

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

In the Matter of the Petition to Revoke Probation
Against:

DAVID DONNY CANTERO
1840 Amy Way
Santa Maria, CA 93458

Pharmacy Technician No. TCH 10551

Respondent.

Case No. 3616

OAH No. 2010090496

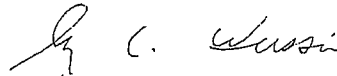
DECISION

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 May 11, 2011.

It is so ORDERED April 11, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Petition to Revoke
Probation Against:

DAVID DONNY CANTERO,

Pharmacy Technician
Registration No. TCH 10551,

Respondent.

Case No. 3616

OAH No. 2010090496

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles on January 7, 2011. Petitioner was represented by M. Travis Peery, Deputy Attorney General. Respondent was present and represented himself.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On November 15, 1993, the Board of Pharmacy, Department of Consumer Affairs, State of California (Board), issued pharmacy technician registration no. TCH 10551 to respondent David Donny Cantero. Said registration is on probation and will expire on May 31, 2011, unless renewed.

2. (A) Effective on May 23, 2002, pursuant to a Decision in Case No. 2048, and following an administrative hearing on January 31, 2002, the Board revoked respondent's pharmacy technician registration, stayed the revocation, and placed his registration on probation for two years for unprofessional conduct under Business and Professions Code section 4301, subdivision (j), for illegally possessing a controlled substance in violation of Business and Professions Code section 4060.

(B) The facts and circumstances of respondent's violation were that, on February 14, 1996, respondent was employed as a pharmacy technician at Skilled Care Pharmacy, a closed-door pharmacy in Pasadena and Monrovia, that supplied medications to patients or residents in long-term care facilities. On February 14, 1996, respondent performed an inventory of drugs at the pharmacy and inadvertently placed a bottle of Vicodin and a bottle of Tylenol 4 with Codeine, both controlled substances, in the pocket of his lab coat when he was instructed by a pharmacist to go to a local hospital and obtain some drugs on a "rush basis." At the hospital, he realized he had the two medication bottles in his pocket and placed them in the trunk of his car for safekeeping. He then forgot about the bottles in his car trunk when he returned to the pharmacy. Later that evening, respondent was arrested for arguing with his date, a former girlfriend, in the parking lot of a restaurant. The police found the two bottles of controlled substances while conducting a search of his car. It was not established that respondent stole or diverted the controlled substances or was under the influence of controlled substances when he was arrested that night.

3. Pursuant to the Decision and Disciplinary Order in Case No. 2048, respondent's pharmacy technician registration was placed on probation subject, in part, to the following pertinent terms and conditions:

a. Condition No. 3: "Respondent shall report to the Board or its designee on a quarterly basis. The report shall either be made in person or in writing, as directed. If the final probation report is not made as directed, then probation shall be extended automatically until such time as the final report is made."

b. Condition No. 5: "Respondent shall cooperate with the Board's inspection program and in the Board's monitoring and investigation of the Respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation."

c. Condition No. 7: "Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall make payments as follows: At least \$100.00 per month beginning thirty days after the effective date of this decision, with the entire amount to be paid prior to the completion of the probation term. Failure to comply with this provision shall be deemed a violation of probation."

d. Condition No. 8: "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 at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation."

e. ~~Condition No. 10: "Within ten (10) days of a change in employment—~~ either leaving or commencing employment—Respondent shall so notify the Board in writing, including the address of the new employer. . . . Should Respondent, regardless of residency, for any reason cease practicing as a pharmacy technician in

California, Respondent must notify the Board in writing within ten (10) days of cessation of practice or resuming practice.”

f. Condition No. 11: “If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall be automatically extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate by the Board, including but not limited to treating the failure to comply as a violation of probation, or [imposing] the penalty that was stayed.”

4. On April 6, 2010, complainant Virginia Herold made and filed the Petition to Revoke Probation, Case No. 3616, in her official capacity as Executive Officer of the Board.¹

5. On or about May 3, 2010, respondent filed a Notice of Defense pursuant to Government Code sections 11505 and 11506, acknowledging receipt of the Petition to Revoke Probation and requesting a hearing so that he could present a defense to the charges contained in the Petition to Revoke Probation. This matter ensued.

6. On June 27, 2002, following the effective date of the Decision and Disciplinary Order in Case No. 2048 and upon commencement of his probation, Board inspectors held an initial probation conference with respondent and explained each and every term and condition of his probation. Respondent signed a Declaration, acknowledging that the terms and conditions of his probation were fully explained to him by the Board representatives and that he understood these terms and conditions. Respondent further acknowledged that he understood the failure to comply with the terms and conditions of his probation may result in further disciplinary action.

7. (A) From June 2002 through November 2003, respondent filed quarterly reports with the Board as required by Condition No. 3 of his Disciplinary Order. The quarterly reports were due on the tenth day in the month following each calendar quarter, or on January 10, April 10, July 10, and October 10. Each quarterly report was required to contain the information or answers requested by the seven paragraphs of the Quarterly Report outline (Exh. 4) and signed and dated by respondent. If he had any questions about his quarterly reports, respondent was instructed by the Quarterly Report outline to contact an enforcement analyst for the Board.

(B) During probation, beginning in December 2003 and continuing through September 2004, respondent failed to report to the Board on a quarterly basis as required by

¹ Under the Board’s Decision and Disciplinary Order, respondent’s two-year probation was to have expired on or about May 23, 2004. However, due to respondent having not complied with the terms and conditions of his probation and the filing of the Petition to Revoke Probation, respondent’s probation was automatically extended and/or tolled under the Decision and Disciplinary Order.

Condition No. 3 of his Disciplinary Order. He did not submit the three quarterly reports that were due on January 10, 2004; April 10, 2004; and July 10, 2004. On October 19, 2004, the Board's enforcement analyst advised respondent by letter that his last quarterly report was received on December 1, 2003, and directed him to submit his delinquent quarterly reports within 10 days. The Board's outline for completing quarterly reports was also sent to respondent. Respondent did not submit the three delinquent quarterly reports for 2004.

(C) During probation, for the time period beginning on April 1, 2005, and continuing through June 30, 2006, respondent failed to report to the Board on a quarterly basis as required by Condition No. 3 of his Disciplinary Order. He did not submit the six quarterly reports that were due on April 10, 2005; July 10, 2005; October 10, 2005; January 10, 2006; April 10, 2006; and July 10, 2006. On August 25, 2006, the Board's enforcement coordinator advised respondent by letter that his last quarterly report was received on February 18, 2005, and directed him to submit his delinquent quarterly reports within 10 days. The Board's outline for completing quarterly reports was also sent to respondent. Respondent did not submit the six delinquent quarterly reports.

(D) During probation, for the time period beginning on April 1, 2008, and continuing through December 31, 2008, respondent failed to report to the Board on a quarterly basis as required by Condition No. 3 of his Disciplinary Order. He did not submit the four quarterly reports that were due on April 10, 2008; July 10, 2008; October 10, 2008; and January 10, 2009. On March 5, 2009, the Board's enforcement analyst advised respondent by letter that his last quarterly report was received on March 3, 2008, and directed him to submit his delinquent quarterly reports within 10 days. The Board's outline for completing quarterly reports was also sent to respondent. Respondent did not submit the four delinquent quarterly reports.

(E) Based on Findings 7(A) – (D) above, respondent failed to comply with Condition No. 3 of his Disciplinary Order in violation of his probation and California Code of Regulations, title 16, section 1773, subdivision (a)(2).

8. On October 13, 2009, respondent submitted a quarterly report to the Board entitled, "Quarterly Report October 2009," in which he stated that he continued to be employed full-time as a pharmacy technician by Fair Oaks Pharmacy in Arroyo Grande.

9. (A) During probation, respondent failed to pay the Board for its costs associated with probation monitoring each and every year of probation as required by Condition No. 8 of his Disciplinary Order. For the year 2003, he failed to pay probation monitoring costs totaling \$97.50 for three visits by Board inspectors to his place of employment. For 2004, respondent failed to pay probation monitoring costs totaling \$97.50 for two visits by Board inspectors to his place of employment. For 2005, he failed to pay probation monitoring costs totaling \$325.00 for five monitoring visits to the pharmacy where he was employed as a pharmacy technician. For 2006, respondent failed to pay probation monitoring costs of \$130.00 for two inspections at his place of employment. For 2007, he

failed to pay the Board the sum of \$65.00 for probation monitoring costs incurred in inspecting his place of employment on one occasion.

(B) On November 15, 2004, the Board's enforcement analyst notified respondent by letter that he owed \$130 for probation monitoring costs incurred for the three monitoring visits in 2003 and for one monitoring visit in 2004. Respondent was asked to submit the payment within 15 days. On June 29, 2005, the enforcement analyst sent a second notice to respondent soliciting his payment. Respondent did not pay these probation monitoring costs to the Board.

(C) On June 29, 2009, an enforcement analyst for the Board notified respondent by letter that he owed \$520.00 in probation monitoring costs incurred for one probation monitoring visit in 2004, five inspections in 2005, one inspection in 2006, and one inspection in 2007. Respondent was directed to submit his payment within 15 days. Respondent did not pay the Board for these probation monitoring costs.

(D) Based on Findings 9(A) – (C) above, during his probation in the past eight years, respondent violated and failed to comply with Condition No. 8 of his Disciplinary Order by not paying approximately \$715.00 in probation monitoring costs for the years 2003 – 2007.

10. (A) During probation, respondent failed to pay at least \$100 per month to the Board for the costs of investigation and prosecution as required by Condition No. 7 of his Disciplinary Order. He was required to pay at least \$100 per month beginning on or about June 23, 2002, and to pay the full sum of \$5,000.00 in costs and investigation before the end of his two-year probationary term.

(B) For the 18 months from June 23, 2002, through December 1, 2003, respondent paid \$685 of the \$1,800.00 required for reimbursement of the Board's investigation and prosecution costs. On December 1, 2003, he made a partial payment of \$25.00, leaving a balance owed of \$4,315.00. On October 19, 2004, an enforcement analyst for the Board reminded respondent by letter that he was required to pay \$100 per month to reimburse the Board for its investigation and enforcement costs.

(C) On February 18, 2005, respondent made a payment of an undetermined amount towards the costs. On August 25, 2006, an enforcement coordinator advised respondent by letter that he was required to pay \$100 per month towards the costs of investigation and enforcement and that he still owed \$4,270. As of August 25, 2006, and after approximately 39 months of being on probation, respondent had paid \$730.00 of the \$5,000.00 in costs required by his Disciplinary Order.

(D) On March 3, 2008, respondent made a payment of an undetermined amount towards the costs of investigation and enforcement. On March 5, 2009, an enforcement analyst advised respondent by letter that he was required to pay \$100 per month towards the costs of investigation and enforcement and that he still owed \$4,165.00. As of

March 5, 2009, and after approximately 79 months of being on probation, respondent had paid only \$835.00 of the \$5,000.00 in costs required by his Disciplinary Order.

(E) Based on Findings 10(A) – (D) above, during his probation of the past eight or nine years, respondent failed to pay at least \$100 each month towards the costs of investigation and enforcement in violation of Condition No. 7 of his Disciplinary Order. He made his last partial payment of these costs almost three years ago on March 3, 2008, and still owes \$4,165.00 of the \$5,000.00 in costs required by his Disciplinary Order.

11. (A) In 2001, respondent moved to Santa Maria to live near his parents. He began working as a pharmacy technician at Fair Oaks Pharmacy in Arroyo Grande. Beginning in or about 2002, respondent began experiencing financial difficulties. He divorced his wife and became embroiled in a custody battle with his ex-wife over the custody of their two children. In March 2003, he remarried and wed his wife Rosa Maria Brown (Brown) who moved to Santa Maria with her child and began working in the parks and recreation department of the City of Santa Maria. Respondent met Brown in or about 2002 while he was involved in the underlying disciplinary matter before the Board; Brown used to work as a billings manager for respondent's former employer, Skilled Care Pharmacy. Respondent and his wife Brown bought a home in Santa Maria in 2005.

(B) Respondent and his wife Brown began experiencing financial difficulties after purchasing their home. In 2007, the couple lost their home through foreclosure. In early 2008, Brown was laid off from her job with the city. She has not worked in the past three years. While continuing to work as a pharmacy technician, respondent became the In-Home Support Services caregiver for a disabled person. In April 2009, the disabled person moved into respondent's home and he has continued to care for her. In or about February 2010, Fair Oaks Pharmacy closed and respondent quit or lost his job as a pharmacy technician there.

12. In this proceeding, respondent admits that he did not pay the probation monitoring and investigation and enforcement costs to the Board and explains that he did not have enough money to make ends meet. In the Quarterly Report that he submitted in October 2009, respondent stated that he was still in financial straits and his wife had lost her job with the city. He stated he was not able to make any payments. Respondent and his wife add that he did not file all of the required quarterly reports because they were disorganized. Respondent wants to retain his pharmacy technician registration and he and his wife assert that they are committed to complying with the terms and conditions of his Disciplinary Order and request leniency.

13. Respondent submitted three letters of reference. Lyssa Stark confirms that respondent helped move her and her belongings into his home and takes cares of her and her medications and makes sure that she attends her medical appointments in her wheelchair. Gabriella Soo, a manager of a care facility for the elderly in Arroyo Grande, has known respondent for six years in his capacity as a pharmacy technician at Fair Oaks Pharmacy. Soo has found respondent to be a professional, detailed, and diligent pharmacy technician

who has helped to train her staff on the medication administration needs of the residents in her care facility. Patrick McGowin, R.P.H., was the managing pharmacist at Fair Oaks Pharmacy for five years and supervised respondent's activities while respondent worked as a pharmacy technician there. McGowin found respondent to have been helpful, personable, and trustworthy; respondent did not cause any problems in the operation of the pharmacy. McGowin confirms that respondent lost his home and was concerned about meeting his obligations to the Board and his family

14. Respondent has been disgruntled and unhappy with the Decision and Disciplinary Order since its issuance in 2002 because he thought that the administrative law judge would not order that he pay any costs of investigation and enforcement in the Proposed Decision after the administrative hearing.² He has wanted a rehearing on the issue of costs over the past eight or nine years and asked for the help of the Board's enforcement staff. Respondent claims that he did not file quarterly reports because the Board's enforcement staff advised him that he could obtain a rehearing on the costs order by not paying the costs. Respondent's claim was not credible. Respondent did not ever file a petition for reconsideration of the Proposed Decision or a petition for reduction of penalty.

15. Respondent has been a registered pharmacy technician for 17 years. He grew up in Santa Maria where he attended Righetti High School and Hancock College. He completed the requirements for his pharmacy technician registration in a program in Santa Ana. He has taught pharmacy technician practices at a business college in Santa Maria and recently obtained certification to be an administrator for residential care facilities after attending a two-week course at the University of Southern California. Respondent and his wife have three children.

* * * * *

² In Case No. 2048, the Accusation was issued against not only against respondent as a pharmacy technician but also his employer Skilled Care Pharmacy, its pharmacist-in-charge, and three other pharmacists. As set forth in the Proposed Decision for Case No. 2048 that was adopted by the Board, the total costs of investigation and enforcement incurred by the Board in all of those matters exceeded \$41,000.00. The administrative law judge determined that the reasonable costs of investigation and enforcement in respondent's particular matter totaled \$5,000.00.

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke respondent's probation and to impose the disciplinary order of revocation that was previously stayed pursuant to Business and Professions Code sections 118, subdivision (d), and 4001.1, and California Code of Regulations, title 16, section 1773, in that respondent violated and failed to comply with the term and condition of his probation that required him to report to the Board on a quarterly basis, as set forth in Findings 1 – 7 above.

2. Grounds exist to revoke respondent's probation and to impose the disciplinary order of revocation that was previously stayed pursuant to Business and Professions Code sections 118, subdivision (d), and 4001.1, and California Code of Regulations, title 16, section 1773, in that respondent violated and failed to comply with the term and condition of his probation that required him to make monthly payments to the Board for the costs of investigation and enforcement, as set forth in Findings 1 – 6 and 9 above.

3. Grounds exist to revoke respondent's probation and to impose the disciplinary order of revocation that was previously stayed pursuant to Business and Professions Code sections 118, subdivision (d), and 4001.1, and California Code of Regulations, title 16, section 1773, in that respondent violated and failed to comply with the term and condition of his probation that required him to pay the Board for its yearly probation monitoring costs, as set forth in Findings 1 – 6 and 10 above.

4. Discussion—In this probation revocation matter, respondent's pharmacy technician registration was revoked, revocation was stayed, and his license placed on probation for two years for illegally possessing controlled substances from his job at a pharmacy. His Disciplinary Order required, in pertinent part, that he file quarterly reports, pay monthly reimbursements of the Board's costs of investigation and enforcement, and pay annual probation monitoring costs.

The Board's conditions of probation were not particularly onerous or difficult to satisfy. The Board reviewed the terms and conditions of probation with respondent and gave him a Quarterly Report outline that contained the information required in his quarterly reports. As shown by the quarterly report that respondent submitted in October 2009, a quarterly report could contain all of the required information in a one-page report. There were mitigating circumstances to respondent's failures to pay the costs inasmuch as he was involved in custody dispute with his ex-wife, respondent and his wife lost their home to foreclosure in 2007, his spouse lost her city job in 2008, and he stopped working for a pharmacy in early 2010. On other hand, respondent was required to pay only \$100.00 per month towards the costs of investigation and enforcement and the annual costs of probation monitoring did not exceed \$325 for any one year. In aggravation, since the inception of his

probation in June 2002, respondent has never paid \$100 per month towards the cost order for any consistent period of time. He has persistently been delinquent in his costs payments for the past eight or nine years of probation, which was automatically extended or tolled due to his failures to file quarterly reports and pay costs. Respondent states he is committed to complying with his probationary conditions but his continued failures to comply over several years demonstrate that he is not willing or able to do so despite having been given extra time and opportunities by the Board over the past four or five years to come back into compliance. Since being placed on two years of probation in May 2002, respondent has taken issue with the Disciplinary Order and especially with the directive to reimburse the Board for its investigative and enforcement costs.

Based on respondent's continued and persistent violations of probation and the lack of evidence that respondent possesses the willingness to comply as set forth in Findings 1 – 15 above, public health and safety require that his probation be revoked, the stay of the discipline of revocation be lifted, and his pharmacy technician registration be revoked.

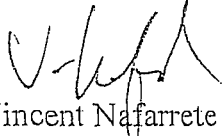
* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Pharmacy technician registration no. TCH 10551 and registration rights previously issued by the Board of Pharmacy to respondent David Donny Cantero, 1840 Amy Way, Santa Maria, California 93458, shall be revoked, based on Conclusions of Law 1 – 4 above, jointly and for all. The Petition to Revoke Probation, Case No. 3616, is sustained

Dated: January 31, 2011


Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

In the Matter of the Petition to Revoke
Probation Against:

DAVID DONNY CANTERO
1840 Amy Way
Santa Maria, CA 93458

Pharmacy Technician Registration No.
TCH 10551

Respondent.

Case No. 3616
PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
2. On or about November 15, 1993, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 10551 to David Donny Cantero (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

///

1 3. In a disciplinary action entitled "*In the Matter of the Accusation Against: David*
2 *Donny Cantero,*" Case No. 2048, the Board issued a Decision adopting the proposed decision of
3 the administrative law judge, effective May 23, 2002, in which Respondent's Pharmacy
4 Technician Registration was revoked. The revocation was stayed and Respondent's license was
5 placed on probation for a period of two (2) years subject to certain terms and conditions. A copy
6 of that decision is attached as Exhibit A and is incorporated by reference.

7 JURISDICTION

8 4. This Petition to Revoke Probation is brought before the Board under the authority of
9 the following laws. All section references are to the Business and Professions Code unless
10 otherwise indicated.

11 STATUTORY PROVISIONS

12 5. Section 118 provides, in pertinent part, that the suspension or expiration of a license
13 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
14 within which the license may be renewed, restored, reissued, or reinstated.

15 6. Section 4300 states, in pertinent part:

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

17

18 "(d) The board may initiate disciplinary proceedings to revoke or suspend any
19 probationary certificate of licensure for any violation of the terms and conditions of probation."

20 REGULATORY PROVISIONS

21 7. California Code of Regulations, title 16, section 1773 states, in pertinent part:

22 "(a) Unless otherwise directed by the Board in its sole discretion, any pharmacist who
23 is serving a period of probation shall comply with the following conditions:

24

25 "(2) Report to the Board or its designee quarterly either in person or in writing
26 as directed; the report shall include the name and address of the probationer's employer. If the
27 final probation report is not made as directed, the period of probation shall be extended until such
28 time as the final report is made."

1 PETITION TO REVOKE PROBATION

2 8. Grounds exist for revoking the probation and reimposing the order of revocation of
3 Respondent's Pharmacy Technician Registration in that Respondent has failed to comply with
4 several conditions of his probation.

5 FIRST CAUSE TO REVOKE PROBATION

6 (Failure to Report to the Board Quarterly)

7 9. At all times after the effective date of Respondent's probation, Probation Condition
8 No. 3 stated:

9 "Respondent shall report to the Board or its designee on a quarterly basis. The report shall
10 either be made in person or in writing, as directed. If the final probation report is not made as
11 directed, then probation shall be extended automatically until such time as the final report is
12 made."

13 10. Respondent's probation is subject to revocation because he failed to comply with
14 Probation Condition No. 3, referenced above, in that Respondent failed to report to the board
15 quarterly as follows:

16 On or about October 13, 2009, the Board received a Quarterly Report from Respondent for
17 the month of October 2009. This was the first Quarterly Report received by the Board since
18 March 2008. Prior to this period of time, Respondent had failed to submit Quarterly Reports on
19 the dates required between December 2, 2003 and October 19, 2004, and on the dates required
20 between February 19, 2005 and August 25, 2006.

21 SECOND CAUSE TO REVOKE PROBATION

22 (Failure to Submit Cost Recovery Payments)

23 11. At all times after the effective date of Respondent's probation, Probation Condition
24 No. 7 stated:

25 "Respondent shall pay to the Board its costs of investigation and prosecution in the amount
26 of \$5,000.00. Respondent shall make payments as follows:

27 "At least \$100.00 per month beginning thirty days after the effective date of this
28 decision, with the entire amount to be paid prior to the completion of the probation term."

1 "Failure to comply with this provision shall be deemed a violation of probation."

2 12. Respondent's probation is subject to revocation because he failed to comply with
3 Probation Condition No. 7, referenced above, in that Respondent failed to submit cost recovery
4 payments to the Board as follows:

5 Respondent has not made a payment to the Board since a partial payment was received on
6 or about March 3, 2008. Prior to the March 3, 2008 payment, Respondent failed to make monthly
7 payments between the dates February 19, 2005 and August 25, 2006 and between the dates
8 December 2, 2003 and October 19, 2004. Respondent still owes the Board \$4,165.00 and
9 indicated in his Quarterly Report for October 2009 that due to financial hardship, he was not
10 currently able to make any payments.

11 **THIRD CAUSE TO REVOKE PROBATION**

12 **(Failure to Submit Costs Associated with Probation Monitoring)**

13 13. At all times after the effective date of Respondent's probation, Probation Condition
14 No. 8 stated:

15 "Respondent shall pay the costs associated with probation monitoring as determined by the
16 Board each and every year of probation. Such costs shall be payable at the end of each year of
17 probation. Failure to pay such costs shall be considered a violation of probation."

18 14. Respondent's probation is subject to revocation because he failed to comply with
19 Probation Condition No. 8, referenced above, in that Respondent failed to submit costs associated
20 with probation monitoring as follows:

21 On or about November 15, 2004, the Board notified Respondent by letter that he owed the
22 Board \$130.00 in probation monitoring costs incurred during the probationary period, May 23,
23 2003 to May 22, 2004. The letter stated that Respondent had 15 days to remit these costs. Over
24 seven months later, on or about June 29, 2005, Respondent had still not submitted any payments
25 to the Board.

26 On or about June 23, 2009, the Board sent a letter to Respondent, via First Class mail to his
27 residential address, indicating that he owed \$650.00 in probation monitoring costs and that
28 payment was required by July 8, 2009. On or about October 13, 2009, Respondent replied in his

1 Quarterly Report for October 2009 that due to financial hardship, he was not currently able to
2 make any payments to the Board.

3 PRAYER

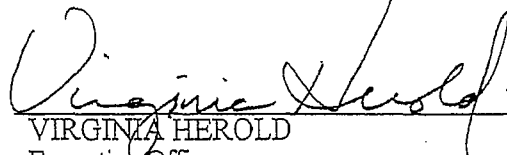
4 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board issue a decision:

6 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2048
7 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician
8 Registration No. 10551, issued to Respondent;

9 2. Revoking or suspending Pharmacy Technician Registration No. 10551, issued to
10 Respondent; and

11 3. Taking such other and further action as deemed necessary and proper.

12
13 DATED: 4/6/10



14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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LA2010600230

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

In the Matter of the Accusation Against:

Case No. ~~2138~~ 2048

OAH No. L-2001030214

**SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
Monrovia, California 91016
SHRUTY PARTI,
Pharmacist-in-Charge
Pharmacy Permit No. PHY 43874**

**SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
Monrovia, California 91016
SHRUTY PARTI,
Pharmacist-in-Charge
Pharmacy Permit No. PHY 41952**

**SKILLED CARE PHARMACY
1350 N. Altadena Drive, Suite 100
Pasadena, California 91107
William C. Scott, President
Frank S. Osen, Secretary
Randy Speer, Treasurer/Financial Officer
Derwin Williams, Treasurer/Financial Officer
Jesse F. Martinez, Vice President
SHRUTY PARTI,
Pharmacist-in-Charge
Pharmacy Permit No. PHY 37908**

**SHRUTY CHATERJEE PARTI
1115 E. Saga Street
Glendora, California 91741
Pharmacist License No. RPH 44615**

**SCOTT RICHARD PRESTON
9343 Aldea Avenue
Northridge, California 91325
Pharmacist License No. RPH 39869**

JESSE FELIX MARTINEZ
29 Sunlight
Irvine, California 92715
Pharmacist License No. RPH 31022

and

DAVID DONNY CANTERO
1465 West Arbolitos Court
Santa Maria, California 93454
Pharmacy Technician Registration
No. 10551

Respondents.

PROPOSED DECISION

The hearing on the charges set forth in the above-captioned matter against Respondent David Donny Cantero, only, was held on January 31, 2002, at Los Angeles, California.¹ Joseph D. Montoya, Administrative Law Judge, presided. Complainant was represented by Gus Gomez, Deputy Attorney General. Respondent Cantero appeared with his attorney, Fredrickson, Mazeika, and Grant, LLP, by Ms. Shari I. Weintraub.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date. The administrative law judge hereby makes his factual findings, legal conclusions, and orders, as follows.

FACTUAL FINDINGS

1. Complainant Patricia F. Harris filed the initial accusation, first amended accusation, and second amended accusation in this matter while acting in her official capacity as Executive Officer of the Board of Pharmacy ("the Board"), Department of Consumer Affairs. The second amended accusation pertained solely to Respondent David Donny Cantero ("Cantero" or "Respondent").

¹ The claims against the other Respondents were resolved without a formal hearing prior to January 31, 2002, and thus no other parties appeared.

2. On November 15, 1993, the Board issued original pharmacy technician registration number TCH 10551 to Respondent Cantero. That license will expire in May 2003 unless renewed.

3. The events relevant to this proposed decision occurred in February 1996. At that time Respondent was working for Skilled Care Pharmacy in Monrovia, California as a pharmacy technician. Skilled Care then operated as a “closed door” pharmacy, one not retailing to the general public, but supplying long-term care facilities.

4. On the evening of February 14, 1996, Respondent was arrested in Brea, California. He was arrested after police were called to a restaurant parking lot because Mr. Cantero and a woman were arguing and fighting. The woman was Respondent’s former girlfriend, and she claimed that Respondent hit her and would not let her out of his car. However, there was evidence that any combat had been mutual, as Respondent showed signs of being struck, and the young lady, who was under the influence², admitted striking Respondent.

5. While the police were investigating the matter, an officer helped the woman retrieve her property from Respondent’s car. They went into the trunk, and the officer opened a small ice chest and found two bottles that contained prescription drugs. One bottle contained 500 tablets of Vicodin, and that bottle was sealed. The other bottle was labeled as containing 500 tables of Tylonal 4 with codeine. However, the seal on that bottle was broken, and it was missing eighteen tablets, leaving 482 tablets in that bottle. Both Vicodin and Tylonal 4 with codeine are controlled substances.

6. (A) When questioned about the matter Respondent stated that he was a pharmacy technician, and that the drugs belonged to his employer. He stated that he was transporting the drugs from one facility to another, and that they were in his trunk because they could not be in the passenger compartment of the car.

(B) There is no evidence whatsoever that either Respondent or his lady friend were under the influence of either Vicodin or Tylonal with codeine, and there is no evidence that they were in possession of the eighteen tablets missing from the bottle of Tylonal.

7. (A) Respondent contacted one of his supervisors—in fact, the pharmacist-in-charge of the facility—the evening he was arrested, and disclosed that he was in possession of the drugs. His explanation during that conversation was that he had been performing an inventory of drugs at the pharmacy on the morning of February 14, 1996, and “pulling” some drugs that were getting near their expiration date, or that might be returned to the wholesaler. He told the pharmacist that the basket he was carrying was full, and that he placed the bottles in his lab coat. He was interrupted by another pharmacist, and told to go to a local hospital to obtain some drugs not in Skilled Care’s stock, and he was to do so on a rush basis. He forgot about about the two bottles of drugs when he left.

² This finding is based on the testimony of a police officer who responded to the incident. The nature of the “influence” was not defined, although the testimony implied she had been drinking.

(B) When he got to the hospital, he realized he had the drugs, and left them in the car. He stated that he then became concerned that they might be stolen, so he put them in the trunk. After he returned to the pharmacy, he forgot to retrieve them from the trunk.

(C) The pharmacist confirmed the next day that Respondent had been sent to the hospital on a rush basis, while he was doing the inventory work. As he had been a good employee for a significant period, his version of events was accepted, though he was reprimanded by the employer for leaving the premises with the drugs. He remained in the employ of Skilled Care for a number of months after the arrest.

8. Thereafter, on or about July 2, 1996, in the Municipal Court of California, County of Orange, North Orange Judicial District, in the case *People v. David Donny Cantero*, case no. BPD B 96-0866, Respondent was convicted on violating Penal Code section 415(1). That crime—unlawful fight in a public place—is a misdemeanor. Charges of possessing narcotics, possessing drugs without a prescription, and assault, were all dismissed.

9. Respondent was placed on three years summary probation. He was ordered to pay a small fine, and other terms and conditions, common to probation grants, were imposed.

10. Respondent completed his criminal probation without incident. He is now employed in a pharmacy in Santa Maria, California, and has been since approximately 1997. He has no other criminal record, and no prior discipline by the Board.

11. It was not established that Respondent's conviction for unlawfully fighting in a public place is substantially related to the duties, qualifications, or functions of a pharmacy technician, or that it evidences to a substantial degree a present or potential unfitness by Respondent to act as a pharmacy technician consistent with the public welfare.

12. At this hearing Respondent recounted the events surrounding the removal of the drugs in a manner consistent with the version of events he gave his pharmacist-in-charge on the evening of his arrest. He explained that he may not have noticed the drugs in the pockets of his "lab coat" because he then acted as the person who inputs the purchasing through a bulky hand-held electronic device, which he normally carried in the coat.

13. (A) The Board has incurred costs in the investigation and prosecution of this matter. However, those costs were also incurred in the investigation and prosecution of the charges against Skilled Care Pharmacy and various persons related to that firm. Those costs, as of December 31, 2001, exceeded \$41,000.00.

(B) The entire case has been fairly complex, and replete with discovery issues and pre-hearing motions. The pharmacies and pharmacists were represented by able counsel, who put the Complainant and her attorney to the task of preparing the case for hearing, and to defending the case against procedural attacks. However, for most of the process Respondent Cantero was not represented by counsel, and in some ways the case against him

receded into the background. Had this case been prosecuted against Cantero alone it would have consumed a nominal amount of time on the part of the Board and its counsel. Complainant's counsel acknowledges that some apportionment of costs is reasonable in the facts and circumstances of this case.

(C) The reasonable costs of investigating and prosecuting the case against Mr. Cantero are \$5,000.00.

LEGAL CONCLUSIONS

1. The Board has jurisdiction to proceed in this matter, pursuant to Business and Professions Code ("Code") sections 4001(a), 4011, 4300, and 4301, based on Factual Findings 1 and 2.

2. It has not been established that Respondent is guilty of unprofessional conduct in violation of Code section 4301(l) by virtue of being convicted of a misdemeanor crime, unlawful fighting in a public place. This Conclusion is based on Factual Findings 4, 8, and 11.

3. It was established that Respondent is guilty of violating Code section 4060, and is thereby guilty of violating Code section 4031(j). This Conclusion is based on Factual Findings 6(A), 7(A) and 7(B), and 12.

4. There is evidence in mitigation, and evidence of rehabilitation, which should be considered when determining what discipline to impose, based on Factual Finding 10.

5. The Board has incurred costs of investigation and prosecution in this matter, the reasonable amount of which is \$5,000.00, based on Factual Finding 13. The Board is entitled to recover that sum from Respondent pursuant to Code section 125.3.

Discussion and Rationale:³

This case presented unusual factual and legal circumstances. Essentially, Respondent was convicted of a crime which on its face has little or nothing to do with the duties, qualifications, and functions of a pharmacy technician. Under Code section 4115, a pharmacy technician is given little discretion, and acts as a closely-supervised assistant to a

³ The section that follows is within the ambit of Government Code section 11425.50(d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

pharmacist. Under the regulations, he or she is to perform “. . . packaging, manipulative, repetitive, or other nondiscretionary tasks, while assisting, and while under the direct supervision and control of, a registered pharmacist.” (Title 16, California Code of Regulations (“CCR”) section 1793.2.) Just how a fight between a pharmacy technician and a girlfriend shows that the technician thereby has a present or potential unfitness to perform such “nondiscretionary tasks” in a manner consistent with the public welfare was never established. In this case there was some evidence that the combat had been mutual, which attenuates the conviction even further. Further, there is no evidence whatsoever that Respondent was under the influence of controlled substances at the time of the fight.⁴

Code section 4060 provides that no one shall possess controlled substances without a prescription, and that statute goes on to make an exception for a pharmacy, when the drugs are in stock and properly labeled. Section 4059(b), as effective in 1996,⁵ allowed pharmacies to supply each other. Respondent is not within either set of circumstances. He was found in possession of controlled substances, owned by his employer, at a location far and away from the pharmacy premises.⁶ Despite what he told the police at the time, he was not in the process of transporting the drugs from one pharmacy to another. While the statutes may not bar a pharmacy technician from acting as a courier of controlled substances, between two pharmacies and at the direction of a pharmacist, they clearly do not authorize the technician to carry such drugs in his or her car while travelling to a Valentine’s Day assignment. Put another way, accepting Respondent’s testimony that he inadvertently left the pharmacy with the two jars of pills provides no excuse for his failure to rectify his mistake immediately upon his return to the pharmacy, which occurred hours before his arrest. If his mistake in leaving the pharmacy with the drugs was a less than professional act, his failure to promptly return the goods is clearly unprofessional conduct, and is clearly outside the scope of his authorized acts.

The Board’s disciplinary guidelines call for an examination of a number of factors when determining what discipline to impose. Looking to those factors, it should be first noted that here there was potential for public harm, but no actual public harm, and there was no harm to a consumer from Respondent’s unprofessional acts.

Respondent has no prior disciplinary record, warnings, citations, or fines, and he has no current violations.

The severity of the acts is moderate, worse than some proscribed acts, but in the circumstances not so severe as others.

⁴ He was not charged with such at all, nor arrested for it; indeed, he was not even charged with drunkenness, although his date was apparently drunk.

⁵ Section 4059 was added in 1996, and amended in 2000, the amendment to become effective July 2001. The former statute is relied upon herein, as the events occurred in February 1996.

⁶ Indeed, at the time of his arrest he was not even in the same county as the pharmacy. The latter is located in Los Angeles County; the arrest occurred in the County of Orange.

There are mitigating facts, and evidence of rehabilitation. Since these events Respondent has been gainfully employed in another pharmacy, in another area of the state. He has had no further contact with the law, and no other problems with the Board. There was evidence that his acts were negligent rather than intentional.

Six years have passed since the events in question.

The purpose of administrative license discipline proceedings is to protect the public, and not to punish the Respondent. (*E.g., Camacho v. Youde* (1979) 95 Cal. App. 3rd 161, 164.) The misconduct is a Category II act. Given the long passage of time since the misconduct, and the lack of any evidence of wrongdoing since that time, a minimal probationary order is sufficient to protect the public.⁷

ORDER

The Pharmacist Technician Registration, number TCH 10551, issued to Respondent David Donny Cantero is hereby revoked; however, revocation is stayed and Respondent is placed on probation for two years upon the following terms and conditions:

1. Respondent shall not own or have any legal or beneficial interest in, or serve as manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days of the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.

2. Respondent shall obey all federal and state laws and regulations substantially related to, or governing the practice of pharmacy.

3. Respondent shall report to the Board or its designee on a quarterly basis. The report shall either be made in person or in writing, as directed. If the final probation report is not made as directed, then probation shall be extended automatically until such time as the final report is made.

4. Upon receipt of reasonable notice the Respondent shall appear in person for interviews with the Board or its designee, upon request at various intervals at a location to be determined by the Board or its designee. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered as a violation of probation.

⁷ In the circumstances, imposition of a suspension would be punitive, and would not be calculated to have a reasonable deterrent effect.

5. Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of the Respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

6. The Respondent shall notify all present and prospective employers of the decision in this case (number 2048) and the terms, conditions, and restrictions imposed on Respondent by the decision.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging that the employer has read the foregoing decision.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at which he is employed or used of the fact and terms of the decision, in advance of commencing work at the pharmacy.

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

7. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall make payments as follows:

At least \$100.00 per month beginning thirty days after the effective date of this decision, with the entire amount to be paid prior to the completion of the probation term.

Failure to comply with this provision shall be deemed a violation of probation.

8. 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 at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

9. Respondent shall, at all times while on probation, maintain an active current registration with the Board, including any period during which probation is tolled. If Respondent's registration expires by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. Within ten (10) days of a change in employment—either leaving or commencing employment—Respondent shall so notify the Board in writing, including the address of the new employer. Within ten (10) days of a change in mailing address, Respondent shall notify the Board in writing. If Respondent works for or is employed through a pharmacy

employment service, Respondent shall, as requested, provide the Board or its designee with a work schedule indicating dates and location of employment.

Should Respondent, regardless of residency, for any reason cease practicing as a pharmacy technician in California, Respondent must notify the Board in writing within ten (10) days of cessation of practice or resuming practice. "Cessation of practice" means any period of time exceeding thirty (30) days in which Respondent is not engaged in the practice of a pharmacy technician as defined in the Business and Professions Code, or as an exemptee as defined in the Business and Professions Code.

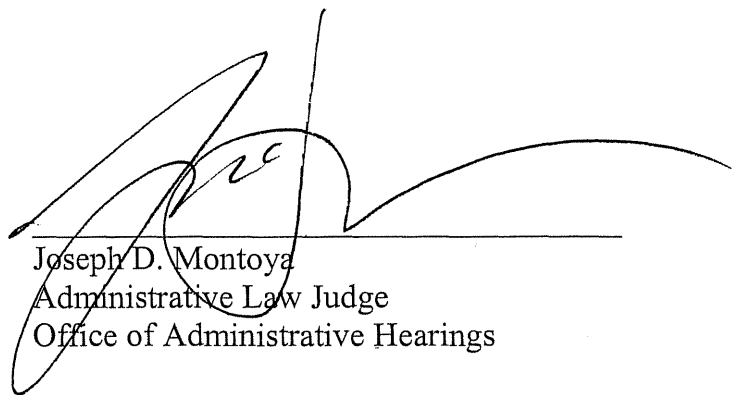
It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a consecutive period of three years.

11. 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 is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall be automatically extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate by the Board, including but not limited to treating the failure to comply as a violation of probation, or imposition of the penalty that was stayed.

12. Upon successful completion of probation, Respondent's registration shall be fully restored.

March 4, 2002



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

RECEIVED
BOARD OF PHARMACY
APR 10 2002

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

In the Matter of the Accusation Against:

) Case No. 2138-2048

) SKILLED CARE PHARMACY
) 222 East Huntington Drive, No. 11
) Monrovia, California 91016
) SHRUTY PARTI,
) Pharmacist-in-Charge
) Pharmacy Permit No. PHY 43874
)

) OAH No. L-2001030214

) SKILLED CARE PHARMACY
) 222 East Huntington Drive, No. 11
) Monrovia, California 91016
) SHRUTY PARTI,
) Pharmacist-in-Charge
) Pharmacy Permit No. PHY 41952
)

) SKILLED CARE PHARMACY
) 1350 N. Altadena Drive, Suite 100
) Pasadena, California 91107
) William C. Scott, President
) Frank S. Osen, Secretary
) Randy Speer, Treasurer/Financial Officer
) Derwin Williams, Treasurer/Financial Officer
) Jesse F. Martinez, Vice President
) SHURTY PARTI,
) Pharmacist-in-Charge
) Pharmacy Permit No. PHY 37908
)

) SHRUTY CHATERJEE PARTI
) 1115 E. Saga Street
) Glendora, California 91741
) Pharmacist License No. RPH 44615
)

SCOTT RICHARD PRESTON)
9343 Aldea Avenue)
Northridge, California 91325)
Pharmacist License No. RPH 39869)
JESSE FELIX MARTINEZ)
29 Sunlight)
Irvine, California 92715)
Pharmacist License No. RPH 31022)
and)
DAVID DONNY CANTERO)
1465 West Arbolitos Court)
Santa Maria, California 93454)
Pharmacy Technician Registration No. 10551,)
Respondents.)
_____)

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 May 23, 2002.

IT IS SO ORDERED April 23, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: 
STEVE LITSEY
Board President

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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2048

12 SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
13 Monrovia, California 91106
SHRUTY PARTI,
Pharmacist-in-Charge
14 Pharmacy Permit No. PHY 43874

SECOND AMENDED
ACCUSATION

15 SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
16 Monrovia, California 91016
SHRUTY PARTI,
Pharmacist-in-Charge
17 Pharmacy Permit No. PHY 41952

**[RESPONDENT DAVID DONNY
CANTERO ONLY]**

18 SKILLED CARE PHARMACY
1350 N. Altadena Drive, Suite 100
19 Pasadena, California 91107
William C. Scott, President
20 Frank S. Osen, Secretary
Randy Speer, Treasurer/Financial Officer
21 Derwin Williams, Treasurer/financial Officer
Jesse F. Martinez, Vice President
22 SHRUTY PARTI,
Pharmacist-in-Charge
23 Pharmacy Permit No. PHY 37908

24 SHRUTY CHATERJEE PARTI
1115 E. Saga Street
25 Glendora, California 91741
Pharmacist License No. RPH 44615

26 SCOTT RICHARD PRESTON
27 9343 Aldea Avenue
Northridge, California 91325
28 Pharmacist License No. RPH 39869

1 JESSE FELIX MARTINEZ
29 Sunlight
2 Irvine, California 92715
Pharmacist License No. RPH 31022

3 and

4 DAVID DONNY CANTERO
1465 West Arbolitos Court
5 Santa Maria, California 93454
6 Pharmacy Technician Registration
No. 10551

7 Respondents.
8

9
10 Complainant alleges:

11 **PARTIES**

12 1. Patricia F. Harris ("Complainant") brings this Second Amended
13 Accusation (as to respondent David Donny Cantero only) solely in her official capacity
14 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
15 This Second Amended Accusation does not supercede the allegations filed or prayers
16 sought against the other respondents in the Accusation or First Amended Accusation
17 filed in case number 2048.

18 2. On or about June 26, 1992, the Board of Pharmacy issued Original
19 Pharmacy Permit Number PHY 37908 to Summit Care Pharmacy, Inc. to do business
20 as SKILLED CARE PHARMACY at 1350 N. Altadena Drive, Suite 100, Pasadena,
21 California 91107 ("Respondent Skilled Care Pharmacy Pasadena"). Corporate
22 officers were President William C. Scott, from July 1, 1992 through December 18, 1997;
23 Secretary Frank S. Osen, from June 26, 1992 through December 18, 1997;
24 Treasurer/Financial Officer Randy Speer, from June 26, 1992 through January 27,
25 1995; and Derwin Williams, from January 27, 1995 through December 18, 1997; and
26 Vice President Jesse F. Martinez, from January 27, 1995 through December 1997.
27 Respondent Scott Richard Preston was the Pharmacist-In-Charge from June 26, 1992
28 through May 25, 1995; and Respondent Shruty Chaterjee Parti was the Pharmacist-In-

1 Charge from May 25, 1995 through December 18, 1997. The license of Respondent
2 Skilled Care Pharmacy Pasadena was in full force and effect until December 18, 1997,
3 at which time a change of location request was approved under pharmacy permit
4 number PHY 41952¹.

5 3. On or about December 18, 1997, the Board of Pharmacy issued
6 Original Pharmacy Permit Number PHY 41952 to Summit Care Pharmacy, Inc., to do
7 business as SKILLED CARE PHARMACY at 222 East Huntington Drive, No. 11,
8 Monrovia, California 91016 ("Respondent Skilled Care Pharmacy Monrovia").
9 Respondent Shruty Chaterjee Parti was the Pharmacist-In-Charge from December 18,
10 1997 to March 14, 2001. The license of Respondent Skilled Care Pharmacy Monrovia
11 was canceled on March 14, 2001.

12 4. On or about March 14, 2001, the Board of Pharmacy issued
13 Original Pharmacy Permit Number 43874 to Summit Care Pharmacy, Inc., to do
14 business as SKILLED CARE PHARMACY at 222 East Huntington Drive, No. 11,
15 Monrovia, California 91106 ("Respondent Skilled Care Pharmacy Monrovia II").²
16 Respondent Shruty Chaterjee Parti has been the Pharmacist-in-Charge since
17 March 14, 2001. The license of Respondent Skilled Care Pharmacy Monrovia II will

18 _____
19 1. On or about February 28, 1997, Respondent Skilled Care Pharmacy
20 Pasadena submitted an application for pharmacy permit to the Board, requesting a
21 change of location from 1350 N. Altadena Drive, Suite 100, Pasadena, California
22 91107 to 222 East Huntington Drive, No. 11, Monrovia, California 91016. Said
23 application was denied by the Board on or about April 16, 1997.

24 Thereafter, the Board waived its right to file a statement of issues
25 against Respondent Skilled Care Pharmacy Pasadena in exchange for its agreement
26 that any discipline that may be imposed against pharmacy permit PHY 37908 issued
27 to Respondent Skilled Care Pharmacy Pasadena, would likewise be imposed against
28 a new permit to be issued to Respondent Skilled Care Pharmacy Monrovia for the
location specified in the paragraph immediately above. The change of location
request was approved under pharmacy permit number PHY 41952 on or about
December 18, 1997.

 2. Under an agreement similar to that described in footnote 1, a change of
ownership was approved under pharmacy permit number 43874 on or about
March 14, 2001.

1 expire on March 1, 2002, unless renewed.

2 5. On or about August 17, 1991, the Board of Pharmacy issued
3 Original Pharmacist License Number RPH 44615 to Shruty Chaterjee Parti
4 ("Respondent Parti"). The license will expire on October 31, 2002, unless renewed.

5 6. On or about January 13, 1986, the Board of Pharmacy issued
6 Original Pharmacist License Number RPH 39869 to Scott Richard Preston
7 ("Respondent Preston"). The license will expire on January 31, 2003, unless renewed.

8 7. On or about July 29, 1977, the Board of Pharmacy issued Original
9 Pharmacist License Number RPH 31022 to Jesse Felix Martinez ("Respondent
10 Martinez"). The license will expire on June 30, 2003, unless renewed.

11 8. On or about November 15, 1993, the Board of Pharmacy issued
12 Original Pharmacy Technician Registration Number TCH 10551 to David Donny
13 Cantero ("Respondent Cantero"). The license will expire on May 31, 2003, unless
14 renewed.

15 **JURISDICTION**

16 9. This Second Amended Accusation is brought before the Board of
17 Pharmacy ("Board"), under the authority of the following sections of the Business and
18 Professions Code ("Code").

19 10. Section 4300 of the Code permits the Board to take disciplinary
20 action to suspend or revoke a license or permit.

21 11. Section 4301 of the Code states that the Board shall take action
22 against any holder of a license who is guilty of unprofessional conduct or whose license
23 has been procured by fraud or misrepresentation or issued by mistake. Unprofessional
24 conduct shall include, but is not limited to, any of the following:

25 (j) The violation of any of the statutes of this state or of the United States
26 regulating controlled substances and dangerous drugs.

27 (l) The conviction of a crime substantially related to the qualifications,
28 functions, and duties of a licensee.

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of or conspiring to violate any provision or term of this chapter or
3 of the applicable federal and state laws and regulations governing pharmacy, including
4 regulations established by the board.

5 12. Section 4081(a) of the Code, in pertinent part, provides that a
6 current inventory shall be kept by every pharmacy, or establishment holding a currently
7 valid and unrevoked certificate, license, permit, registration who maintains a stock of
8 dangerous drugs or dangerous devices.

9 13. Section 4113(b) of the Code states that the pharmacist-in-charge
10 shall be responsible for a pharmacy's compliance with all state and federal laws and
11 regulations pertaining to the practice of pharmacy.

12 14A. Section 4060 of the Code states that no person shall possess any
13 controlled substance, except that furnished to a person upon the prescription of a
14 physician or furnished pursuant to a drug order issued by a physician assistant or a
15 nurse.

16 14B. Section 11350(a) of the Health and Safety Code provides that,
17 except as otherwise provided in Division 10 of the Health and Safety Code, every
18 person who possesses (a) any controlled substance specified in subdivision (b) or (c),
19 or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or
20 (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of
21 Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which
22 is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist,
23 or veterinarian licensed to practice in this state, shall be punished by imprisonment in
24 the state prison.

25 15. Section 4116 of the Code states that no person other than a
26 pharmacist, an intern pharmacist, an authorized officer of the law, or a person
27 authorized to prescribe shall be permitted in that area, place, or premises described in
28 the license issued by the board wherein controlled substances or dangerous drugs or

1 dangerous devices are stored, possessed, prepared, manufactured, derived,
2 compounded, dispensed, or repackaged. However, a pharmacist shall be responsible
3 for any individual who enters the pharmacy for the purposes of receiving consultation
4 from the pharmacist or performing clerical, inventory control, housekeeping, delivery,
5 maintenance, or similar functions relating to the pharmacy if the pharmacist remains
6 present in the pharmacy during all times as the authorized individual is present.

7 16. Title 16, California Code of Regulations, section 1714, in relevant
8 part, states:

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

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

18 17. Title 16, California Code of Regulations, section 1717(b), in
19 pertinent part, provides that the following information shall be maintained for each
20 prescription on file and shall be readily retrievable:

21 (1) The date dispensed, and the name or initials of the dispensing
22 pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be
23 initialed by the preceptor before they are dispensed.

24 (2) The brand name of the drug or device; or if a generic drug or device is
25 dispensed, the distributor's name which appears on the commercial package label; and

26 (3) If a prescription for a drug or device is refilled, a record of each refill,
27 quantity dispensed, if different, and the initials or name of the dispensing pharmacist.

28 (4) A new prescription must be created if there is a change in the drug,

1 strength, prescriber or directions for use, unless a complete record of all such changes
2 is otherwise maintained.

3 18. Title 16, California Code of Regulations, section 1718 provides:

4 "Current inventory' as used in Section 4081 of the Business and
5 Professions Code shall be considered to include complete accountability for all
6 dangerous drugs handled by every licensee enumerated in Section 4081. The
7 controlled substances inventories required by Title 21, CFR, Section 1304 shall be
8 available for inspection upon request for at least 3 years after the date of the inventory."

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

13 CONTROLLED SUBSTANCES

14 A. Lortab Brand and generic (hydrocodone 7.5 with acetaminophen
15 [APAP] 500 mg) is a dangerous drug as defined by Business and Professions Code
16 Section 4022 and a controlled substance schedule III as listed in Health and Safety
17 Code Section 11056(e)(3). It is a narcotic analgesic combination.

18 B. Vicodin Brand and generic (hydrocodone 5 mg with acetaminophen
19 [APAP] 500 mg) is a dangerous drug as defined by Business and Professions Code
20 Section 4022 and a controlled substance schedule III as listed in Health and Safety
21 Code Section 11056(e)(3). It is a narcotic analgesic combination.

22 C. Tylenol with Codeine 60 mg and generic (acetaminophen [APAP]
23 300mg with codeine 60mg) is a dangerous drug as defined by Business and
24 Professions Code Section 4022 and is a controlled substance schedule III as listed in
25 Health and Safety Code Section 11056(e)(2). It is a narcotic analgesic combination.

26 D. Fastin, Ionamin, Adapin and generic phenteramine of various
27 strengths are dangerous drugs as defined by Business and Professions Code Section
28 4022 and are controlled substances schedule IV as listed in Health and Safety Code

1 Section 11057(f)(2). Each is an appetite suppressant.

2 E. Pondimin (generically fenfuramine) is a dangerous drug as defined
3 by Business and Professions Code Section 4022 and is a controlled substance
4 schedule IV as listed in Health and Safety Code Section 11057(e)(1). It is an appetite
5 suppressant.

6 **CAUSES FOR DISCIPLINE**

7 20A. Respondent Cantero has subjected his registration to discipline
8 pursuant to section 4300 of the Code for unprofessional conduct as defined in section
9 4301(j) of the Code, for a violation of Section 4060 of the Code and Section 11350(a) of
10 the Health and Safety Code, as follows:

11 On or about February 14, 1996, Brea police officers observed Respondent
12 Cantero and his girlfriend, Theresa R. arguing. Theresa R. stated that prior to the
13 officers' arrival, she attempted to flee from Respondent Cantero's vehicle but he locked
14 the electric door locks on the vehicle and did not allow her to exit the vehicle. Upon
15 their arrival, officers observed Theresa R.'s lip bleeding and swollen. Theresa R.
16 advised the officers that Respondent Cantero hit her with the back of his hand across
17 the mouth with the back of his right hand. In the course of the investigation, one of the
18 officers located two bottles of prescription medication in the trunk of Respondent
19 Cantero's vehicle. One bottle was sealed and contained 500 tablets of Vicodin and the
20 other opened bottle contained Tylenol 4 with Codeine. The Tylenol 4 with Codeine
21 bottle was labeled as having 500 tablets in it; however, only 482 tablets were found.
22 Subsequently, Respondent Cantero was arrested. Respondent Cantero was employed
23 at Skilled Care Pharmacy Pasadena at the time of his arrest.

24 20B. Respondent Cantero has subjected his registration to discipline
25 pursuant to section 4300 of the Code for unprofessional conduct as defined in section
26 4301(l) of the Code, as follows:

27 On July 2, 1996, Respondent Cantero was convicted by the Court on a
28 plea of guilty of one count of violating Section 415(1) of the Penal Code (unlawful fight

1 in a public place) (a misdemeanor) in the Municipal Court of the State of California,
2 County of Orange, North Judicial District Case No. BPD B96-0866, entitled The People
3 of the State of California v. David Donny Cantero.

4 The circumstances of the conviction are substantially related to the
5 qualifications, functions or duties of a registered pharmacy technician, as defined by
6 Section 4115 of the Code and Title 16, California Code of Regulations, section 1793.2,
7 in that it evidences to a substantial degree a present or potential unfitness on the part of
8 Respondent Cantero to perform the functions authorized by his registration in a manner
9 consistent with the public health, safety, or welfare when, on or about February 14,
10 1996, in the City of Brea, he engaged in a fight in a public place with Theresa R. as
11 described in paragraph 20A above.

12 21. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
13 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, and Martinez, and each
14 of them, have subjected their licenses to discipline for violation of Section 4300 of the
15 Code for unprofessional conduct as defined in Section 4301(j) of the Code in violation
16 of Title 16, California Code of Regulations, Section 1714(d) and Title 21, Code of
17 Federal Regulations, Section 1301.71 in that, on April 17, 1997, a Board inspector
18 made the following observations of Skilled Care Pharmacy Pasadena's practices and
19 operating procedures: the rear door entrance to Respondent Skilled Care Pharmacy
20 Pasadena led to an alley and public parking area directly into the shipping area which in
21 turn led directly into the dispensing area. The dispensing, shipping and receiving areas
22 were part of the licensed pharmacy where drugs were stored. The door was kept in a
23 wide open position allowing for the unsupervised access into the pharmacy by
24 unauthorized individuals. Patient orders were placed on a shelf directly to the right of
25 the open door within arms reach from outside of the building. After the rear door was
26 closed, it was unlocked to accommodate access by individuals without the need for
27 staff supervision. An audit of Skilled Care Pharmacy Pasadena for the period of
28 August 18, 1994 through April 11, 1997 revealed shortages of more than 41,000

1 dosage units of schedule III and IV controlled substances including Hydrocodone,
2 Lortab, Tylenol with Codeine, and Vicodin.

3 22. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
4 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, and Martinez, and each
5 of them, have subjected their licenses to discipline for a violation of Section 4300 of the
6 Code for unprofessional conduct as defined in Section 4301(j) of the Code in violation
7 of Title 16, California Code of Regulations, Section 1715.6 and Title 21, Code of
8 Federal Regulations, Section 1301.76 in that these Respondents were aware of
9 Respondent Cantero's arrest and drug possession and after performing their own audit
10 which showed additional shortages of the drugs, continued to use him in the capacity of
11 ordering technician with full, unrestricted access to all Schedule III and Schedule IV
12 controlled substances. These Respondents failed to notify the Board of the theft or loss
13 of controlled substances within the time prescribed by law. In fact, the required report
14 was not filed until approximately 10 months after finding the shortages and only after
15 instructed to do so by a Board inspector.

16 23. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
17 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, Martinez and Preston,
18 and each of them, have subjected their licenses to discipline for violation of Section
19 4300 of the Code for unprofessional conduct as defined in Section 4301(o) of the Code
20 in violation of Section 4040(a) of the Code and Health and Safety Code Section 11164
21 and Title 16, California Code of Regulations, Section 1717(b) in that Respondents failed
22 to maintain for each prescription on file, with respect to prescriptions filled between
23 approximately July 6, 1994 and May 25, 1995 (respondent Preston)(approximately
24 between 2,000 and 6,000 prescriptions) and between May 25, 1995 and January 22,
25 1997 (respondent Parti)(approximately 3,000 and 9,000 prescriptions) one or more of
26 the following:

- 27 A. Identify quantities dispensed;
28 B. Identify if a generic drug was dispensed; and

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C. Identify the distributor's name.

24. Respondents Skilled Care Pharmacy Pasadena, Skilled Care Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, and Martinez, and each of them, have subjected their licenses to discipline for violation of 4300 of the Code for unprofessional conduct as defined in Section 4301(o) of the Code and in violation of Section 4081 of the Code and Title 16, California Code of Regulations, Section 1718 in that between approximately May 25, 1995 and January 22, 1997 these Respondents failed to maintain accurate records showing complete accountability of controlled substances as required by law. A review of the records revealed that approximately 333 of the prescriptions filled were missing a prescription number, approximately 1272 of the prescriptions were missing the quantity of the prescription; and approximately 326 were missing both the prescription number and quantity.

25. Respondents Parti and Preston have subjected their licenses to discipline for violation of 4300 of the Code for unprofessional conduct in violation of Section 4113(b) of the Code in that Respondents Parti and Preston failed to insure the pharmacy's compliance with both state and federal laws pertaining to the practice of pharmacy as described above in paragraphs 21, 22, 23 and 24 above (as to respondent Parti) and paragraph 23 (as to respondent Preston).

26. Respondents Skilled Care Pharmacy Pasadena, Skilled Care Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, and Parti have further subjected their licenses to discipline for violation of Business and Professions Code Section 4116 for unprofessional conduct in violation of Section 4113(b) of the Code and Title 16, California Code of Regulations, Section 1714(b) and (d) in that Respondents Skilled Care Pharmacy Pasadena, Skilled Care Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, and Parti failed to maintain the security of the pharmacy even after the pharmacy personnel was instructed to close and secure the rear door of the licensed area.

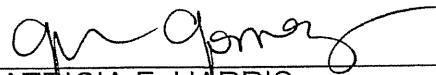
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1 PRAYER

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

- 5 1. Revoking or suspending Original Pharmacy Technician
6 Registration TCH No. 10551, issued to DAVID DONNY CANTERO;
- 7 2. Ordering DAVID DONNY CANTERO to pay the Board of Pharmacy
8 the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code Section 125.3;
- 10 3. Taking such other and further action as deemed necessary and
11 proper.

12 DATED: 12/3/01.

13
14 *for* 
15 PATRICIA F. HARRIS
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-2563
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 2048

11 SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
12 Monrovia, California 91106
SHRUTY PARTI,
13 Pharmacist-in-Charge
Pharmacy Permit No. PHY 43874

FIRST AMENDED
ACCUSATION

14 SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
15 Monrovia, California 91016
SHRUTY PARTI,
16 Pharmacist-in-Charge
17 Pharmacy Permit No. PHY 41952

18 SKILLED CARE PHARMACY
1350 N. Altadena Drive, Suite 100
19 Pasadena, California 91107
William C. Scott, President
20 Frank S. Osen, Secretary
Randy Speer, Treasurer/Financial Officer
21 Derwin Williams, Treasurer/financial Officer
Jesse F. Martinez, Vice President
22 SHRUTY PARTI,
Pharmacist-in-Charge
23 Pharmacy Permit No. PHY 37908

24 SHRUTY CHATERJEE PARTI
1115 E. Saga Street
25 Glendora, California 91741
Pharmacist License No. RPH 44615

26 SCOTT RICHARD PRESTON
27 9343 Aldea Avenue
Northridge, California 91325
28 Pharmacist License No. RPH 39869

1 JESSE FELIX MARTINEZ
29 Sunlight
2 Irvine, California 92715
Pharmacist License No. RPH 31022

3
4 and

5 DAVID DONNY CANTERO
1465 West Arbolitos Court
Santa Maria, California 93454
6 Pharmacy Technician Registration
No. 10551

7 Respondents.
8

9

10 Complainant alleges:

11

PARTIES

12

1. Patricia F. Harris ("Complainant") brings this Accusation solely in
13 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
14 Consumer Affairs.

15

2. On or about June 26, 1992, the Board of Pharmacy issued Original
16 Pharmacy Permit Number PHY 37908 to Summit Care Pharmacy, Inc. to do business
17 as SKILLED CARE PHARMACY at 1350 N. Altadena Drive, Suite 100, Pasadena,
18 California 91107 ("Respondent Skilled Care Pharmacy Pasadena"). Corporate
19 officers were President William C. Scott, from July 1, 1992 through December 18, 1997;
20 Secretary Frank S. Osen, from June 26, 1992 through December 18, 1997;
21 Treasurer/Financial Officer Randy Speer, from June 26, 1992 through January 27,
22 1995; and Derwin Williams, from January 27, 1995 through December 18, 1997; and
23 Vice President Jesse F. Martinez, from January 27, 1995 through December 1997.

24

Respondent Scott Richard Preston was the Pharmacist-In-Charge from June 26, 1992
25 through May 25, 1995; and Respondent Shruty Chaterjee Parti was the Pharmacist-In-
26 Charge from May 25, 1995 through December 18, 1997. The license of Respondent
27 Skilled Care Pharmacy Pasadena was in full force and effect until December 18, 1997,
28 at which time a change of location request was approved under pharmacy permit

1 number PHY 41952¹.

2 3. On or about December 18, 1997, the Board of Pharmacy issued
3 Original Pharmacy Permit Number PHY 41952 to Summit Care Pharmacy, Inc., to do
4 business as SKILLED CARE PHARMACY at 222 East Huntington Drive, No. 11,
5 Monrovia, California 91016 ("Respondent Skilled Care Pharmacy Monrovia").
6 Respondent Shruty Chaterjee Parti was the Pharmacist-In-Charge from December 18,
7 1997 to March 14, 2001. The license of Respondent Skilled Care Pharmacy Monrovia
8 was cancelled on March 14, 2001.

9 4. On or about March 14, 2001, the Board of Pharmacy issued
10 Original Pharmacy Permit Number 43874 to Summit Care Pharmacy, Inc., to do
11 business as SKILLED CARE PHARMACY at 222 East Huntington Drive, No. 11,
12 Monrovia, California 91106 ("Respondent Skilled Care Pharmacy Monrovia II").²
13 Respondent Shruty Chaterjee Parti has been the Pharmacist-in-Charge since
14 March 14, 2001. The license of Respondent Skilled Care Pharmacy Monrovia II will
15 expire on March 1, 2002, unless renewed.

16 5. On or about August 17, 1991, the Board of Pharmacy issued
17 Original Pharmacist License Number RPH 44615 to Shruty Chaterjee Parti

18 _____
19 1. On or about February 28, 1997, Respondent Skilled Care Pharmacy
20 Pasadena submitted an application for pharmacy permit to the Board, requesting a
21 change of location from 1350 N. Altadena Drive, Suite 100, Pasadena, California
22 91107 to 222 East Huntington Drive, No. 11, Monrovia, California 91016. Said
23 application was denied by the Board on or about April 16, 1997.

24 Thereafter, the Board waived its right to file a statement of issues
25 against Respondent Skilled Care Pharmacy Pasadena in exchange for its agreement
26 that any discipline that may be imposed against pharmacy permit PHY 37908 issued
27 to Respondent Skilled Care Pharmacy Pasadena, would likewise be imposed against
28 a new permit to be issued to Respondent Skilled Care Pharmacy Monrovia for the
location specified in the paragraph immediately above. The change of location
request was approved under pharmacy permit number PHY 41952 on or about
December 18, 1997.

29 2. Under an agreement similar to that described in footnote 1, a change of
ownership was approved under pharmacy permit number 43874 on or about
March 14, 2001.

1 ("Respondent Parti"). The license will expire on October 31, 2002, unless renewed.

2 6. On or about January 13, 1986, the Board of Pharmacy issued
3 Original Pharmacist License Number RPH 39869 to Scott Richard Preston
4 ("Respondent Preston"). The license will expire on January 31, 2003, unless renewed.

5 7. On or about July 29, 1977, the Board of Pharmacy issued Original
6 Pharmacist License Number RPH 31022 to Jesse Felix Martinez ("Respondent
7 Martinez"). The license will expire on June 30, 2001, unless renewed.

8 8. On or about November 15, 1993, the Board of Pharmacy issued
9 Original Pharmacy Technician Registration Number TCH 10551 to David Donny
10 Cantero ("Respondent Cantero"). The license will expire on May 31, 2003, unless
11 renewed.

12 JURISDICTION

13 9. This Accusation is brought before the Board of Pharmacy
14 ("Board"), under the authority of the following sections of the Business and Professions
15 Code ("Code").

16 10. Section 4300 of the Code permits the Board to take disciplinary
17 action to suspend or revoke a license or permit.

18 11. Section 4301 of the Code states that the Board shall take action
19 against any holder of a license who is guilty of unprofessional conduct or whose license
20 has been procured by fraud or misrepresentation or issued by mistake. Unprofessional
21 conduct shall include, but is not limited to, any of the following:

22 (j) The violation of any of the statutes of this state or of the United States
23 regulating controlled substances and dangerous drugs.

24 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
25 abetting the violation of or conspiring to violate any provision or term of this chapter or
26 of the applicable federal and state laws and regulations governing pharmacy, including
27 regulations established by the board.

28 12. Section 4081(a) of the Code, in pertinent part, provides that a

1 current inventory shall be kept by every pharmacy, or establishment holding a currently
2 valid and unrevoked certificate, license, permit, registration who maintains a stock of
3 dangerous drugs or dangerous devices.

4 13. Section 4113(b) of the Code states that the pharmacist-in-charge
5 shall be responsible for a pharmacy's compliance with all state and federal laws and
6 regulations pertaining to the practice of pharmacy.

7 14. Section 4060 of the Code states that no person shall possess any
8 controlled substance, except that furnished to a person upon the prescription of a
9 physician or furnished pursuant to a drug order issued by a physician assistant or a
10 nurse.

11 15. Section 4116 of the Code states that no person other than a
12 pharmacist, an intern pharmacist, an authorized officer of the law, or a person
13 authorized to prescribe shall be permitted in that area, place, or premises described in
14 the license issued by the board wherein controlled substances or dangerous drugs or
15 dangerous devices are stored, possessed, prepared, manufactured, derived,
16 compounded, dispensed, or repackaged. However, a pharmacist shall be responsible
17 for any individual who enters the pharmacy for the purposes of receiving consultation
18 from the pharmacist or performing clerical, inventory control, housekeeping, delivery,
19 maintenance, or similar functions relating to the pharmacy if the pharmacist remains
20 present in the pharmacy during all times as the authorized individual is present.

21 16. Title 16, California Code of Regulations, section 1714, in relevant
22 part, states:

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

27 (d) Each pharmacist while on duty shall be responsible for the security
28 of the prescription department, including provisions for effective control against theft or

1 diversion of dangerous drugs and devices, and records for such drugs and devices.
2 Possession of a key to the pharmacy where dangerous drugs and controlled
3 substances are stored shall be restricted to a pharmacist.

4 17. Title 16, California Code of Regulations, section 1717(b), in
5 pertinent part, provides that the following information shall be maintained for each
6 prescription on file and shall be readily retrievable:

7 (1) The date dispensed, and the name or initials of the dispensing
8 pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be
9 initialed by the preceptor before they are dispensed.

10 (2) The brand name of the drug or device; or if a generic drug or device is
11 dispensed, the distributor's name which appears on the commercial package label; and

12 (3) If a prescription for a drug or device is refilled, a record of each refill,
13 quantity dispensed, if different, and the initials or name of the dispensing pharmacist.

14 (4) A new prescription must be created if there is a change in the drug,
15 strength, prescriber or directions for use, unless a complete record of all such changes
16 is otherwise maintained.

17 18. Title 16, California Code of Regulations, section 1718 provides:

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

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

27 **CONTROLLED SUBSTANCES**

28 A. Lortab Brand and generic (hydrocodone 7.5 with acetaminophen

1 [APAP] 500 mg) is a dangerous drug as defined by Business and Professions Code
2 Section 4022 and a controlled substance schedule III as listed in Health and Safety
3 Code Section 11056(e)(3). It is a narcotic analgesic combination.

4 B. Vicodin Brand and generic (hydrocodone 5 mg with acetaminophen
5 [APAP] 500 mg) is a dangerous drug as defined by Business and Professions Code
6 Section 4022 and a controlled substance schedule III as listed in Health and Safety
7 Code Section 11056(e)(3). It is a narcotic analgesic combination.

8 C. Tylenol with Codeine 60 mg and generic (acetaminophen [APAP]
9 300mg with codeine 60mg) is a dangerous drug as defined by Business and
10 Professions Code Section 4022 and is a controlled substance schedule III as listed in
11 Health and Safety Code Section 11056(e)(2). It is a narcotic analgesic combination.

12 D. Fastin, Ionamin, Adapin and generic phenteramine of various
13 strengths are dangerous drugs as defined by Business and Professions Code Section
14 4022 and are controlled substances schedule IV as listed in Health and Safety Code
15 Section 11057(f)(2). Each is an appetite suppressant.

16 E. Pondimin (generically fenfuramine) is a dangerous drug as defined
17 by Business and Professions Code Section 4022 and is a controlled substance
18 schedule IV as listed in Health and Safety Code Section 11057(e)(1). It is an appetite
19 suppressant.

20 CAUSES FOR DISCIPLINE

21 20. Respondent Cantero has subjected his registration to discipline
22 pursuant to section 4300 of the Code as defined in section 4301(j) of the Code for
23 unprofessional conduct as follows:

24 On or about February 14, 1996, Brea police officers observed Respondent
25 Cantero and his girlfriend, Theresa R. arguing. Prior to the officers arrival, Theresa R.
26 stated she attempted to flee from Respondent Cantero's vehicle but he locked the
27 electric door locks on the vehicle and did not allow her to exit the vehicle. Officers
28 observed Theresa R.'s lip bleeding and swollen. Theresa R. advised the officers that

1 Respondent Cantero had hit her with the back of his hand across the mouth with the
2 back of his right hand. Subsequently, one of the officers located two bottles of
3 prescription medication in the trunk of Respondent Cantero's vehicle. One bottle was
4 sealed and contained 500 tablets of Vicodin and the other opened bottle contained
5 Tylenol 4 with Codeine. The Tylenol 4 with Codeine bottle was labeled as having 500
6 tablets in it, however; only 482 tablets were found. Subsequently, Respondent Cantero
7 was arrested. Respondent Cantero was employed at Skilled Care Pharmacy Pasadena
8 at the time of his arrest.

9 On July 2, 1996, Respondent Cantero was convicted by the Court on a
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11 fight in a public place) (a misdemeanor) in the Municipal Court of the State of California,
12 County of Orange, North Judicial District Case No. BPD B96-0866, entitled The People
13 of the State of California v. David Donny Cantero.

14 21. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
15 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, and Martinez, and each
16 of them, have subjected their licenses to discipline for violation of Section 4300 of the
17 Code for unprofessional conduct as defined in Section 4301(j) of the Code in violation
18 of Title 16, California Code of Regulations, Section 1714(d) and Title 21, Code of
19 Federal Regulations, Section 1301.71 in that, on April 17, 1997, a Board inspector
20 made the following observations of Skilled Care Pharmacy Pasadena's practices and
21 operating procedures: the rear door entrance to Respondent Skilled Care Pharmacy
22 Pasadena led to an alley and public parking area directly into the shipping area which in
23 turn led directly into the dispensing area. The dispensing, shipping and receiving areas
24 were part of the licensed pharmacy where drugs were stored. The door was kept in a
25 wide open position allowing for the unsupervised access into the pharmacy by
26 unauthorized individuals. Patient orders were placed on a shelf directly to the right of
27 the open door within arms reach from outside of the building. After the rear door was
28 closed, it was unlocked to accommodate access by individuals without the need for

1 staff supervision. An audit of Skilled Care Pharmacy Pasadena for the period of
2 August 18, 1994 through April 11, 1997 revealed shortages of more than 41,000
3 dosage units of schedule III and IV controlled substances including Hydrocodone,
4 Lortab, Tylenol with Codeine, and Vicodin.

5 22. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
6 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, and Martinez, and each
7 of them, have subjected their licenses to discipline for a violation of Section 4300 of the
8 Code for unprofessional conduct as defined in Section 4301(j) of the Code in violation
9 of Title 16, California Code of Regulations, Section 1715.6 and Title 21, Code of
10 Federal Regulations, Section 1301.76 in that these Respondents were aware of
11 Respondent Cantero's arrest and drug possession and after performing their own audit
12 which showed additional shortages of the drugs, continued to use him in the capacity of
13 ordering technician with full, unrestricted access to all Schedule III and Schedule IV
14 controlled substances. These Respondents failed to notify the Board of the theft or loss
15 of controlled substances within the time prescribed by law. In fact, the required report
16 was not filed until approximately 10 months after finding the shortages and only after
17 instructed to do so by a Board inspector.

18 23. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
19 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, Martinez and Preston,
20 and each of them, have subjected their licenses to discipline for violation of Section
21 4300 of the Code for unprofessional conduct as defined in Section 4301(o) of the Code
22 in violation of Section 4040(a) of the Code and Health and Safety Code Section 11164
23 and Title 16, California Code of Regulations, Section 1717(b) in that Respondents failed
24 to maintain for each prescription on file, with respect to prescriptions filled between
25 approximately July 6, 1994 and May 25, 1995 (respondent Preston)(approximately
26 between 2,000 and 6,000 prescriptions) and between May 25, 1995 and January 22,
27 1997 (respondent Parti)(approximately 3,000 and 9,000 prescriptions) one or more of
28 the following:

- 1 A. Identify quantities dispensed;
- 2 B. Identify if a generic drug was dispensed; and
- 3 C. Identify the distributor's name.

4 24. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
5 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, Parti, and Martinez, and each
6 of them, have subjected their licenses to discipline for violation of 4300 of the Code for
7 unprofessional conduct as defined in Section 4301(o) of the Code and in violation of
8 Section 4081 of the Code and Title 16, California Code of Regulations, Section 1718 in
9 that between approximately May 25, 1995 and January 22, 1997 these Respondents
10 failed to maintain accurate records showing complete accountability of controlled
11 substances as required by law. A review of the records revealed that approximately
12 333 of the prescriptions filled were missing a prescription number, approximately 1272
13 of the prescriptions were missing the quantity of the prescription; and approximately
14 326 were missing both the prescription number and quantity.

15 25. Respondents Parti and Preston have subjected their licenses to
16 discipline for violation of 4300 of the Code for unprofessional conduct in violation of
17 Section 4113(b) of the Code in that Respondents Parti and Preston failed to insure the
18 pharmacy's compliance with both state and federal laws pertaining to the practice of
19 pharmacy as described above in paragraphs 21, 22, 23 and 24 above (as to
20 respondent Parti) and paragraph 23 (as to respondent Preston).

21 26. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
22 Pharmacy Monrovia, Skilled Care Pharmacy Monrovia II, and Parti have further
23 subjected their licenses to discipline for violation of Business and Professions Code
24 Section 4116 for unprofessional conduct in violation of Section 4113(b) of the Code and
25 Title 16, California Code of Regulations, Section 1714(b) and (d) in that Respondents
26 Skilled Care Pharmacy Pasadena, Skilled Care Pharmacy Monrovia, Skilled Care
27 Pharmacy Monrovia II, and Parti failed to maintain the security of the pharmacy even
28 after the pharmacy personnel was instructed to close and secure the rear door of the

1 licensed area.

2 **PRAYER**

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

- 6 1. Revoking or suspending Original Pharmacy Permit No. PHY
7 43874, issued to SKILLED CARE PHARMACY MONROVIA II;
- 8 2. Revoking or suspending Original Pharmacy Permit No. PHY
9 41952, issued to SKILLED CARE PHARMACY MONROVIA;
- 10 3. Revoking or suspending Original Pharmacy Permit No. PHY 37908,
11 issued to SKILLED CARE PHARMACY PASADENA;
- 12 4. Revoking or suspending Original Pharmacy Technician
13 Registration TCH No. 10551, issued to DAVID DONNY CANTERO;
- 14 5. Revoking or suspending Original Pharmacist License No. RPH
15 44615, issued to SHRUTY CHATERJEE PARTI;
- 16 6. Revoking or suspending Original Pharmacist License No. RPH
17 39869, issued to SCOTT RICHARD PRESTON;
- 18 7. Revoking or suspending Original Pharmacist License No. RPH
19 31022, issued to JESSE FELIX MARTINEZ;
- 20 8. Ordering SKILLED CARE PHARMACY MONROVIA, SKILLED
21 CARE PHARMACY MONROVIA II, SKILLED CARE PHARMACY PASADENA, DAVID
22 DONNY CANTERO, SHRUTY CHATERJEE PARTI, SCOTT RICHARD PRESTON and
23 JESSE FELIX MARTINEZ to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code
25 Section 125.3;

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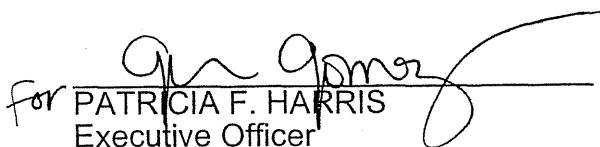
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9. Taking such other and further action as deemed necessary and

proper.

DATED: 6/20/01

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

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
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4 Los Angeles, California 90013
Telephone: (213) 897-2563
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2048

12 SKILLED CARE PHARMACY
222 East Huntington Drive, No. 11
13 Monrovia, California 91016
SHRUTY PARTI,
Pharmacist-in-Charge
Pharmacy Permit No. PHY 41952

A C C U S A T I O N

14 SKILLED CARE PHARMACY
15 1350 N. Altadena Drive, Suite 100
Pasadena, California 91107
16 William C. Scott, President
Frank S. Osen, Secretary
17 Randy Speer, Treasurer/Financial Officer
Derwin Williams, Treasurer/financial Officer
18 Jesse F. Martinez, Vice President
SHRUTY PARTI,
19 Pharmacist-in-Charge
Pharmacy Permit No. PHY 37908

20 SHRUTY CHATERJEE PARTI
21 1115 E. Saga Street
Glendora, California 91741
22 Pharmacist License No. RPH 44615

23 SCOTT RICHARD PRESTON
9343 Aldea Avenue
24 Northridge, California 91325
Pharmacist License No. RPH 39869

25 JESSE FELIX MARTINEZ
26 29 Sunlight
Irvine, California 92715
27 Pharmacist License No. RPH 31022

28 and

1 DAVID DONNY CANTERO
1465 West Arbolitos Court
2 Santa Maria, California 93454
Pharmacy Technician Registration
3 No. 10551

4 Respondents.

5
6 Complainant alleges:

7 **PARTIES**

8 1. Patricia F. Harris ("Complainant") brings this Accusation solely in
9 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
10 Consumer Affairs.

11 2. On or about June 26, 1992, the Board of Pharmacy issued Original
12 Pharmacy Permit Number PHY 37908 to Summit Care Pharmacy, Inc. to do business
13 as SKILLED CARE PHARMACY at 1350 N. Altadena Drive, Suite 100, Pasadena,
14 California 91107 ("Respondent Skilled Care Pharmacy Pasadena"). Corporate
15 officers were President William C. Scott, from July 1, 1992 through December 18, 1997;
16 Secretary Frank S. Osen, from June 26, 1992 through December 18, 1997;
17 Treasurer/Financial Officer Randy Speer, from June 26, 1992 through January 27,
18 1995; and Derwin Williams, from January 27, 1995 through December 18, 1997; and
19 Vice President Jesse F. Martinez, from January 27, 1995 through December 1997.
20 Respondent Scott Richard Preston was the Pharmacist-In-Charge from June 26, 1992
21 through May 25, 1995; and Respondent Shruty Chaterjee Parti was the Pharmacist-In-
22 Charge from May 25, 1995 through December 18, 1997. The license of Respondent
23 Skilled Care Pharmacy Pasadena was in full force and effect until December 18, 1997,
24 at which time a change of location request was approved under pharmacy permit
25 number PHY 41952¹.

26
27 1. On or about February 28, 1997, Respondent Skilled Care Pharmacy
28 Pasadena submitted an application for pharmacy permit to the Board, requesting a
change of location from 1350 N. Altadena Drive, Suite 100, Pasadena, California

1 3. On or about December 18, 1997, the Board of Pharmacy issued
2 Original Pharmacy Permit License PHY Number 41952 to Summit Care Pharmacy, Inc.,
3 to do business as SKILLED CARE PHARMACY at 222 East Huntington Drive, No. 11,
4 Monrovia, California 91016 ("Respondent Skilled Care Pharmacy Monrovia").
5 Respondent Shruty Chaterjee Parti has been the Pharmacist-In-Charge since
6 December 18, 1997. The license of Respondent Skilled Care Pharmacy Monrovia will
7 expire on December 1, 2001, unless renewed.

8 4. On or about August 17, 1991, the Board of Pharmacy issued
9 Original Pharmacist License Number RPH 44615 to Shruty Chaterjee Parti
10 ("Respondent Parti"). The license will expire on October 31, 2002, unless renewed.

11 5. On or about January 13, 1986, the Board of Pharmacy issued
12 Original Pharmacist License Number RPH 39869 to Scott Richard Preston
13 ("Respondent Preston"). The license will expire on January 31, 2003, unless renewed.

14 6. On or about July 29, 1977, the Board of Pharmacy issued Original
15 Pharmacist License Number RPH 31022 to Jesse Felix Martinez ("Respondent
16 Martinez"). The license will expire on June 30, 2001, unless renewed.

17 7. On or about November 15, 1993, the Board of Pharmacy issued
18 Original Pharmacy Technician Registration Number TCH 10551 to David Donny
19 Cantero ("Respondent Cantero"). The license will expire on May 31, 2001, unless
20 renewed.

21
22 _____
23 91107 to 222 East Huntington Drive, No. 11, Monrovia, California 91016. Said
24 application was denied by the Board on or about April 16, 1997.

25 Thereafter, the Board waived its right to file a statement of issues
26 against Respondent Skilled Care Pharmacy Pasadena in exchange for its agreement
27 that any discipline that may be imposed against pharmacy permit PHY 37908 issued
28 to Respondent Skilled Care Pharmacy Pasadena, would likewise be imposed against
a new permit to be issued to Respondent Skilled Care Pharmacy Monrovia for the
location specified in the paragraph immediately above. The change of location
request was approved under pharmacy permit number PHY 41952 on or about
December 18, 1997.

JURISDICTION

1
2 8. This Accusation is brought before the Board of Pharmacy
3 ("Board"), under the authority of the following sections of the Business and Professions
4 Code ("Code").

5 9. Section 4300 of the Code permits the Board to take disciplinary
6 action to suspend or revoke a license or permit.

7 10. Section 4301 of the Code states that the Board shall take action
8 against any holder of a license who is guilty of unprofessional conduct or whose license
9 has been procured by fraud or misrepresentation or issued by mistake. Unprofessional
10 conduct shall include, but is not limited to, any of the following:

11 (j) The violation of any of the statutes of this state or of the United States
12 regulating controlled substances and dangerous drugs.

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

17 11. Section 4081(a) of the Code, in pertinent part, provides that a
18 current inventory shall be kept by every pharmacy, or establishment holding a currently
19 valid and unrevoked certificate, license, permit, registration who maintains a stock of
20 dangerous drugs or dangerous devices.

21 12. Section 4113(b) of the Code states that the pharmacist-in-charge
22 shall be responsible for a pharmacy's compliance with all state and federal laws and
23 regulations pertaining to the practice of pharmacy.

24 13. Section 4060 of the Code states that no person shall possess any
25 controlled substance, except that furnished to a person upon the prescription of a
26 physician or furnished pursuant to a drug order issued by a physician assistant or a
27 nurse.

28 14. Section 4116 of the Code states that no person other than a

1 pharmacist, an intern pharmacist, an authorized officer of the law, or a person
2 authorized to prescribe shall be permitted in that area, place, or premises described in
3 the license issued by the board wherein controlled substances or dangerous drugs or
4 dangerous devices are stored, possessed, prepared, manufactured, derived,
5 compounded, dispensed, or repackaged. However, a pharmacist shall be responsible
6 for any individual who enters the pharmacy for the purposes of receiving consultation
7 from the pharmacist or performing clerical, inventory control, housekeeping, delivery,
8 maintenance, or similar functions relating to the pharmacy if the pharmacist remains
9 present in the pharmacy during all times as the authorized individual is present.

10 15. Title 16, California Code of Regulations, section 1714, in relevant
11 part, states:

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

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

21 16. Title 16, California Code of Regulations, section 1717(b), in
22 pertinent part, provides that the following information shall be maintained for each
23 prescription on file and shall be readily retrievable:

24 (1) The date dispensed, and the name or initials of the dispensing
25 pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be
26 initialed by the preceptor before they are dispensed.

27 (2) The brand name of the drug or device; or if a generic drug or device is
28 dispensed, the distributor's name which appears on the commercial package label; and

1 (3) If a prescription for a drug or device is refilled, a record of each refill,
2 quantity dispensed, if different, and the initials or name of the dispensing pharmacist.

3 (4) A new prescription must be created if there is a change in the drug,
4 strength, prescriber or directions for use, unless a complete record of all such changes
5 is otherwise maintained.

6 17. Title 16, California Code of Regulations, section 1718 provides:

7 "Current inventory' as used in Section 4081 of the Business and
8 Professions Code shall be considered to include complete accountability for all
9 dangerous drugs handled by every licensee enumerated in Section 4081. The
10 controlled substances inventories required by Title 21, CFR, Section 1304 shall be
11 available for inspection upon request for at least 3 years after the date of the inventory."

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

16 **CONTROLLED SUBSTANCES**

17 A. Lortab Brand and generic (hydrocodone 7.5 with acetaminophen
18 [APAP] 500 mg) is a dangerous drug as defined by Business and Professions Code
19 Section 4022 and a controlled substance schedule III as listed in Health and Safety
20 Code Section 11056(e)(3). It is a narcotic analgesic combination.

21 B. Vicodin Brand and generic (hydrocodone 5 mg with acetaminophen
22 [APAP] 500 mg) is a dangerous drug as defined by Business and Professions Code
23 Section 4022 and a controlled substance schedule III as listed in Health and Safety
24 Code Section 11056(e)(3). It is a narcotic analgesic combination.

25 C. Tylenol with Codeine 60 mg and generic (acetaminophen [APAP]
26 300mg with codeine 60mg) is a dangerous drug as defined by Business and
27 Professions Code Section 4022 and is a controlled substance schedule III as listed in
28 Health and Safety Code Section 11056(e)(2). It is a narcotic analgesic combination.

1 D. Fastin, Ionamin, Adapin and generic phenteramine of various
2 strengths are dangerous drugs as defined by Business and Professions Code Section
3 4022 and are controlled substances schedule IV as listed in Health and Safety Code
4 Section 11057(f)(2). Each is an appetite suppressant.

5 E. Pondimin (generically fenfuramine) is a dangerous drug as defined
6 by Business and Professions Code Section 4022 and is a controlled substance
7 schedule IV as listed in Health and Safety Code Section 11057(e)(1). It is an appetite
8 suppressant.

9 CAUSES FOR DISCIPLINE

10 19. Respondent Cantero has subjected his registration to discipline
11 pursuant to section 4300 of the Code as defined in section 4301(j) of the Code for
12 unprofessional conduct as follows:

13 On or about February 14, 1996, Brea police officers observed Respondent
14 Cantero and his girlfriend, Theresa R. arguing. Prior to the officers arrival, Theresa R.
15 stated she attempted to flee from Respondent Cantero's vehicle but he locked the
16 electric door locks on the vehicle and did not allow her to exit the vehicle. Officers
17 observed Theresa R.'s lip bleeding and swollen. Theresa R. advised the officers that
18 Respondent Cantero had hit her with the back of his hand across the mouth with the
19 back of his right hand. Subsequently, one of the officers located two bottles of
20 prescription medication in the trunk of Respondent Cantero's vehicle. One bottle was
21 sealed and contained 500 tablets of Vicodin and the other opened bottle contained
22 Tylenol 4 with Codeine. The Tylenol 4 with Codeine bottle was labeled as having 500
23 tablets in it, however; only 482 tablets were found. Subsequently, Respondent Cantero
24 was arrested.

25 On July 2, 1996, Respondent Cantero was convicted by the Court on a
26 plea of guilty of one count of violation of Section 415(1) of the Penal Code (unlawful
27 fights in a public place) (a misdemeanor) in the Municipal Court of the State of
28 California, County of Orange, North Judicial District Case No. BPD B96-0866, entitled

1 The People of the State of California v. David Donny Cantero.

2 20. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
3 Pharmacy Monrovia, Parti, Martinez and Preston, and each of them, have subjected
4 their licenses to discipline for violation of Section 4300 of the Code for unprofessional
5 conduct as defined in Section 4301(j) of the Code in violation of Title 16, California
6 Code of Regulations, Section 1714(d) and Title 21, Code of Federal Regulations,
7 Section 1301.71 in that the rear door entrance to Respondent Skilled Care Pharmacy
8 Pasadena led to an alley and public parking area directly into the shipping area which in
9 turn led directly into the dispensing area. The dispensing, shipping and receiving areas
10 were part of the licensed pharmacy where drugs were stored. The door was kept in a
11 wide open position allowing for the unsupervised access into the pharmacy by
12 unauthorized individuals. Patient orders were placed on a shelf directly to the right of
13 the open door within arms reach from outside of the building. After the rear door was
14 closed, it was unlocked to accommodate access by individuals without the need for
15 staff supervision. An audit of Skilled Care Pharmacy Pasadena for the period of
16 August 18, 1994 through November 22, 1996 revealed shortages of more than 41,000
17 dosage units of schedule III and IV controlled substances including Hydrocodone,
18 Lortab, and Vicodin.

19 21. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
20 Pharmacy Monrovia, Parti, Martinez and Preston, and each of them, have subjected
21 their licenses to discipline for violation of Section 4300 of the Code for unprofessional
22 conduct as defined in Section 4301(j) of the Code in violation of Title 16, California
23 Code of Regulations, Section 1715.6 and Title 21, Code of Federal Regulations,
24 Section 1301.76 in that these Respondents were aware of Respondent Cantero's arrest
25 and drug possession and after performing their own audit which showed additional
26 shortages of the drugs, continued to use him in the capacity of ordering technician with
27 full, unrestricted access to all Schedule III and Schedule IV controlled substances.
28 These Respondents failed to notify the Board of the theft or loss of controlled

1 substances within the time prescribed by law. In fact, the required report was not filed
2 until approximately 10 months after finding the shortages and only after instructed to do
3 so by a Board inspector.

4 22. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
5 Pharmacy Monrovia, Parti, Martinez and Preston, and each of them, have subjected
6 their licenses to discipline for violation of Section 4300 of the Code for unprofessional
7 conduct as defined in Section 4301(o) of the Code in violation of Section 4040(a) of the
8 Code and Health and Safety Code Section 11164 and Title 16, California Code of
9 Regulations, Section 1717(b) in that Respondents failed to document in the
10 prescriptions as follows:

- 11 A. Identify quantities dispensed;
- 12 B. Identify if a generic drug was dispensed; and
- 13 C. Identify the distributor's name.

14 23. Respondents Skilled Care Pharmacy Pasadena, Skilled Care
15 Pharmacy Monrovia, Parti, Martinez and Preston, and each of them, have subjected
16 their licenses to discipline for violation of 4300 of the Code for unprofessional conduct
17 as defined in Section 4301(o) of the Code and in violation of Section 4081 of the Code
18 and Title 16, California Code of Regulations, Section 1718 in that these Respondents
19 failed to maintain accurate records of complete accountability of controlled substances
20 as required by law. A review of the records revealed that many of the prescriptions
21 were missing a prescription number or the quantity of the prescription; and some were
22 missing both the prescription number and quantity.

23 24. Respondents Parti and Preston, have subjected their licenses to
24 discipline for violation of 4300 of the Code for unprofessional conduct in violation of
25 Section 4113(b) of the Code in that Respondents failed to insure the pharmacy's
26 compliance with both state and federal laws pertaining to the practice of pharmacy as
27 described above in paragraphs 19, 20, 21 and 22 above.

28 25. Respondents Skilled Care Pharmacy Pasadena, Skilled Care

1 Pharmacy Monrovia, and Parti have further subjected their licenses to discipline for
2 violation of Business and Professions Code Section 4116 for unprofessional conduct in
3 violation of Section 4113(b) of the Code and Title 16, California Code of Regulations,
4 Section 1714(b) and (d) in that Respondents Skilled Care Pharmacy Pasadena, Skilled
5 Care Pharmacy Monrovia, and Parti failed to maintain the security of the pharmacy
6 even after the pharmacy personnel was instructed to close and secure the rear door of
7 the licensed area.

8 **PRAYER**

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

- 12 1. Revoking or suspending Original Pharmacy Permit No. PHY
13 41952, issued to SKILLED CARE PHARMACY MONROVIA;
- 14 2. Revoking or suspending Original Pharmacy Permit No. PHY 37908,
15 issued to SKILLED CARE PHARMACY PASADENA;
- 16 3. Revoking or suspending Original Pharmacy Technician
17 Registration TCH No. 10551, issued to DAVID DONNY CANTERO;
- 18 4. Revoking or suspending Original Pharmacist License No. RPH
19 44615, issued to SHRUTY CHATERJEE PARTI;
- 20 5. Revoking or suspending Original Pharmacist License No. RPH
21 39869, issued to SCOTT RICHARD PRESTON;
- 22 6. Revoking or suspending Original Pharmacist License No. RPH
23 31022, issued to JESSE FELIX MARTINEZ;

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7. Ordering SKILLED CARE PHARMACY MONROVIA, SKILLED CARE PHARMACY PASADENA, DAVID DONNY CANTERO, SHRUTY CHATERJEE PARTI, SCOTT RICHARD PRESTON and JESSE FELIX MARTINEZ to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code Section 125.3;

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

DATED: 2/7/01

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