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6 Attorneys for Complainant

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

11 In the Matter of the First Amended Accusation  
Against:

12 R & W PHARMACY SERVICES, INC.  
13 165 B Pointdexter Avenue  
Moorpark, CA 93021  
14 PATTI JO REED, President/Treasurer/CEO  
ARTHUR HOWARD BERGER, Secretary

15 Original Pharmacy Permit No. PHY 43143

16 And

17 ARTHUR HOWARD BERGER  
18 30061 Torre Pines Place  
Agoura Hills, CA 91301  
19 Pharmacist-in-Charge

20 Original Pharmacist License No. RPH 30997

21 Respondent.

Case No. 2279

OAH No. L-2003110259

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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, Complainant Patricia F. Harris and Respondent Arthur Howard Berger agree  
26 to the following Stipulated Settlement and Disciplinary Order which will be submitted to the  
27 Board for approval and adoption as the final disposition of the Accusation solely with respect to  
28 Respondent Berger. This stipulation does not apply to R & W Pharmacy Services, Inc.

1 PARTIES

2 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
3 Pharmacy. She brought this action solely in her official capacity and is represented in this matter  
4 by Bill Lockyer, Attorney General of the State of California, by Joseph N. Zimring, Deputy  
5 Attorney General.

6 2. Respondent Arthur Howard Berger is represented in this proceeding by  
7 attorney Donald B. Brown, whose address is 3848 Carson Street, Suite 206, Torrance, CA  
8 90503.

9 3. On or about July 29, 1977, the Board issued Pharmacy Original  
10 Pharmacist License No. RPH 30997 to Respondent Berger to practice pharmacy. The Original  
11 Pharmacist License will expire on April 30, 2006, unless renewed.

12 JURISDICTION

13 3. Accusation No. 2279 was filed before the Board of Pharmacy on  
14 September 29, 2003. A First Amended Accusation was filed on December 16, 2003 and is  
15 currently pending against Respondent. The accusations and all other statutorily required  
16 documents were properly served on Respondent. Respondent timely filed his Notice of Defense  
17 contesting the Accusation. The First Amended Accusation is incorporated by reference.

18 ADVISEMENT AND WAIVERS

19 4. Respondent has carefully read, fully discussed with counsel, and  
20 understands the charges and allegations in the First Amended Accusation. Respondent has also  
21 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
22 Settlement and Disciplinary Order.

23 5. Respondent is fully aware of his legal rights in this matter, including the  
24 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
25 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
26 the right to present evidence and to testify on his own behalf; the right to the issuance of  
27 subpoenas to compel the attendance of witnesses and the production of documents; the right to

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1 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall  
2 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
3 between the parties, and the Board shall not be disqualified from further action by having  
4 considered this matter.

5 12. The parties understand and agree that facsimile copies of this Stipulated  
6 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
7 force and effect as the originals.

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

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 30997  
13 issued to Respondent Arthur Howard Berger is revoked. However, the revocation is stayed and  
14 Respondent is placed on probation for three (3) years on the following terms and conditions.

15 1. **Actual Suspension.** Original Pharmacist License No. RPH 30997 is  
16 suspended for a period of sixty (60) days.

17 During suspension, Respondent shall not enter any pharmacy area or any portion  
18 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
19 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous  
20 drugs and devices or controlled substances are maintained. Respondent shall not practice  
21 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,  
22 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or  
23 be a consultant to any licensee of the Board, or have access to or control the ordering,  
24 manufacturing or dispensing of dangerous drugs and devices or controlled substances.

25 Respondent shall not engage in any activity that requires the professional  
26 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of  
27 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for  
28 any entity licensed by the Board. Subject to the above restrictions, Respondent may continue to

1 own or hold an interest in any pharmacy in which he holds an interest at the time this decision  
2 becomes effective unless otherwise specified in this order.

3           2.       **Obey All Laws.** Respondent shall obey all state and federal laws and  
4 regulations substantially related to or governing the practice of pharmacy.

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

- 7           •       an arrest or issuance of a criminal complaint for violation of any provision of the  
8 Pharmacy Law, state and federal food and drug laws, or state and federal  
9 controlled substances laws;
- 10          •       a plea of guilty or nolo contendere in any state or federal criminal proceeding to  
11 any criminal complaint, information or indictment;
- 12          •       a conviction of any crime;
- 13          •       discipline, citation, or other administrative action filed by any state and federal  
14 agency which involves Respondent's license or which is related to the practice  
15 of pharmacy or the manufacturing, obtaining, handling or distribution or billing  
16 or charging for any drug, device or controlled substance.

17           3.       **Reporting to the Board.** Respondent shall report to the Board  
18 quarterly. The report shall be made either in person or in writing, as directed. Respondent  
19 shall state under penalty of perjury whether there has been compliance with all the terms and  
20 conditions of probation. If the final probation report is **not** made as directed, probation shall  
21 be extended automatically until such time as the final report is made and accepted by the  
22 Board.

23           4.       **Interview with the Board.** Upon receipt of reasonable notice,  
24 Respondent shall appear in person for interviews with the Board upon request at various  
25 intervals at a location to be determined by the Board. Failure to appear for a scheduled  
26 interview without prior notification to Board staff shall be considered a violation of probation.

27           5.       **Cooperation with Board Staff.** Respondent shall cooperate with the  
28 Board's inspectional program and in the Board's monitoring and investigation of Respondent's

1 compliance with the terms and conditions of the probation. Failure to comply shall be  
2 considered a violation of probation.

3           6.     **Continuing Education.** Respondent shall provide evidence of efforts  
4 to maintain skill and knowledge as a pharmacist as directed by the Board.

5           7.     **Notice to Employers.** Respondent shall notify all present and  
6 prospective employers of the decision in case number 2279 and the terms, conditions and  
7 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of  
8 this decision, and within 15 days of Respondent undertaking new employment, Respondent  
9 shall cause their direct supervisor, pharmacist-in-charge and/or owner to report to the Board  
10 in writing acknowledging the employer has read the decision in case number 2279.

11                 If Respondent works for or is employed by or through a pharmacy employment  
12 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at  
13 every pharmacy of the and terms conditions of the decision in case number 2279 in advance  
14 of the Respondent commencing work at each pharmacy.

15                 "Employment" within the meaning of this provision shall include any full-time, part-  
16 time, temporary, relief or pharmacy management service as a pharmacist, whether the  
17 Respondent is considered an employee or independent contractor.

18           8.     **No Preceptorships, Supervision of Interns, Being Pharmacist-in-  
19 Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern  
20 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the  
21 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this  
22 order.

23           9.     **Reimbursement of Board Costs.** Respondent shall pay to the Board  
24 its costs of investigation and prosecution in the amount of \$6,000. Respondent shall make  
25 said payments in monthly installments of \$500, beginning the first day of the month following  
26 the effective date of this decision.

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

1                   10.    **Probation Monitoring Costs.** Respondent shall pay the costs  
2 associated with probation monitoring as determined by the Board each and every year of  
3 probation. Such costs shall be payable to the Board at the end of each year of probation.  
4 Failure to pay such costs shall be considered a violation of probation.

5                   11.    **Status of License.** Respondent shall, at all times while on probation,  
6 maintain an active current license with the Board, including any period during which  
7 suspension or probation is tolled.

8                   If Respondent's license expires or is cancelled by operation of law or  
9 otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms  
10 and conditions of this probation not previously satisfied.

11                  12.    **License Surrender while on Probation/Suspension.** Following the  
12 effective date of this decision, should Respondent cease practice due to retirement or health,  
13 or be otherwise unable to satisfy the terms and conditions of probation, Respondent may  
14 tender his license to the Board for surrender. The Board shall have the discretion whether to  
15 grant the request for surrender or take any other action it deems appropriate and reasonable.  
16 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject  
17 to the terms and conditions of probation.

18                  Upon acceptance of the surrender, Respondent shall relinquish his pocket  
19 license to the Board within 10 days of notification by the Board that the surrender is accepted.  
20 Respondent may not reapply for any license from the Board for three years from the effective  
21 date of the surrender. Respondent shall meet all requirements applicable to the license sought  
22 as of the date the application for that license is submitted to the Board.

23                  13.    **Notification of Employment/Mailing Address Change.** Respondent  
24 shall notify the Board in writing within 10 days of any change of employment. Said  
25 notification shall include the reasons for leaving and/or the address of the new employer,  
26 supervisor or owner and work schedule if known. Respondent shall notify the Board in  
27 writing within 10 days of a change in name, mailing address or phone number.

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1           14.    **Tolling of Probation.** Should Respondent, regardless of residency, for  
2 any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in  
3 California, Respondent must notify the Board in writing within 10 days of cessation of the  
4 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time  
5 shall not apply to the reduction of the probation period. It is a violation of probation for  
6 Respondent's probation to remain tolled pursuant to the provisions of this condition for a  
7 period exceeding three years.

8           “Cessation of practice” means any period of time exceeding 30 days in which  
9 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of  
10 the Business and Professions Code.

11           15.    **Violation of Probation.** If Respondent violates probation in any  
12 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke  
13 probation and carry out the disciplinary order which was stayed. If a petition to revoke  
14 probation or an accusation is filed against Respondent during probation, the Board shall have  
15 continuing jurisdiction and the period of probation shall be extended, until the petition to  
16 revoke probation or accusation is heard and decided.

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

22           16.    **Completion of Probation.** Upon successful completion of probation,  
23 Respondent's license will be fully restored.

24           17.    **No Ownership of Premises.** Respondent shall not own, have any legal  
25 or beneficial interest in, or serve as a manager, administrator, member, officer, director,  
26 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter  
27 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Donald B. Brown. I understand the stipulation and the effect it will have on my Original Pharmacy Permit. I agree to all of the terms of the stipulation. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: \_\_\_\_\_  
ARTHUR HOWARD BERGER  
Respondent

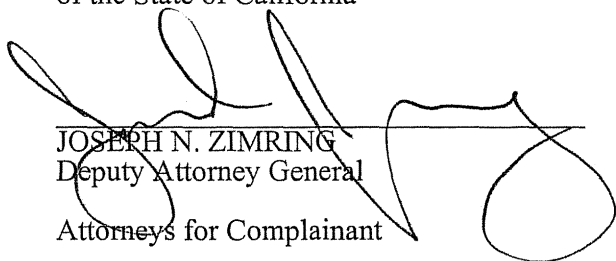
I have read and fully discussed with Respondent R & W Pharmacy Services, Inc. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: \_\_\_\_\_  
DONALD B. BROWN  
Attorney for Respondent Berger

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: 5/17/2005  
BILL LOCKYER, Attorney General  
of the State of California

  
JOSEPH N. ZIMRING  
Deputy Attorney General  
Attorneys for Complainant

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

In the Matter of the First Amended Accusation  
Against:

Case No. 2279

OAH No. L-2003110259

R & W PHARMACY SERVICES, INC.  
165 B Pointdexter Avenue  
Moorpark, CA 93021  
PATTI JO REED, President/Treasurer/CEO  
ARTHUR HOWARD BERGER, Secretary

Original Pharmacy Permit No. PHY 43143

And

ARTHUR HOWARD BERGER  
30061 Torre Pines Place  
Agoura Hills, CA 91301  
Pharmacist-in-Charge

Original Pharmacist License No. RPH 30997

Respondent.

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**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 August 12, 2005.

It is so ORDERED July 13, 2005.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
STANLEY W. GOLDENBERG  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 GUS GOMEZ, State Bar No. 146845  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
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5 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:  
11 R & W PHARMACY SERVICES, INC.  
12 165 B Pointdexter Avenue  
Moorpark, CA 93021  
13 PATTI JO REED, President/Treasurer/CEO  
ARTHUR HOWARD BERGER, Secretary  
14  
15 Original Pharmacy Permit No. PHY 43143  
  
16 And  
17 ARTHUR HOWARD BERGER  
30061 Torre Pines Place  
Agoura Hills, CA 91301  
18 Pharmacist-in-Charge  
19 Original Pharmacist License No. RPH 30997  
20 Respondent.

Case No. 2279

**FIRST AMENDED ACCUSATION**

21  
22 Complainant alleges:

23 PARTIES

- 24 1. Patricia F. Harris (Complainant) brings this Accusation solely in her  
25 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
26 Affairs (Board).  
27 2. On or about October 7, 1997, the Board issued Original Pharmacy Permit  
28 No. PHY 43143 to R & W Pharmacy Services, Inc. (Respondent "R & W Pharmacy") to do



1                   “(g) Knowingly making or signing any certificate or other document that falsely  
2 represents the existence or nonexistence of a state of facts.

3                   .....

4                   “(j) The violation of any of the statutes of this state of the United States regulating  
5 controlled substances and dangerous drugs.

6                   .....

7                   “(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
8 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
9 applicable federal and state laws and regulations governing pharmacy, including regulations  
10 established by the board.”

11                   7.       Section 118, subdivision (b) of the Code, provides that the suspension,  
12 expiration, or forfeiture by operation of law of a license does not deprive the Board of authority  
13 or jurisdiction to institute or continue with disciplinary action against the license or to order  
14 suspension or revocation of the license, during the period within which the license may be  
15 renewed, restored, reissued or reinstated.

16                   8.       Section 4081 states, in pertinent part:

17                   “(a) All records of manufacture and of sale, acquisition, or disposition of  
18 dangerous drugs or dangerous devices shall be at all times during business hours open to  
19 inspection by authorized officers of the law, and shall be preserved for at least three years from  
20 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,  
21 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,  
22 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked  
23 certificate, license, permit, registration, or exemption under Division 2 (commencing with  
24 Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000)  
25 of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or  
26 dangerous devices.

27                   “(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary  
28 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee,

1 for maintaining the records and inventory described in this section.”

2 9. Section 4113, subdivision (b) states:

3 “The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with  
4 all state and federal laws and regulations pertaining to the practice of pharmacy.”

5 10. Section 4160, subdivision (a) states:

6 “No person shall act as a wholesaler of any dangerous drug or dangerous device  
7 unless he or she has obtained a license from the board. Upon approval by the board and the  
8 payment of the required fee, the board shall issue a license to the applicant.”

9 11. Section 4332 states:

10 “Any person who fails, neglects, or refuses to maintain the records required by  
11 Section 4081 or who when called upon by an authorized officer or a member of the Board, fails,  
12 neglects, or refuses to produce or provide the records within a reasonable time, or who willfully  
13 produces or furnishes records that are false, is guilty of a misdemeanor.”

14 12. Section 4380 provides, in pertinent part, that the resale, by any person, of  
15 drugs acquired at preferentially low prices permitted under federal law only because of the  
16 Nonprofit Institutions Act (15 U.S.C. Sec.13c) is prohibited.

17 13. California Code of Regulations, title 16, section 1718 states:

18 “Current Inventory” as used in Sections 4081 and 4332 of the Business and  
19 Professions Code shall be considered to include complete accountability for all dangerous drugs  
20 handled by every licensee enumerated in Sections 4081 and 4332. The controlled substances  
21 inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon  
22 request for at least 3 years after the date of inventory.”

23 14. California Code of Regulations, title 16, section 1709.1 provides, in  
24 pertinent part, that the pharmacist-in-charge of a pharmacy shall be employed at that location and  
25 shall have responsibility for the daily operation of the pharmacy.

26 15. Section 125.3 states, in pertinent part, that the Board may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations  
28 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and



1 enforcement of the case.

2 FIRST CAUSE FOR DISCIPLINE

3 (Failure to Produce Records)

4 16. Respondents and each of them are subject to disciplinary action under  
5 sections 4301(g), 4301(j), 4081(a), 4081(b), and 4332 of the Code, in conjunction with California  
6 Code of Regulations, title 16, section 1718, for unprofessional conduct, in that Respondents  
7 failed to produce the records of acquisition and disposition on June 16, 1999, during normal  
8 business hours when demanded by a Board inspector. Specifically, Respondents failed to  
9 provide complete records in a timely manner, in that Respondents provided only acquisition  
10 records for an amount of \$485,164.71 in dangerous drugs for the audit period of January 1  
11 through June 16, 1999, when Respondents had purchased \$6,968,612.84 in dangerous drugs.

12 SECOND CAUSE FOR DISCIPLINE

13 (Violated Federal Prescription Drug Marketing Act)

14 17. Respondents and each of them are subject to disciplinary action under  
15 sections 4301 and 4380 of the Code, for unprofessional conduct, in that Respondents purchased  
16 millions of dollars of drugs at preferentially low prices for the use of eligible non-profit  
17 institutions and their patients. Respondents then knowingly and intentionally distributed them to  
18 unknown recipients for their use, for other than the intended and legal purpose, under the  
19 circumstances and at prices that took unfair advantage of competing pharmacies.

20 THIRD CAUSE FOR DISCIPLINE

21 (Wholesaling Without a License)

22 18. Respondents and each of them are subject to disciplinary action under  
23 section 4160 and of the Code, for unprofessional conduct, in that Respondents sold dangerous  
24 drugs to Montana Pharmacy Services, Inc., in Kalispell, Montana for the use of that pharmacy, in  
25 the amount of \$6,590,117.02, between January 11, 1999 and June 28, 1999, without being  
26 licensed to do so.

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