

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

In the Matter of the Accusation Against:

**STEVEN'S PHARMACY**  
1525 Mesa Verde Drive East  
Costa Mesa, CA 92626

Permit No. PHY 37415

And

**CHARLES TERRANCE BONNER, RPH**  
1525 Mesa Verde Drive East  
Costa Mesa, CA 92626

Pharmacist License No. RPH 39398

Respondent.

Case No. 3279

OAH No. 2009090744

**DECISION**

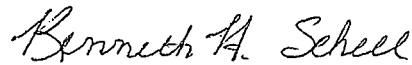
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on June 23, 2010.

It is so ORDERED May 24, 2010.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
KENNETH H. SCHELL  
Board President

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Pharmacist License No. RPH 39398

Respondents.

Case No. 3279

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**PROPOSED DECISION**

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on February 9, 2010.

Marichelle S. Tahimic, Deputy Attorney General, California Department of Justice, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Herbert Weinberg, McGuire Woods, LLC, attorneys at law, represented respondents Steven's Pharmacy and Charles Terrance Bonner who was present at the hearing.

The record remained open for submission of argument regarding costs. Respondent failed to submit any written opposition to complainant's request for costs. The record was closed and the matter was submitted on March 1, 2010.

**FACTUAL FINDINGS**

1. Accusation number 3279, dated August 3, 2009, was filed by complainant Virginia Herold (complainant), in her official capacity as Executive Officer, Board of

Pharmacy, Department of Consumer Affairs, State of California against respondent Steven's Pharmacy (Steven's Pharmacy or the pharmacy) and respondent Charles Terrance Bonner (respondent). Respondents filed a special notice of defense dated August 7, 2009 requesting a hearing in this matter. The proceeding herein followed.

2. On September 12, 1991, the Board of Pharmacy for the State of California (the Board) issued pharmacy permit number PHY 37415 to Harbor Drug Co., Inc. doing business as Steven's Pharmacy. On October 26, 1986, the Board issued pharmacist license number RPH 39398 to respondent. Respondent has been President and Pharmacist-in-Charge of Steven's Pharmacy since September 12, 1991. The Pharmacist-in-Charge is the pharmacist that is jointly responsible along with the owner and/or officer of the pharmacy for maintaining the records and inventory at the pharmacy under Business and Professions Code section 4081, and is also the pharmacist that is responsible for a pharmacy's compliance with all state and federal laws pertaining to the practice of pharmacy under Business and Professions Code section 4113. Steven's Pharmacy's permit will expire on September 1, 2010, unless renewed. Respondent's pharmacy license will expire on September 30, 2010, unless renewed.

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

A. Hydrocodone Bitartate/Acetaminophen which is also known by the brand names Vicodin, Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia. It is a narcotic Schedule III controlled substance and is designated as a dangerous drug used for pain relief.

B. Oxycodone which is also known by the brand name OxyContin. It is a Schedule II controlled substance and is designated as a dangerous drug.

4. On August 29, 2007, while respondent was on vacation and away from the pharmacy, he received a phone call from the relief pharmacist-in-charge that was on duty at Steven's Pharmacy while respondent was gone. The pharmacist called respondent to tell him that she suspected an attempted theft of medication. Six bottles of hydrocodone were found wrapped in a plastic baggy in the trash bin inside the pharmacy. A trash bag was also found near the back door of the store waiting to be taken out to the dumpster and inside the trash bag staff found full bottles of medication. The relief pharmacist-in-charge suspected that an employee of the pharmacy was stealing drugs from the pharmacy.

5. After respondent returned home, he immediately reviewed the surveillance videotapes from his store surveillance system in order to see if he could determine what might be going on at the store. He also reviewed his inventory and determined that someone had placed two orders of hydrocodone. Each of these orders was for 10 bottles of 500 count hydrocodone pills. These orders had been delivered on Saturday August 25, 2007. There had not been sufficient storage space for these bottles in the regular locked drug storage container so they were placed on the overflow shelf for return to the vendor the following Monday,

August 27, 2007. The overflow shelf is an unlocked open shelf that should never have been used for dangerous drugs and controlled substances.

6. The surveillance videotapes from August 27, 2007 showed a pharmacy technician, JG, taking bottles of hydrocodone from the overflow shelf and putting them inside his lab coat pockets in the morning right after the pharmacy opened. Then JG walked back into the compounding area of the pharmacy that was not in sight of the video surveillance. Several minutes later, JG made three more trips to the overflow shelf and then to the compounding area, and then JG is seen taking out the trash to the outside dumpster. The surveillance videotapes from August 29, 2007 again showed JG filling an empty trash bin with bottles of hydrocodone and then taking the trash to the outside dumpster.

7. On August 30, 2007, respondent confronted JG with his suspicions and without admitting the theft, JG offered to pay respondent for the store's loss. Respondent declined that offer and immediately terminated JG from his employment. Thereafter, on September 7, 2007, respondent reported what he had learned to the City of Costa Mesa Police Department (police). The police came to the pharmacy and met with respondent. Respondent told the police what he had learned and showed the police officer the surveillance tape. The police officer referred the matter to a detective for investigation of a possible commercial burglary. On September 24, 2007, respondent reported the theft of dangerous drugs and controlled substances to the Board. Subsequently, JG admitted that he had been diverting drugs from Steven's Pharmacy and he was prosecuted and convicted in United States District Court for knowingly and intentionally possessing with the intent to distribute more than 1,000 tablets of oxycodone, a schedule II narcotic drug controlled substance.

8. The Board sent an inspector to Steven's Pharmacy to conduct an audit of the pharmacy's drug inventory and records of compliance for the period of June 11, 2003 through September 24, 2007. The inspector conducted his audit of the 52-month period of time and found shortages of approximately 379,469 dosage units of hydrocodone/acetaminophen and 21,552 dosage units of oxycodone for that time period. The inspector also found overages of approximately 596 dosage units of hydrocodone/acetaminophen, 245 dosage units of Vicodin and 1,043 dosage units of oxycodone. Respondent could not account for the shortages or the overages found by the inspector in the audit. During the investigation and audit process, respondent realized that JG had been ordering large amounts of these dangerous drugs and controlled substances for delivery on Saturdays, a time when respondent was generally not present at the pharmacy, making it easier for JG to then put the excess amounts of the drugs on the unlocked overflow shelf supposedly for return on Monday. But then JG would go through the process of putting the drugs in the garbage, and taking out the garbage so he could steal the drugs instead of returning the overflow drugs to the manufacturer. The evidence all clearly indicates that the shortages found at Steven's Pharmacy were due to JG's theft and diversion of those drugs. However, as the pharmacist-in-charge listed on Steven's Pharmacy license, respondent was ultimately responsible for maintaining adequate security whether he was on duty or not, and he failed to provide and maintain sufficient security in the prescription department to ensure against the theft of controlled substance and dangerous drugs at Steven's Pharmacy.

9. Respondent has now taken all possible steps to correct any security lapses at Steven's Pharmacy. First and foremost, respondent has eliminated the use of the overflow shelf for any controlled substances. Prior to this event, staff was supposed to put any overflow of schedule II or III drugs in the locked drug locker, but he learned as part of this investigation that often they would simply be put on the unlocked overflow shelf. Now, he avoids this problem with overflow drugs through tighter control of his inventory. He does not permit the over-ordering of controlled substances by anyone on his staff and if, by some chance, there are overages of any controlled substance, it is put only in the locked drug locker. Prior to this event, respondent did not regularly review the invoices for drugs ordered and delivered, because he knew they were always reviewed by whatever pharmacist was on duty at the time of delivery. Now, he makes sure he reviews all invoices himself so that he will be alerted if there are orders made for unusually large amounts of drugs. All bottles of controlled substances now have a sticker affixed that is updated to indicate the quantity of medication left in the bottle and he keeps a concurrently running inventory on all such drugs so he knows what they have in the store at all times. He has alerted all staff working at the pharmacy to be hyper-sensitive to the possibility of internal theft of drugs. Steven's Pharmacy still has door locks and a gate on the back door to prevent break-ins. It is also equipped with an alarm system and motion detectors along with security cameras. Respondent asked his landlord to increase security around the outside of the building, and the landlord has increased the outside lighting and the nighttime security patrol, both at respondent's request. Also, respondent had the ceiling of Steven's Pharmacy reinforced to help prevent burglaries of the pharmacy.

10. Respondent has operated Steven's Pharmacy in the same location for 22 years. He was born in South Africa and immigrated to this country in 1986. He is married with four children. Over the years, respondent has built a loyal following of customers and has established himself as a caring individual who tries to provide excellent service and has become a community leader. Respondent provided many reference letters from members of the general community as well as the pharmacy community vouching for his professionalism and good moral character. Respondent is also an active member of his synagogue, serving as a board member and always offering to help others, both financially and with emotional support, when needed. Respondent is clearly a valued and committed member of his local community who does not hesitate to reach out to help others.

11. Respondent testified at the hearing and impressed the administrative court as an honest and dedicated pharmacist who sincerely wants to ensure that something like this could never again happen at his pharmacy. Respondent properly reported the theft to the Board once he discovered it, and then fully cooperated with the Board's investigation and audit. The theft of drugs from the pharmacy was a result of respondent's negligent operations at the pharmacy and the conduct of JG, but respondent certainly never benefited financially from JG's actions. Respondent genuinely regrets the practices in his pharmacy that he now realizes may have lead JG to be able to steal such large amounts of dangerous drugs. He appears to understand the gravity of this situation and is deeply regretful that this activity took place right under his nose. Respondent freely trusted his employees far too much and knows he must now keep a much tighter handle on the day-to-day operations at the pharmacy. He has admitted his prior mistakes and has learned a difficult lesson. Respondent is dedicated to never again letting his guard down as he did before, and he has made real and substantial changes in the operational and

security practices at his pharmacy. It would not be against the public interest to allow respondent to continue to work as a pharmacist subject to strict terms and conditions of probation.

12. Complainant seeks to recover \$11,716.25 in costs incurred for the investigation and prosecution of this case. Respondent and Steven's Pharmacy was given the opportunity to submit written opposition to complainant's request for costs, but they did not submit any opposition. \$4,258.50 of the total amount of requested costs was incurred for the performance of investigative tasks in this case. The Board's inspector spent 41.75 hours performing the audit and additional investigative tasks in this matter. \$7,457.75 of the total amount of costs was incurred for the performance of tasks by the Attorney General's Office. The Attorney General's Office spent time performing the necessary tasks preparing this case for prosecution, including: pleading preparation, client communication, legal research, witness preparation, evidentiary preparation, communication with opposing party, preparing discovery, settlement negotiations, and overall trial preparation. The total amount of \$11,716.25 in costs is reasonable in light of the obvious level of excellent preparation performed by hearing counsel as well as the nature and complexity of this matter.

#### LEGAL CONCLUSIONS

1. Cause exists to discipline respondent Steven's Pharmacy's license as a licensed pharmacy pursuant to Business and Professions Code sections 4301, subdivisions (o) and Title 16, California Code of Regulations, section 1714, subdivision (b) in that respondent failed to maintain adequate security of the prescription department at the pharmacy which enabled a pharmacy technician to divert drugs from the pharmacy, as set forth in Findings 2-11.
2. Cause exists to discipline respondent Steven's Pharmacy's license as a licensed pharmacy pursuant to Business and Professions Code sections 4301, subdivisions (j) and (o) and 4081, subdivision (a) in that respondent failed to adequately maintain a current inventory of all controlled substances and/or dangerous drugs as defined by Title 16, California Code of Regulations, section 1718 and respondent could not account for shortages and overages found in the Board's audit, as set forth in Findings 2-11.
3. Cause exists to discipline respondent Bonner's license as a pharmacist under Business and Professions Code section 4301, subdivision (o) and Title 16, California Code of Regulations, section 1714, subdivision (d) in that respondent failed to maintain adequate security of the prescription department at the pharmacy which enabled a pharmacy technician to divert drugs from the pharmacy, as set forth in Findings 2-11.
4. Cause exists to discipline respondent Bonner's license as a pharmacist pursuant to Business and Professions Code sections 4301, subdivisions (j) and (o) and 4113, subdivision (b) in that respondent failed to adequately maintain a current inventory of all controlled substances and/or dangerous drugs as defined by Title 16, California Code of Regulations, section 1718 and respondent could not account for shortages and overages found in the Board's audit, as set forth in Findings 2-11.

5. There was overwhelmingly convincing evidence presented to establish extenuation, mitigation and rehabilitation by respondent and Steven's Pharmacy such that both respondents should continue to be licensed by the Board, as set forth in Findings 9-11.

6. Cause exists to award costs to complainant in the amount of \$11,716.25 pursuant to Business and Professions Code section 125.3 in that this is a reasonable amount of costs that complainant incurred to investigate and prosecute this case, as set forth in Finding 12.

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

### ORDER

1. License number RPH 39398, issued to respondent Charles Terrance Bonner (respondent) is hereby revoked; however, the revocation is stayed and respondent Charles Terrance Bonner is placed on probation for three years upon the following terms and conditions:

#### **A. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

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

1. An arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
2. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
3. a conviction of any crime;
4. discipline, citation, or other administrative action filed by any state and federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

**B. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any periods of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

**C. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

**D. Cooperate with Board Staff**

Respondent shall cooperate with the board's inspectional program and in the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

**E. Continuing Education**

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

**F. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3279 and the terms, conditions and restrictions imposed on respondent by the decision as follows:

Within thirty (30) days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individuals(s) has/have read the decision in case number 3279, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every entity



licensed by the board of the terms and conditions of the decision in case number 3279 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 3279 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor, or volunteer.

**G. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant**

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity other than Steven's Pharmacy licensed by the board nor serve as a consultant, unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

However, respondent shall be permitted to continue to serve in the capacity of pharmacist-in-charge at Steven's Pharmacy as licensed by the board, but only to the extent that he has held that position in the past and as of the effective date of this decision and in compliance with all other terms and conditions of probation set forth herein.

**H. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$11,716.25. Respondent shall make payments as directed by the board or its designee. Failure to pay costs as directed shall be considered a violation of probation.

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

#### **I. Probation Monitoring Costs**

Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs shall be considered a violation of probation.

#### **J. Status of License**

Respondent shall, at all times while on probation, maintain an active current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

#### **K. License Surrender While on Probation**

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his or her pocket license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including outstanding costs.

#### **L. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the board in writing within ten (10) days of a change in name, mailing address or phone number. Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

### **M. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of forty (40) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

### **N. Violation of Probation**

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

### **O. Completion of Probation**

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

**P. Remedial Education**

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

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

**Q. No Ownership of Licensed Premises**

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

2. License number PHY 37415 issued to Steven's Pharmacy is hereby revoked; however, the revocation is stayed and Steven's Pharmacy is placed on probation for three years upon the following terms and conditions:

**A. Obey All Laws**

Respondent owner shall obey all state and federal laws and regulations.

Respondent owner shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

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

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

3. a conviction of any crime;

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

Failure to timely report any such occurrence shall be considered a violation of probation.

**B. Report to the Board**

Respondent owner shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any periods of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

**C. Interview with the Board**

Upon receipt of reasonable prior notice, respondent owner shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

**D. Cooperate with Board Staff**

Respondent owner shall cooperate with the board's inspectional program and in the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

**E. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent owner shall pay to the board its costs of investigation and prosecution in the amount of \$11,716.25. Respondent owner shall make payments as directed by the board or its designee. Failure to pay costs as directed shall be considered a violation of probation.

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

#### **F. Probation Monitoring Costs**

Respondent owner shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs shall be considered a violation of probation.

#### **G. Status of License**

Respondent owner shall, at all times while on probation, maintain an active current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

#### **H. License Surrender While on Probation**

Following the effective date of this decision, should respondent owner discontinue business, respondent owner may tender the premises license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and renewal license to the board within 10 days of notification by the board that the surrender is accepted. Respondent owner shall further submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. Respondent owner shall also, by the effective date of this decision, arrange for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five days of its provision to the pharmacy's ongoing patients, respondent owner shall provide a copy of the written notice to the board. For the purposes of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60) days.

Respondent owner may not apply for any new licensure from the board for three (3) years from the effective date of the surrender. Respondent owner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

Respondent owner further stipulates that he or she shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

**I. Notice to Employees**

Respondent owner 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 owner shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent owner shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the board shall be considered a violation of probation.

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

**J. Owners and officers: Knowledge of the law**

Respondent shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent’s stock, and any officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

**K. Posted Notice of Probation**

Respondent owner shall prominently post a probation notice provided by the board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation.

Respondent owner shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

Failure to post such notice shall be considered a violation of probation.

**L. Violation of Probation**

If respondent owner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be

extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent owner violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

**M. Completion of Probation**

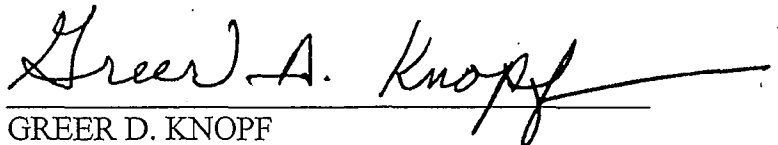
Upon written notice by the board or its designee indicating successful completion of probation, respondent license will be fully restored.

**O. Report of Controlled Substances**

Respondent owner shall submit quarterly reports to the board detailing the total acquisition and disposition of such controlled substances as the board may direct. Respondent owner shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondent owner shall report on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the board no later than ten (10) days following the end of the reporting period. Failure to timely prepare or submit such reports shall be considered a violation of probation.

3. Respondents Charles Terrance Bonner and Steven's Pharmacy shall pay complainant at total of \$11,716.25 in costs for investigation and prosecution of this case, as directed by the Board or its designee.

DATED: 3/29/2010



GREER D. KNOPF  
Administrative Law Judge  
Office of Administrative Hearings



**Exhibit A**  
**Accusation No. 3279**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 MARICHELE S. TAHIMIC  
Deputy Attorney General  
4 State Bar No. 147392  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-3154  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3279

12  
13 **STEVEN'S PHARMACY**  
1525 Mesa Verde Drive East  
14 Costa Mesa, CA 92626

**ACCUSATION**

15 Permit No. PHY 37415,

16 and

17 **CHARLES TERRANCE BONNER, RPH**  
1525 Mesa Verde Drive East  
18 Costa Mesa, CA 92626

19  
20 Pharmacist License No. RPH 39398

21 Respondents.

22  
23 Complainant alleges:

24 **PARTIES**

- 25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
27 2. On or about September 12, 1991, the Board of Pharmacy issued pharmacy permit  
28 number PHY 37415 to Harbor Drug Co., Inc. dba Steven's Pharmacy. (Respondent). The

1 pharmacy permit was in full force and effect at all times relevant to the charges brought herein  
2 and will expire on September 1, 2009 unless renewed.

3 3. On or about October 26, 1986, the Board of Pharmacy issued pharmacist license  
4 number RPH 39398 to Charles Terrance Bonner (Respondent Bonner). Charles T. Bonner has  
5 been the President and Pharmacist-in-Charge of Steven's Pharmacy since September 12, 1991.  
6 The pharmacist license was in full force and effect at all times relevant to the charges brought  
7 herein and will expire on September 30, 2010 unless renewed.

### 8 JURISDICTION

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

12 5. Section 4300 of the Code states:

13 "(a) Every license issued may be suspended or revoked.

14 "(b) The board shall discipline the holder of any license issued by the board, whose default  
15 has been entered or whose case has been heard by the board and found guilty, by any of the  
16 following methods:

17 "(1) Suspending judgment.

18 "(2) Placing him or her upon probation.

19 "(3) Suspending his or her right to practice for a period not exceeding one year.

20 "(4) Revoking his or her license.

21 "(5) Taking any other action in relation to disciplining him or her as the board in its  
22 discretion may deem proper.

23 "..."

24 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
25 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
26 shall have all the powers granted therein. The action shall be final, except that the propriety of  
27 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
28 Civil Procedure."



1 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and  
2 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

3 "(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal  
4 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-  
5 charge, for maintaining the records and inventory described in this section.

6 "(c) The pharmacist-in-charge or representative-in-charge shall not be criminally  
7 responsible for acts of the owner, officer, partner, or employee that violate this section and of  
8 which the pharmacist-in-charge or representative-in-charge had no knowledge, or in which he or  
9 she did not knowingly participate."

10 10. Section 4113 of the Code states in part:

11 "...

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

14 "...."

15 11. Title 16, California Code of Regulations, section 1714 provides:

16 "...

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

21 "...

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

26 "...."

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12. Title 16, California Code of Regulations, section 1718 provides:  
"Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332."

13. Code section 4306.6 provides:  
"If the Board disciplines a pharmacist-in-charge for the violation of a state or federal law or regulation committed by another person and the pharmacist-in-charge reported to the board that the violation or suspected violation, the board shall use the report as a mitigating factor if all of the following conditions are met:

"(a) The pharmacist-in-charge did not engage, either directly or indirectly, in any conduct that violated any state or federal law or regulation pertaining to the practice of pharmacy.

"(b) The pharmacist-in-charge did not permit, encourage, approve of, either tacitly or implicitly or through willful ignorance, any conduct committed by another person that violated state or federal law or regulation pertaining to the practice of pharmacy.

"(c) The pharmacist-in-charge reported the violation, or suspected violation, of any state or federal law or regulation pertaining to the practice of pharmacy to the board as soon as reasonably possible following the discovery of the violation.

"(d) The pharmacist-in-charge took all actions reasonably necessary to stop and remedy the violation, or suspected violation, of any state or federal law or regulation pertaining to the practice of pharmacy as soon as reasonably possible following the discovery of the violation."

COST RECOVERY

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

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1 DRUGS

2 15. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,  
3 Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic  
4 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),  
5 and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone  
6 is used as a narcotic analgesic in the relief of pain.

7 16. Oxycodone, also sold under the brand name OxyContin, is a Schedule II controlled  
8 substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is a  
9 dangerous drug pursuant to Business and Professions Code section 4022.

10 FACTS

11 17. On or about August 29, 2007, Respondent Bonner, received a telephone call from his  
12 relief pharmacist-in-charge while he was out of town on vacation. The relief pharmacist-in-  
13 charge reported an attempted theft and stated she found six bottles of hydrocodone wrapped  
14 inside a plastic baggy in the trash bin inside the store. Pharmacy staff was looking for a broken  
15 bottle of a drug for return when an employee, J.B., found a trash bag near the back door waiting  
16 to be taken to the dumpster. J.B. found empty bottles in the trash bag as well as full bottles. The  
17 relief pharmacist-in-charge advised Respondent Bonner that she suspected an employee of  
18 stealing from the pharmacy.

19 18. When Respondent Bonner returned from vacation, he reviewed surveillance  
20 videotapes and inventory. Respondent Bonner learned that someone had made two orders of  
21 hydrocodone. Each order consisted of 10 bottles of 500-count pills. These orders were delivered  
22 on Saturday, August 25, 2007. Because of the surplus of bottles, these two orders could not be  
23 placed in a locked container and were placed on an overflow shelf for return to the vendor on  
24 Monday, August 27, 2007.

25 19. The videotape of August 27th showed a pharmacy technician, JG, taking bottles of  
26 hydrocodone from the overflow shelf and placing them inside his lab coat pockets shortly after  
27 the pharmacy opened. JG walked back to the compounding area, which was not covered by the  
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1 surveillance video, and several minutes later the videotape showed him taking out the trash after  
2 three separate trips from the overflow shelves to the compounding area.

3 20. The surveillance videotape of August 29, 2007, showed JG filling an empty bin with  
4 bottles of hydrocodone, and then taking a trash bag outside.

5 21. Respondent Bonner confronted JG after another employee stated JG admitted to  
6 taking hydrocodone from the pharmacy. JG did not admit taking the hydrocodone, but offered to  
7 pay Respondent Bonner \$5,000 for the loss.

8 22. JG later admitted to a DEA Special Agent that he had been diverting drugs from  
9 Respondent Steven's Pharmacy for 1.5 years. JG stated the pharmacist at Steven's always left the  
10 keys out for the controlled substances and that everyone in the pharmacy had access to them. JG  
11 admitted that he would take bottles off the "overage" shelf and put them in the garbage, and then  
12 take the garbage out when no one was looking.

13 23. After an audit of the pharmacy's drug inventory and records of compliance by the  
14 Board's inspector for the period June 11, 2003 through September 24, 2007, Respondents could  
15 not account for shortages of about 379,469 dosage units of hydrocodone/acetaminophen (multiple  
16 strengths) and 21,552 dosage units of oxycodone (multiple strengths). Respondent also could  
17 not account for overages of about 596 dosage units of hydrocodone/acetaminophen 5 mg/325mg,  
18 245 dosage units of Vicodin and 1043 dosage units of oxycodone 10 mg.

19 24. On September 24, 2007, Respondent Bonner reported the attempted theft of  
20 hydrocodone/acetaminophen by technician JG to the Board of Pharmacy.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unprofessional conduct Against Respondent Steven's Pharmacy for**  
23 **Violation of Laws Concerning Dangerous Drugs)**

24 25. Respondent Steven's Pharmacy is subject to disciplinary action under Code section  
25 4301(o) for violating title 16, California Code of Regulations, section 1.714(b) by failing to  
26 maintain security of the prescription department in that on August 27 and 29, 2009 pharmacy  
27 technician JG diverted hydrocodone from the pharmacy's unlocked "overage" shelf and admitted  
28



1 to diverting drugs from the pharmacy for 1.5 years as set forth more fully in paragraphs 17-24  
2 above.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional conduct Against Respondent Steven's Pharmacy  
5 Failure to Maintain Current Inventory)**

6 26. Respondent Steven's Pharmacy is subject to disciplinary action under Code sections  
7 4301(j) and (o) for violating Code section 4081(a) by failing to maintain a current inventory of all  
8 controlled substances and/or dangerous drugs as defined by title 16, California Code of  
9 Regulations, section 1718 in that an audit of the pharmacy's drug inventory and records of  
10 compliance by the Board's inspector for the period June 11, 2003 through September 24, 2007,  
11 revealed that Respondent Steven's Pharmacy could not account for shortages of about 379,469  
12 dosage units of hydrocodone/acetaminophen (multiple strengths) and 21,552 dosage units of  
13 oxycodone (multiple strengths). Respondent also could not account for overages of about 596  
14 dosage units of hydrocodone/ acetaminophen 5 mg/325mg, 245 dosage units of Vicodin and 1043  
15 dosage units of oxycodone 10 mg.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct Against Respondent Charles Bonner for  
18 Violation of Laws Concerning Dangerous Drugs)**

19 27. Respondent Bonner is subject to disciplinary action under Code sections 4301(o) for  
20 violating title 16, California Code of Regulations, section 1714(d) by failing to maintain security  
21 of the prescription department and provide effective controls to prevent theft or diversion of  
22 controlled substances and/or dangerous drugs in that on August 27 and 29, 2009 pharmacy  
23 technician JG diverted hydrocodone from the pharmacy's unlocked "overage" shelf and admitted  
24 to diverting drugs from the pharmacy for 1.5 years as set forth more fully in paragraphs 17-24  
25 above.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct Against Respondent Charles Bonner

3 Failure to Maintain Current Inventory)

4 28. Respondent Bonner is subject to disciplinary action under Code sections 4301(j) and  
5 (o) for violating Code section 4113(b) by failing to maintain a current inventory of all controlled  
6 substances and/or dangerous drugs as defined by title 16, California Code of Regulations, section  
7 1718 in that an audit of the pharmacy's drug inventory and records of compliance by the Board's  
8 inspector for the period June 11, 2003 through September 24, 2007, revealed that Respondent  
9 could not account for shortages of about 379,469 dosage units of hydrocodone/acetaminophen  
10 (multiple strengths) and 21,552 dosage units of oxycodone (multiple strengths). Respondent also  
11 could not account for overages of about 596 dosage units of hydrocodone/ acetaminophen 5  
12 mg/325mg, 245 dosage units of Vicodin and 1043 dosage units of oxycodone 10 mg.

13 MITIGATING FACTORS

14 29. Respondent Bonner reported the attempted theft of hydrocodone/acetaminophen by  
15 technician JG to the Board of Pharmacy on September 24, 2007.

16 PRAYER

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

- 19 1. Revoking or suspending Permit Number PHY 37415, issued to Steven's Pharmacy;  
20 2. Revoking or suspending Pharmacist License Number RPH 39398, issued to Charles  
21 Terrance Bonner;  
22 3. Ordering Steven's Pharmacy and Charles Terrance Bonner to pay the Board of  
23 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
24 Business and Professions Code section 125.3;

25 ///

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28 ///