

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KATHLEEN B.Y. LAM, State Bar No. 95379
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5
6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2091
7 Facsimile: (619) 645-2061
8 Attorneys for Complainant

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

11 In the Matter of the Petition to Revoke Probation
12 Against:

Case No. 3205

13 GARY MICHAEL WARNECKE
4005 San Antonio Road
14 Yorba Linda, CA 92686

**PETITION TO REVOKE
PROBATION**

15 Pharmacist License No. 38265

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation
21 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of
22 Consumer Affairs.

23 **LICENSE HISTORY**

24 2. On or about November 3, 1983, the Board of Pharmacy issued Pharmacist
25 License Number 38265 to Gary Michael Warnecke (Respondent).

26 3. In a prior disciplinary action entitled "*In the Matter of Accusation Against*
27 *Gary Michael Warnecke*," Case No. 2851, the Board of Pharmacy issued a decision, effective
28 July 11, 2007, in which Respondent's Pharmacist License was revoked. However, the revocation

1 was stayed. Respondent's license was suspended for ninety (90) days and placed on probation for
2 a period of five (5) years with certain terms and conditions, including successful participation in
3 the Pharmacists Recovery Program. A copy of that decision is attached as Exhibit A and is
4 incorporated by reference.

5 4. Respondent's Pharmacist License expired on or about November 30, 2007
6 and was not renewed. Said license was suspended by the Board on or about December 28, 2007.

7 JURISDICTION

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

11 6. Section 4300 of the Code states:

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

13

14 (d) The board may initiate disciplinary proceedings to revoke or suspend
15 any probationary certificate of licensure for any violation of the terms and
16 conditions of probation. Upon satisfactory completion of probation, the board
shall convert the probationary certificate to a regular certificate, free of conditions.

17 (e) The proceedings under this article shall be conducted in accordance
18 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
19 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.

20 7. Section 118, subdivision (b), of the Code provides that the suspension,
21 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
22 proceed with a disciplinary action during the period within which the license may be renewed,
23 restored, reissued or reinstated.

24 8. California Code of Regulations, title 16, section 1773 states:

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

27 (1) Obey all laws and regulations substantially related to the
28 practice of Pharmacy;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

(3) Submit to peer review if deemed necessary by the Board;

(4) Provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board;

(5) Inform all present and prospective employers of license restrictions and terms of probation. Probationers employed by placement agencies must inform all permittees in whose premises they work of license restrictions and terms of probation.

(6) Not supervise any registered interns nor perform any of the duties of a preceptor;

(7) The period of probation shall not run during such time that the probationer is engaged in the practice of pharmacy in a jurisdiction other than California.

(b) If ordered by the Board in an administrative action or agreed upon in the stipulated settlement of an administrative action, any registered pharmacist who is serving a period of probation shall comply with any or all of the following conditions;

(1) Take and pass all or any sections of the pharmacist licensure examination and/or attend continuing education courses in excess of the required number in specific areas of practice if directed by the Board;

(2) Provide evidence of medical or psychiatric care if the need for such care is indicated by the circumstances leading to the violation and is directed by the Board;

(3) Allow the Board to obtain samples of blood or urine (at the pharmacist's option) for analysis at the pharmacist's expense, if the need for such a procedure is indicated by the circumstances leading to the violation and is directed by the Board;

(4) If and as directed by the Board, practice only under the supervision of a pharmacist not on probation to the Board. The supervision directed may be continuous supervision, substantial supervision, partial supervision, or supervision by daily review as deemed necessary by the Board for supervision, partial supervision, or supervision by daily review as deemed necessary by the Board for the protection of the public health and safety.

(c) When the circumstances of the case so require, the Board may impose conditions of probation in addition to those enumerated herein by the terms of its decision in an administrative case or by stipulation of the parties.

///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE TO REVOKE PROBATION

(Reporting to the Board)

9. At all times after the effective date of Respondent's probation, Condition 3 stated:

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

10. Respondent's probation is subject to revocation because he failed to submit quarterly reports that were due on October 10, 2007 and January 10, 2008 in violation of Probation Condition 3, referenced above.

SECOND CAUSE TO REVOKE PROBATION

(Interview With the Board)

11. At all times after the effective date of Respondent's probation, Condition 4 stated:

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

12. Respondent's probation is subject to revocation because he failed to appear for scheduled interviews with the Board on November 20, 2007 and January 22, 2008, in violation of Probation Condition 3, referenced above. Respondent was informed of the scheduled interviews in writing and did not contact the Board to reschedule the interviews.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE TO REVOKE PROBATION

(Cooperation With Board Staff)

13. At all times after the effective date of Respondent's probation, Condition 5 stated:

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

14. Respondent's probation is subject to revocation because he failed to cooperate with the Board's staff in that Respondent did not return numerous telephone calls left at two contact numbers for Respondent, and failed to respond to correspondence, in violation of Probation Condition 5, referenced above.

FOURTH CAUSE TO REVOKE PROBATION

(Reimbursement of Board Costs)

15. At all times after the effective date of Respondent's probation, Condition 9 stated:

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$8,000. Respondent shall make quarterly payments until the costs are paid in full.

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

16. Respondent's probation is subject to revocation because he failed to make any payments towards Board costs in violation of Probation Condition 9, referenced above.

FIFTH CAUSE TO REVOKE PROBATION

(Status of License)

17. At all times after the effective date of Respondent's probation, Condition 11 stated:

Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

///

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

3 18. Respondent's probation is subject to revocation because he failed to renew
4 his license prior to its expiration on November 30, 2007, in violation of Probation Condition 11,
5 referenced above.

6 **SIXTH CAUSE TO REVOKE PROBATION**

7 **(Rehabilitation Program - Pharmacists Recovery Program)**

8 19. At all times after the effective date of Respondent's probation, Condition
9 17 stated:

10 Within 30 days of the effective date of this decision, Respondent shall
11 contact the Pharmacists Recovery Program for evaluation and shall successfully
12 participate in and complete the treatment contract and any subsequent addendums
as recommended and provided by the PRP and as approved by the Board. The
costs for PRP participation shall be borne by the Respondent.

13 If Respondent is currently enrolled in the PRP, said participation is now
14 mandatory and is no longer considered a self-referral under Business and
Professions Code section 4363, as of the effective date of this decision.
15 Respondent shall successfully participate in and complete his current contract and
any subsequent addendums with the PRP. Probation shall be automatically
16 extended until Respondent successfully completes his treatment contract. Any
person terminated from the program shall be automatically suspended upon notice
17 by the Board. Respondent may not resume the practice of pharmacy until notified
by the Board in writing. The Board shall retain jurisdiction to institute action to
18 terminate probation for any violation of this term.

19 20. Respondent's probation is subject to revocation because he failed to
20 successfully complete the Pharmacists Recovery Program (PRP) in violation of Probation
21 Condition 17, referenced above. The facts and circumstances regarding this violation are as
22 follows:

23 a. On or about September 23, 2007, Respondent stopped calling
24 Compass Vision for Random Body Fluid Testing (RBFT), and missed RBFT's scheduled for
25 September 25, 2007 and October 20, 2007.

26 b. Respondent failed to return the PRP recovery contract that was due
27 on October 29, 2007.

28 ///

1 c. Respondent failed to return telephone calls to either Compass
2 Vision or Maximus, the entity who oversees the Board's PRP program;

3 d. On or about October 31, 2007, Respondent stated in a telephone
4 conversation with his PRP case manager that he was withdrawing from the Maximus program to
5 pursue teaching.

6 e. Respondent failed to submit a letter to Maximus with regards to his
7 withdrawal from the PRP as directed by his case manager.

8 f. On or about November 13, 2007, Respondent was terminated from
9 the PRP with Maximus for non-compliance.

10 **PRAYER**

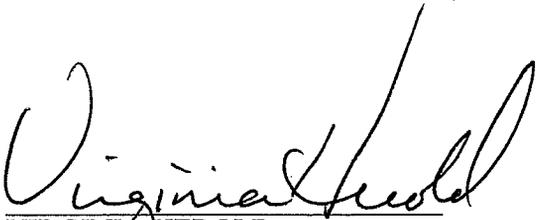
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

13 1. Revoking the probation that was granted by the Board of Pharmacy in
14 Case No. 2851 and imposing the disciplinary order that was stayed thereby revoking Pharmacist
15 License No. 38265 issued to Gary Michael Warnecke;

16 2. Revoking Pharmacist License No. 38265, issued to Gary Michael
17 Warnecke;

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

19
20 DATED: 4/16/09



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

Exhibit A
Decision and Order
Board of Pharmacy Case No. 3205