ~~DAVID WILLIAM RASTOCKY~~
16 Respondent Rastocky

17
18 We have carefully read the above Stipulated Settlement and Disciplinary Order
19 and have fully discussed it with our attorney, Carmen A. Trutanich. We understand the
20 stipulation and the effect it will have on our Original Pharmacy Permit. We enter into this
21 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
22 to be bound by the Decision and Order of the Board of Pharmacy.

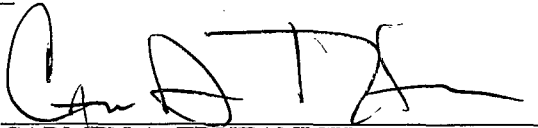
23 DATED: 1/1/2009.

24 
25 ~~DAVID WILLIAM RASTOCKY~~, on behalf of
26 DAVID W. RASTOCKY, WILLIAM RASTOCY, and
27 VICTORIA RASTOCKY, doing business as
28 LOMBARD PHARMACY
Respondent Lombard Pharmacy

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I have read and fully discussed with Respondents David William Rastocky, and David W. Rastocky, William Rastocky, and Victoria Rastocky, doing business as Lombard Pharmacy, with David William Rastocky as Pharmacist-In-Charge, terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2-1-09


CARMEN A. TRUTANICH
Attorney for Respondents

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 2/6/09

EDMUND G. BROWN JR., Attorney General
of the State of California

GLORIA A. BARRIOS
Supervising Deputy Attorney General



SCOTT J. HARRIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A
Accusation No. 3035

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 GLORIA A. BARRIOS
Supervising Deputy Attorney General

3 SCOTT J. HARRIS, State Bar No. 238437
Deputy Attorney General

4 300 So. Spring Street, Suite 1702
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13 DAVID WILLIAM RASTOCKY
14 2230 Lynn Road
15 Thousand Oaks, CA 91360

A C C U S A T I O N

16 Original Pharmacist License No. RPH 44112,

17 and

18 DAVID W. RASTOCKY, Pharmacist-In-Charge
19 WILLIAM RASTOCKY, and
20 VICTORIA RASTOCKY,
21 DBA
22 LOMBARD PHARMACY
23 2230 Lynn Road
24 Thousand Oaks, CA 91360

25 Original Pharmacy Permit No. 43635

26 Respondents.

27 Complainant alleges:

28 PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy (Board).

2. On or about March 6, 1991, the Board issued Original Pharmacist License Number RPH 44112 to David William Rastocky (Respondent Rastocky). The license expired on or about March 21, 2007.

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
6 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
7 meaning of this provision. The board may take action when the time for appeal has elapsed, or
8 the judgment of conviction has been affirmed on appeal or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order under Section
10 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
11 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
12 or indictment.

13

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

18 7. Section 490 of the Code states:

19 "A board may suspend or revoke a license on the ground that the licensee
20 has been convicted of a crime, if the crime is substantially related to the
21 qualifications, functions, or duties of the business or profession for which the
22 license was issued. A conviction within the meaning of this section means a plea
23 or verdict of guilty or a conviction following a plea of nolo contendere. Any
24 action which a board is permitted to take following the establishment of a
conviction may be taken when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal, or when an order granting probation is
made suspending the imposition of sentence, irrespective of a subsequent order
under the provisions of Section 1203.4 of the Penal Code."

25 8. Code section 4061 states:

26 "(a) No manufacturer's sales representative shall distribute any dangerous
27 drug or dangerous device as a complimentary sample without the written request
28 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
pursuant to Section 3640.7. However, a certified nurse-midwife who functions
pursuant to a standardized procedure or protocol described in Section 2746.51, a

1 nurse practitioner who functions pursuant to a standardized procedure described in
2 Section 2836.1, or protocol, a physician assistant who functions pursuant to a
3 protocol described in Section 3502.1, or a naturopathic doctor who functions
4 pursuant to a standardized procedure or protocol described in Section 3640.5, may
5 sign for the request and receipt of complimentary samples of a dangerous drug or
6 dangerous device that has been identified in the standardized procedure, protocol,
7 or practice agreement. Standardized procedures, protocols, and practice
8 agreements shall include specific approval by a physician. A review process,
9 consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the
10 complimentary samples requested and received by a nurse practitioner, certified
11 nurse-midwife, physician assistant, or naturopathic doctor, shall be defined within
12 the standardized procedure, protocol, or practice agreement.”

13
14 9. Code section 4126.5 states:

15 “(a) A pharmacy may furnish dangerous drugs only to the following:

16 (1) A wholesaler owned or under common control by the wholesaler from whom
17 the dangerous drug was acquired.

18 (2) The pharmaceutical manufacturer from whom the dangerous drug was
19 acquired.

20 (3) A licensed wholesaler acting as a reverse distributor.

21 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a
22 dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous
23 drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary
24 shortage.

25 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise
26 authorized by law.

27 (6) A health care provider that is not a pharmacy but that is authorized to purchase
28 dangerous drugs.

(7) To another pharmacy under common control.”

10. Code section 4022 states:

““Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

1 (b) Any device that bears the statement: "Caution: federal law restricts this device
2 to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to
3 be filled in with the designation of the practitioner licensed to use or order use of the device.

4 (c) Any other drug or device that by federal or state law can be lawfully dispensed
5 only on prescription or furnished pursuant to Section 4006."

6 11. California Code of Regulations, title 16, section 1770, states:

7 "For the purpose of denial, suspension, or revocation of a personal or facility
8 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
9 Code, a crime or act shall be considered substantially related to the qualifications, functions or
10 duties of a licensee or registrant if to a substantial degree it evidences present or potential
11 unfitness of a licensee or registrant to perform the functions authorized by his license or
12 registration in a manner consistent with the public health, safety, or welfare."

13 12. Section 118, subdivision (b), of the Code provides that the
14 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
15 action during the period within which the license may be renewed, restored, reissued or
16 reinstated.

17 13. Section 125.3 of the Code states, in pertinent part, that the Board may
18 request the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 DANGEROUS DRUGS

22 14. "Zoloff" is the brand name for Sertraline, and is categorized as a
23 "dangerous drug" pursuant to Business and Professions Code section 4022.

24 15. "Dopamine" is categorized as a "dangerous drug" pursuant to Business
25 and Professions Code section 4022.

26 16. "Erythromycin" is categorized as a "dangerous drug" pursuant to Business
27 and Professions Code section 4022.

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1 found in a dumpster located in Van Nuys, California. The prescription drug samples discovered
2 included Zoloft, Dopamine, Erythromycin, Aminphylline, Wellbutrin, Tiazac, Covera HS, and
3 Luvox. It was determined that the prescription drug samples belonged to Respondents.

4 a. An investigation by the Los Angeles Police Department and the Ventura
5 County Environmental Health Division revealed that Respondents stored outdated prescription
6 drug samples at Respondent Rastocky's home, which originally belonged to the medical offices
7 located in the pharmacy's commercial building. Respondent Rastocky's mother and partner in
8 Respondent Lombard Pharmacy, Victoria Rastocky, admitted disposing of the prescription drug
9 samples.

10 b. Following the investigation, Respondents were instructed to retain custody
11 of the prescription drug samples and properly return them to a reverse distributor for disposal.
12 On or about July 26, 2006, Respondents sent a certificate of destruction from Capital Returns,
13 Inc.² to the Ventura County Environmental Health Division.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Illegal Disposal of Pharmaceuticals)

16 25. Respondents Rastocky and Lombard Pharmacy are subject to disciplinary
17 action under sections 4300, 4301, subdivisions (j) and (o), and 4026.5, on the grounds of
18 unprofessional conduct, in that Respondents illegally disposed of dangerous drugs, in the form
19 pharmaceuticals drug samples and expired drugs, in a dumpster, as more fully discussed in
20 paragraph 24, above.

21 PRAYER

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

24 1. Revoking or suspending Original Pharmacist License Number RPH
25 44112, issued to David William Rastocky;

26
27
28 2. Capital Returns Inc. is a licensed reverse distributor in the State of California, Non-
Resident Wholesaler License OSD 3432.

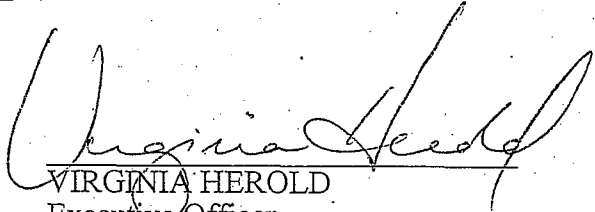
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2. Revoking or suspending Original Pharmacy Permit Number 43635, issued to William Rastocky, Victoria Rastocky, and David W. Rastocky, doing business as Lombard Pharmacy;

3. Ordering David William Rastocky and Lombard Pharmacy 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;

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

DATED: 5/12/08



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

LA2006601219

Rastocky.Accusation1.wpd

EXHIBIT 10