

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

In the Matter of the Accusation Against:

**BACON EAST PHARMACY, INC.
d.b.a. BACON EAST PHARMACY
LISA HARB, PRESIDENT
2425 East Street, Suite 5
Concord, CA 95420**

Original Pharmacy Permit No. PHY 53596

**SEAN BRIAN WEEKES
149 El Ritero
Sonoma, CA 95476**

Pharmacist License No. RPH 70114

Respondents.

Case No. 5890

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER
FOR PUBLIC REPROVAL AS TO
RESPONDENT SEAN BRIAN
WEEKES**

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 at 5:00 p.m. on July 13, 2017.

It is so ORDERED on June 13, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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Attorney General of California
DIANN SOKOLOFF
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Attorneys for Complainant

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Original Pharmacy Permit No. PHY 53596

and
SEAN BRIAN WEEKES
149 El Ritero
Sonoma, CA 95476
Pharmacist License No. RPH 70114

Respondent.

Case No. 5890

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL AS TO RESPONDENT
SEAN BRIAN WEEKES**

[Bus. & Prof. Code § 495]

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by

1 Xavier Becerra, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy
2 Attorney General.

3 2. Respondent Sean Brian Weekes (Respondent) is represented in this proceeding by
4 attorneys Jonathan A. Klein and Anne F. Marchant, whose address is: Klein, Hockel, Iezza &
5 Patel, P.C., 455 Market Street, Suite 1480, San Francisco, CA 94105.

6 JURISDICTION

7 3. On or about October 18, 2013, the Board issued Pharmacist License No. RPH 70114
8 to Sean Brian Weekes (Respondent). The Pharmacist License was in full force and effect at all
9 times relevant to the charges brought in Accusation No. 5890 and will expire on July 31, 2017,
10 unless renewed.

11 4. Accusation No. 5890 was filed before the Board of Pharmacy (Board), Department of
12 Consumer Affairs and is currently pending against Respondent. The Accusation and all other
13 statutorily required documents were properly served on Respondent on January 17, 2017.
14 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
15 No. 5890 is attached as exhibit A and incorporated by reference.

16 ADVISEMENT AND WAIVERS

17 5. Respondent has carefully read, fully discussed with counsel, and understands the
18 charges and allegations in Accusation No. 5890. Respondent has also carefully read, fully
19 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
20 Order for Public Repeval.

21 6. Respondent is fully aware of his legal rights in this matter, including the right to a
22 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
23 his own expense; the right to confront and cross-examine the witnesses against him; the right to
24 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
25 the attendance of witnesses and the production of documents; the right to reconsideration and
26 court review of an adverse decision; and all other rights accorded by the California
27 Administrative Procedure Act and other applicable laws.

28

1 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 CULPABILITY

4 8. Respondent understands and agrees that the charges and allegations in Accusation
5 No. 5890, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist
6 License.

7 9. For the purpose of resolving the Accusation without the expense and uncertainty of
8 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
9 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
10 those charges.

11 10. Respondent agrees that his Pharmacist License is subject to discipline and agrees to
12 be bound by the Disciplinary Order below.

13 RESERVATION

14 11. The admissions made by Respondent in this stipulation are only for the purposes of
15 this proceeding, or any other proceedings in which the Board or other professional licensing
16 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
19 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
20 communicate directly with the Board regarding this stipulation and settlement, without notice to
21 or participation by Respondent or his counsel. By signing the stipulation, Respondent
22 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
23 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
24 as its Decision and Order, the Stipulated Settlement and Disciplinary Order for Public Repeval
25 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
26 between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

28

1 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
2 copies of this Stipulated Settlement and Disciplinary Order for Public Repeval, including
3 Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and
4 effect as the originals.

5 14. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
6 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
7 of their agreement. It supersedes any and all prior or contemporaneous agreements,
8 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
9 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
10 supplemented, or otherwise changed except by a writing executed by an authorized representative
11 of each of the parties.

12 15. In consideration of the foregoing admissions and stipulations, the parties agree that
13 the Board may, without further notice or formal proceeding, issue and enter the following
14 Disciplinary Order:

15 **DISCIPLINARY ORDER**

16 IT IS HEREBY ORDERED that Pharmacist License No. RPH 70114 issued to Sean Brian
17 Weekes (Respondent) shall be publicly reprovved by the Board of Pharmacy under Business and
18 Professions Code section 495 in resolution of Accusation No. 5890, attached as exhibit A.
19 Respondent is required to report this reprovval as a disciplinary action.


20 **Cost Recovery.** Respondent shall pay \$3,500.00 to the Board for its costs associated with
21 the investigation and enforcement of this matter. Respondent shall be permitted to pay these
22 costs in a payment plan approved by the Board. If Respondent fails to pay the Board costs as
23 ordered, Respondent shall not be allowed to renew his Pharmacist License until Respondent pays
24 costs in full.

25 **ACCEPTANCE**

26 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
27 Repeval and have fully discussed it with my attorney Jonathan A. Klein or Anne F. Marchant. I
28 understand the stipulation and the effect it will have on my Pharmacist License. I enter into this


1 Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and
2 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

3
4 DATED: 4/27/17


SEAN BRIAN WEEKES
Respondent

6 I have read and fully discussed with Respondent Sean Brian Weekes the terms and
7 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
8 for Public Repeval. I approve its form and content.

10 DATED: 5/2/2017



JONATHAN A. KLEIN or
ANNE F. MARCHANT
Attorney for Respondent

13 ENDORSEMENT

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

17 Dated: May 3, 2017

18 Respectfully submitted,
19 XAVIER BECERRA
Attorney General of California
20 DIANN SOKOLOFF
Supervising Deputy Attorney General


21 ASPASIA A. PAPA VASSILIOU
22 Deputy Attorney General
23 *Attorneys for Complainant*

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Exhibit A

Accusation No. 5890

1 KATHLEEN A. KENEALY
Acting Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 ASPASIA A. PAPAVALASSILOU
Deputy Attorney General
4 State Bar No. 196360
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-0818
Facsimile: (510) 622-2270
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF PHARMACY
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5890

12 **BACON EAST PHARMACY, INC.**
13 **d.b.a. BACON EAST PHARMACY**
LISA HARB, PRESIDENT
14 **2425 East Street, Suite 5**
Concord, CA 95420

ACCUSATION

15 **Original Pharmacy Permit No. PHY 53596**

16 **and**

17 **SEAN BRIAN WEEKES**
18 **149 El Ritero**
Sonoma, CA 95476

19 **Pharmacist License No. RPH 70114**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
25 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. On or about April 16, 2015, the Board of Pharmacy issued Original Pharmacy Permit
27 Number PHY 53596 to Bacon East Pharmacy, Inc., doing business as Bacon East Pharmacy, with
28 Lisa Harb as President (Respondent Pharmacy). The permit was in full force and effect at all times

1 relevant to the charges brought in this Accusation and will expire on April 1, 2017, unless
2 renewed.

3 3. On or about October 18, 2013, the Board of Pharmacy issued Original Pharmacist
4 License Number RPH 70114 to Sean Brian Weekes (Respondent Pharmacist). The license was in
5 full force and effect at all times relevant to the charges brought in this Accusation and will expire
6 on July 31, 2017, unless renewed.

7 4. Respondent Pharmacist has been Pharmacist- in-Charge (PIC) of Respondent
8 Pharmacy since on or about April 16, 2015.

9 JURISDICTION

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

13 6. Section 4300 of the Code states, in pertinent part:

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

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

18 "(1) Suspending judgment.

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

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

21 "(4) Revoking his or her license.

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

24 . . .

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

1 Procedure."

2 7. Section 4300.1 of the Code states:

3 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
4 of law or by order or decision of the board or a court of law, the placement of a license on a
5 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
6 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
7 against, the licensee or to render a decision suspending or revoking the license."

8 8. Section 4301 of the Code states, in pertinent part:

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

12 ...

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

15 ...

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

20 STATUTORY AND REGULATORY PROVISIONS

21 9. Section 4169 of the Code states, in pertinent part:

22 "(a) A person or entity shall not do any of the following:

23 ...

24 (3) Purchase, trade, sell, or transfer dangerous drugs that the person knew or reasonably
25 should have known were misbranded, as defined in Section 111335 of the Health and Safety
26 Code."

27 10. California Code of Regulations, title 16, section 1714, subdivision (c), states:

28 "The pharmacy and fixtures and equipment shall be maintained in a clean and orderly

1 condition. The pharmacy shall be dry, well-ventilated, free from rodents and insects, and properly
2 lighted. The pharmacy shall be equipped with a sink with hot and cold running water for
3 pharmaceutical purposes.”

4 11. California Code of Regulations, title 16, section 1735.2, subdivision (g), states:

5 “All chemicals, bulk drug substances, drug products, and other components used for drug
6 compounding shall be stored and used according to compendial and other applicable requirements
7 to maintain their integrity, potency, quality, and labeled strength.”

8 COST RECOVERY

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

13 FACTUAL BACKGROUND

14 13. On or about January 15, 2016, the Department of Public Health notified the Board of
15 a physician’s complaint that a solution compounded at Respondent Pharmacy on or about
16 September 22, 2015, had bacterial contamination. The physician noticed many of her patients
17 developed bacterial infections after the phenylephrine 0.25 solution was sprayed into their nostrils,
18 so she cultured the solution and found it was contaminated with the bacteria *Serratia marcescens*.
19 As a result, on or about January 18, 2016, the Board conducted an inspection of Respondent
20 Pharmacy, and found the violations alleged in paragraphs 14-16, below,

21 FIRST CAUSE FOR DISCIPLINE
22 (Compounding Violations—Expired Ingredients)
(Cal. Code Regs., tit. 16, §1735.2, subd. (g))

23 14. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent
24 Pharmacist has subjected his pharmacist license to discipline, because Respondents committed
25 violations regarding compounding (Cal. Code Regs., tit. 16, §1735.2, subd. (g)). Respondents had
26 expired ethyl alcohol and two bottles of expired simple syrup on the compounding lab shelves.

1 SECOND CAUSE FOR DISCIPLINE
2 (Failure to Maintain Operational Standards)
3 (Cal. Code Regs., tit. 16, §1714, subd. (c))

4 15. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent
5 Pharmacist has subjected his pharmacist license to discipline, because Respondents failed to
6 maintain operational standards requiring pharmacy equipment and fixtures to be maintained in a
7 clean and orderly condition (Cal. Code Regs., tit. 16, §1714, subd. (c)). Respondents allowed
8 considerable dust and dirt to accumulate on top of the compound hood and weight scale, and they
9 also failed to clean up a white powder directly below and around the compound work space.

10 THIRD CAUSE FOR DISCIPLINE
11 (Misbranding)
12 (Bus. & Prof. Code, § 4169, subd. (a)(3))

13 16. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent
14 Pharmacist has subjected his pharmacist license to discipline, because Respondents misbranded
15 drugs by allowing incorrect information to appear on labels or packaging (Bus. & Prof. Code, §
16 4169, subd. (a)(3)). Respondents incorrectly documented the beyond-use date of phenylephrine
17 0.25 percent solution as 180 days from the compound date, when, the beyond-use date should
18 have been documented as 30 days from the compound date.

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
21 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

22 1. Revoking or suspending Original Pharmacy Permit Number PHY 53596, issued to
23 Bacon East Pharmacy, Inc., doing business as Bacon East Pharmacy;

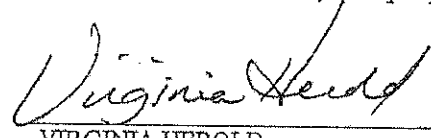
24 2. Revoking or suspending Pharmacist License Number RPH 70114, issued to Sean
25 Brian Weekes;

26 3. Ordering Bacon East Pharmacy and Sean Brian Weekes to pay the Board of Pharmacy
27 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3; and,

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

DATED: 1/11/17



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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