



California State Board of Pharmacy

1625 N. Market Blvd, N219, Sacramento, CA 95834
Phone: (916) 574-7900
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www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

April 15, 2014

Gary Allen Bartee, RPh
517 Avalon Ct. NE
Albany, OR 97322

Re: LETTER OF PUBLIC REPROVAL
In the Matter of the Accusation Against:
Gary Allen Bartee, Pharmacist No. 43085

Dear Dr. Bartee:

On October 23, 2013, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed an Accusation against your Pharmacy License No. RPH 43085. The Accusation alleged that you engaged in unprofessional conduct under Business and Professions Code section 4301(n) by having your Oregon pharmacy license disciplined by the Board of Pharmacy for the State of Oregon, specifically, from November 2007 through March 2009, you wrote, dispensed and fraudulently billed insurance carrier(s) for unauthorized prescriptions for you and members of your family.

The violations are more than four years old, and your Oregon license was subjected to substantial discipline. You have no record of prior discipline against your California pharmacist license or your Oregon pharmacist license. For these reasons, the Board has decided that the charges warrant a public reproval.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproval.

Sincerely,

A handwritten signature in cursive script that reads "Virginia Herold".

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **GARY ALLEN BARTEE**
13 **517 Avalon Ct. NE**
Albany, OR 97322
14 **Pharmacist No. 43085**
15 Respondent.

Case No. 4654
OAH Case No. 2013120400
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL
[Bus. & Prof. Code § 495]

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney
24 General.

25 2. Respondent Gary Allen Bartee (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 ///

1 3. On or about March 1, 1990, the Board of Pharmacy issued Pharmacist No. 43085 to
2 Gary Allen Bartee (Respondent). The Pharmacist was in full force and effect at all times relevant
3 to the charges brought in Accusation No. 4654 and will expire on May 31, 2015, unless renewed.

4 JURISDICTION

5 4. Accusation No. 4654 was filed before the Board of Pharmacy (Board), Department of
6 Consumer Affairs and is currently pending against Respondent. The Accusation and all other
7 statutorily required documents were properly served on Respondent on November 4, 2013.
8 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
9 No. 4654 is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 4654. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order for Public Reapproval.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every allegation of Accusation No. 4654.

25 9. Respondent agrees that his Pharmacy License is subject to discipline and he agrees to
26 be bound by the Disciplinary Order below.

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28 ///

CONTINGENCY

1
2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and settlement, without notice to
5 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
6 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
8 Order, the Stipulated Settlement and Disciplinary Order for Public Repeval shall be of no force
9 or effect, except for this paragraph, it shall be inadmissible in any legal action between the
10 parties, and the Board shall not be disqualified from further action by having considered this
11 matter.

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

16 12. This Stipulated Settlement and Disciplinary Order for Public Repeval is intended by
17 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
18 of their agreement. It supersedes any and all prior or contemporaneous agreements,
19 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
20 Settlement and Disciplinary Order for Public Repeval may not be altered, amended, modified,
21 supplemented, or otherwise changed except by a writing executed by an authorized representative
22 of each of the parties.

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

DISCIPLINARY ORDER

26
27 IT IS HEREBY ORDERED that Pharmacist No. 43085 issued to Respondent Gary Allen
28 Barte (Respondent) shall, by way of letter from the Board's Executive Officer, be publicly


1 reproved. The letter shall be in the same form as the letter attached as Exhibit B to this
2 stipulation.

3 IT IS FURTHER ORDERED that Respondent shall pay \$1,444.00 to the Board for its costs
4 associated with the investigation and enforcement of this matter. Respondent shall be permitted
5 to pay these costs in a payment plan approved by the Board. If Respondent fails to pay the Board
6 costs as ordered, Respondent shall not be allowed to renew his Pharmacist until Respondent pays
7 costs in full.

8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order for Public Repeoval.
10 I understand the stipulation and the effect it will have on my Pharmacist. I enter into this
11 Stipulated Settlement and Disciplinary Order for Public Repeoval voluntarily, knowingly, and
12 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

13
14 DATED: 3/2/2014


15 GARY ALLEN BARTEE
Respondent

16 ENDORSEMENT

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

20 Dated: 3/3/2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General

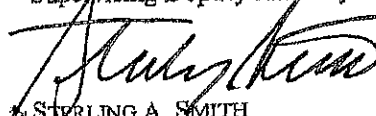

24 STERLING A. SMITH
25 Deputy Attorney General
26 Attorneys for Complainant

EXHIBIT A

Accusation No. 4654

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4654

12 **GARY ALLEN BARTEE**
13 **517 Avalon Court NE**
Albany, Oregon 97322

A C C U S A T I O N

14 **Pharmacist License No. RPH 43085**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about March 1, 1990, the Board of Pharmacy issued Pharmacist License No.
23 RPH 43085 to Gary Allen Bartee (Respondent). The Pharmacist License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless
25 renewed.

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JURISDICTION

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

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

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

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

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

..."

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

5. Section 4300.1 of the Code states that "the expiration, cancellation, forfeiture, or suspension of a aboard-issued license by operation of law, or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

///

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

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

5

6 (n) The revocation, suspension, or other discipline by another state of a license to practice
7 pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.
8 ”

9 7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
14 included in a stipulated settlement.

15 8. Section 118, subdivision (b), of the Code provides that the
16 suspension/expiration/surrender/cancellation of a license shall not deprive the
17 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
18 within which the license may be renewed, restored, reissued or reinstated.

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct: Out of State Discipline)

21 9. Respondent is subject to disciplinary action under Code section 4301(n) for
22 unprofessional conduct because on or about August 25, 2009, while licensed as a pharmacist by
23 the Oregon Board of Pharmacy, Respondent ‘s Oregon license No. 11137 was disciplined by the
24 Oregon Board of Pharmacy. Respondent’s license was suspended for three months, five years
25 probation was imposed and a fine of \$1,000,00 was assessed pursuant to a Notice of Proposed
26 Disciplinary Action; Answer Required” and a “Consent Order”, copies of which are attached
27 hereto as Exhibit A collectively and incorporated by reference. The circumstances were that from
28 on or about November 2007 through March 2009, while Respondent was employed as a

1 pharmacist at Wal-Mart Pharmacy 10-1775 in Lebanon, Oregon, Respondent wrote, dispensed
2 and fraudulently billed insurance for multiple unauthorized prescriptions for Respondent and
3 members of his family, in violation of the Oregon laws identified in Exhibit A.

4 PRAYER

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

- 7 1. Revoking or suspending Pharmacist License No. RPH 43085, issued to Gary Allen
8 Bartee;
- 9 2. Ordering Gary Allen Bartee to pay the Board of Pharmacy the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: 10/23/13

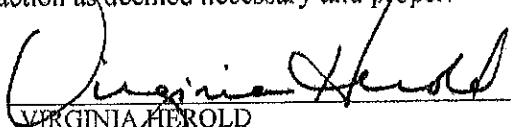

14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant
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EXHIBIT A

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**BOARD OF PHARMACY
OF THE STATE OF OREGON**

In the Matter of the
Pharmacist License of

GARY ALLEN BARTHE, R.PH.

Licensee

) Case No. 2009-0175
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**NOTICE OF PROPOSED
DISCIPLINARY ACTION;
ANSWER REQUIRED**

The Oregon Board of Pharmacy proposes to revoke your license pursuant to ORS 689.445, 689.405, 689.135, and 689.145, because you violated the Oregon Pharmacy Act and the Board of Pharmacy rules as alleged below:

From on or about November 2007 through March 2009, while you were employed at Wal-Mart Pharmacy 10-1775 located in Lebanon (Oregon), you wrote, dispensed, and fraudulently billed insurance for multiple unauthorized prescriptions for yourself and family members.

The above conduct is unprofessional conduct as defined by OAR 855-006-0005(25)(a)(B) and (C), (b), (d), (e) and (f) and in violation of and grounds for discipline pursuant to OAR 855-019-0310(1), ORS 689.765(6), ORS 689.405(1)(a), (e)(B) and (f), ORS 475.840(3) and ORS 167.212(1)(c).

Based on these alleged violations, the Board proposes to revoke your pharmacist license and impose a \$1000 civil penalty per violation.

HEARING RIGHTS

You are entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183). If you wish to have a hearing, you must file a written request for hearing with the Board within 21 days from the date this notice was mailed. You may send or deliver a request for hearing to:

Oregon Board of Pharmacy
800 NE Oregon Street, Suite 150
Portland, OR 97232
Fax (971) 673-0002

If a request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the time and place of the hearing. Before the commencement of the hearing, you will be given information on the

47 procedures, right of representation and other rights of parties relating to the conduct of
48 the hearing. You may be represented by legal counsel.

49
50 If you do not request a hearing within 21 days, or if you withdraw a hearing
51 request, notify the Board or Administrative Law Judge that you will not appear, or fail to
52 appear at a scheduled hearing, the Board may issue a final order by default imposing
53 discipline. If the Board issues a final order by default, it designates its file on this matter
54 as the record.

55
56 **ANSWER REQUIRED**

57 Pursuant to OAR 855-001-0010 and OAR 855-001-0015, if you request a hearing
58 you must also provide, within 21 days from the date this document was served, a written
59 answer to the allegations set forth in this document. Your written answer must include an
60 admission or denial of each factual matter alleged in the notice. Except for good cause,
61 factual matters alleged in this document and not denied in your answer will be presumed
62 admitted.

63
64
65 **Hearing Request and Answers:**
66 **Consequences of Failure to Answer**
67 **855-001-0015**

- 68
69 (1) A hearing request, and answer when required, shall be made in writing to
70 the Board by the party or his attorney and an answer shall include the following:
71 (a) An admission or denial of each factual matter alleged in the notice;
72 (b) A short and plain statement of each relevant affirmative defense
73 the party may have.
74
75 (2) Except for good cause;
76 (a) Factual matters alleged in the notice and not denied in the answer
77 shall be presumed admitted;
78 (b) Failure to raise a particular defense in the answer will be
79 considered a waiver of such defense;
80 (c) New matters alleged in the answer (affirmative defenses) shall be
81 presumed to be denied by the agency; and
82 (d) Evidence shall not be taken on any issue not raised in the notice
83 and the answer.

84
85 **BOARD OF PHARMACY**
86 **FOR THE STATE OF OREGON**

87
88
89 Gary Miner, R.Ph.
90 Compliance Director

7/1/09
Date

91
92
93 DATE OF MAILING 7/1/2009

RECEIVED

AUG 17 2009

BEFORE THE BOARD OF PHARMACY
OF THE STATE OF OREGON

OREGON BOARD OF PHARMACY

Case No. 2009-0175

In the Matter of the
Pharmacist License of

GARY ALLEN BARTEE, R.PH.,

Licensee

CONSENT ORDER

WHEREAS, the Board of Pharmacy of the State of Oregon has filed a Notice of Proposed Disciplinary Action; Answer Required ("Notice"), hereby incorporated by reference, regarding the licensee in the above-captioned matter; and

WHEREAS, the above-noted Notice was duly served on the licensee as required by law; and

WHEREAS, the parties are desirous of resolving and settling those matters contained in the above-noted Notice without further proceedings thereon; and

WHEREAS, the licensee is aware of the right to a hearing with the assistance of counsel and the right to judicial review of the Board's decision, and hereby freely and voluntarily waives those rights; and

WHEREAS, the licensee admits that the facts alleged in the above-noted Notice are true, that the licensee's conduct, as admitted, violated the statutes and rules cited in the Notice, and that legal cause exists pursuant to ORS 689.405 for disciplinary action by the Board; and

WHEREAS, the licensee consents to the disciplinary action as set forth herein;

The Board finds that the allegations in the Notice are true and hereby imposes the following sanctions:

1. Licensee's license is suspended for a period of three (3) months, with three months credit granted for time served.

2. Licensee shall pay a civil penalty in the amount of \$1,000. Civil penalty shall be paid within ten days from the date this Consent Order becomes final.

3. The licensee is placed on probation for a period of five (5) years from the date this order is signed by the Board and the licensee shall comply with the following conditions of probation:

- a. The licensee must comply with all laws and rules regarding pharmacy practice.
- b. The licensee may not register with the Board to be a preceptor. Licensee shall deliver his preceptor registration, if any, to the Board within ten (10) calendar days of the effective date of this order.

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- e. The licensee may not be employed as a pharmacist-in-charge (PIC) or pharmacy manager.
- d. During the probationary period, the licensee shall, as soon as reasonably practical, provide all present and prospective pharmacy related employers and any pharmacists-in-charge of the licensee with a copy of the Notice and the final order in this matter and have the PIC and management acknowledge to the Board in writing, on a form supplied by the Board, that the PIC and management have received a copy of both the Notice and the Order. Licensee shall submit said written acknowledgement to the Board office by certified mail (or other method approved by the Board in writing) within 15 calendar days and retain receipt of verification of delivery to the Board office.
- c. If licensee works for, or is employed by or through a pharmacy service, licensee must notify the direct supervisor, Pharmacist-In-Charge and owner at every pharmacy of the terms and conditions of licensee's probation in advance of the licensee commencing work at each pharmacy. "Employment" within the meaning of this provision shall include any full-time, part time, temporary, relief or pharmacy management service as a pharmacist, whether or not the licensee is considered an employee or independent contractor. Verification of compliance with this sanction is the same as the preceding sanction.
- f. The licensee must report all citations, arrests or convictions to the Board Office in writing within 15 days from the date of occurrence with a copy of citation, police report, and court documents. Licensee shall submit said information to the Board office by certified mail (or other method approved by the Board in writing) and retain receipt of verification of delivery to the Board office.

4. Failure of the licensee to comply with all the requirements of the final order in this matter constitutes unprofessional conduct and is grounds for imposing a civil penalty up to \$1,000 per violation, and any other form of discipline or sanction authorized by law.

CONSENT

I hereby acknowledge that I have read and understand the above-noted Notice with Notice of Rights and the terms of the Consent Order. I agree to the Board entering the Consent Order.

Gary Allen Baxee, R.Ph.
Licensee (License No. RPH-0011137)

August 19, 2009
Date

IT IS SO ORDERED.

BOARD OF PHARMACY
FOR THE STATE OF OREGON

Gary Miner, R.Ph.,
Compliance Director

8/25/09
Date

EXHIBIT B

Letter of Public Reproval in Case No. 4654

Date: _____

Gary Allen Bartee, RPh
517 Avalon Ct. NE
Albany, OR 97322

Re: LETTER OF PUBLIC REPROVAL
In the Matter of the Accusation Against:
Gary Allen Bartee, Pharmacist No. 43085

Dear Dr. Bartee:

On October 23, 2013, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed an Accusation against your Pharmacy License No. RPH 43085. The Accusation alleged that you engaged in unprofessional conduct under Business and Professions Code section 4301(n) by having your Oregon pharmacy license disciplined by the Board of Pharmacy for the State of Oregon, specifically, from November 2007 through March 2009, you wrote, dispensed and fraudulently billed insurance carrier(s) for unauthorized prescriptions for you and members of your family.

The violations are more than four years old, and your Oregon license was subjected to substantial discipline. You have no record of prior discipline against your California pharmacist license or your Oregon pharmacist license. For these reasons, the Board has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproof.

Sincerely,

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs