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

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against,

Case No. 4094

14 **NORMAN BRUCE SHIBLEY**
15 45446 Genoa Avenue
16 Lancaster, CA 93534

ACCUSATION AND

17 **Pharmacist License No. RPH 39528**

PETITION TO REVOKE PROBATION

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia K. Herold (Complainant) brings this Accusation and Petition to Revoke
22 Probation solely in her official capacity as the Executive Officer of the California State Board of
23 Pharmacy.

24 2. On or about September 4, 1985, the Board of Pharmacy issued Pharmacist License
25 No. RPH 39528 to Norman Bruce Shibley (Respondent). The Pharmacist License expired on
26 December 31, 2010, and has not been renewed. Effective May 18, 2011, the Board of Pharmacy
27 suspended Respondent's Pharmacist License.

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"(c) If an applicant for renewal of a pharmacist license submits the renewal application and payment of the renewal fee but does not submit proof satisfactory to the board that the licensee has completed 30 hours of continuing pharmacy education, the board shall not renew the license and shall issue the applicant an inactive pharmacist license. A licensee with an inactive pharmacist license issued pursuant to this section may obtain an active pharmacist license by paying the renewal fees due and submitting satisfactory proof to the board that the licensee has completed 30 hours of continuing pharmacy education.

"(d) If, as part of an investigation or audit conducted by the board, a pharmacist fails to provide documentation substantiating the completion of continuing education as required in subdivision (a), the board shall cancel the active pharmacist license and issue an inactive pharmacist license in its place. A licensee with an inactive pharmacist license issued pursuant to this section may obtain an active pharmacist license by paying the renewal fees due and submitting satisfactory proof to the board that the licensee has completed 30 hours of continuing pharmacy education."

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

9. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

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1 10. California Code of Regulations, title 16, section 1773, states, in part:

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

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

5 ...

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

8 ...

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

12 **COST RECOVERY**

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

17 **ACCUSATION**

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 12. Respondent has subjected his license to disciplinary action under sections 4301,
21 subdivision (o), and 4231, of the Code, on the grounds of unprofessional conduct, in that
22 Respondent failed to provide records requested by the Board documenting completion of
23 continuing education required as a condition of licensure. The circumstances are as follows:

24 13. On or about December 28, 2009, Respondent renewed his pharmacist license and
25 indicated completion of the required continuing education credits on the pharmacist license
26 renewal application. On or about April 21, 2011, the Board sent a letter to Respondent advising
27 him that the Board was conducting an audit on his continuing education hours for renewal period
28 January 1, 2008 to December 31, 2010, that are required as a condition of renewing a pharmacist

1 license on an active status. This correspondence directed Respondent to provide the requested
2 documents by May 18, 2011. This letter was sent via certified mail and received and signed by
3 Respondent on or about April 23, 2011. As of the filing of this Accusation and Petition to Revoke
4 Probation, Respondent has not provided the requested documents to the Board.

5 14. On or about April 23, 2011, Respondent signed his pharmacist renewal application
6 for renewal period January 1, 2011 to December 31, 2013, but failed to provide proof satisfactory
7 to the Board that he completed the continuing education requirements necessary for license
8 renewal.

9 15. Pursuant to section 4231, subdivision (d), of the Code, the Board cancelled
10 Respondent's active pharmacist license and issued an inactive pharmacist license in its place.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Probation)**

13 16. Respondent has subjected his license to disciplinary action under section 4301,
14 subdivision (o), of the Code, on the grounds of unprofessional conduct, for violating California
15 Code of Regulations, title 16, section 1773, in that Respondent failed to comply with the terms
16 and conditions of probation. Specifically, Respondent failed to enroll in and successfully
17 participate in and complete the Pharmacists Recovery Program, failed to obey all laws, provide to
18 the Board evidence of his efforts to maintain skill and knowledge as a pharmacist, and failed to
19 maintain a current and active pharmacist license, as set forth in paragraphs 12 and 15, above, and
20 paragraphs 17 through 24, below.

21 **PETITION TO REVOKE PROBATION**

22 **FIRST CAUSE TO REVOKE PROBATION**

23 **(Failure to Obey All Laws)**

24 17. At all times after the effective date of Respondent's probation, Condition 2 stated, in
25 part:

26 **"Obey All Laws.** Respondent shall obey all state and federal laws and regulations."
27
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1 18. Respondent's probation is subject to revocation because he failed to comply with
2 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
3 are set forth in paragraphs 12 through 15, above.

4 **SECOND CAUSE TO REVOKE PROBATION**

5 **(Failure to Comply with Continuing Education Condition)**

6 19. At all times after the effective date of Respondent's probation, Condition 6 stated:
7 "Continuing Education. Respondent shall provide evidence of efforts to maintain skill
8 and knowledge as a pharmacist as directed by the Board or its designee."

9 20. Respondent's probation is subject to revocation because he failed to comply with
10 Probation Condition 6, referenced above. As of the date of this Accusation and Petition to
11 Revoke Probation's filing, Respondent has not provided evidence of efforts to complete the
12 continuing education requirements for licensure, as set forth in paragraphs 12 through 15, above.

13 **THIRD CAUSE TO REVOKE PROBATION**

14 **(Failure to Maintain Active License)**

15 21. At all times after the effective date of Respondent's probation, Condition 11 stated:
16 "Status of License. Respondent shall, at all times while on probation, maintain an active,
17 current license with the Board, including any period during which suspension or probation is
18 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

19 "If Respondent's license expires or is cancelled by operation of law or otherwise at any time
20 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
21 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
22 probation not previously satisfied."

23 22. Respondent's probation is subject to revocation because he failed to comply with
24 Probation Condition 11, referenced above. The facts and circumstances regarding this violation
25 are set forth in paragraphs 12 through 15, above.

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Failure to enroll in Pharmacists Recovery Program)**

3 23. At all times after the effective date of Respondent's probation, Condition 17 stated, in
4 part:

5 **"Pharmacists Recovery Program (PRP).** Within thirty (30) days of the effective date of
6 this decision, Respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation,
7 and shall immediately thereafter enroll, successfully participate in, and complete the treatment
8 contract and any subsequent addendums as recommended and provided by the PRP and as
9 approved by the Board or its designee. The costs for PRP participation shall be borne by the
10 Respondent.

11 . . .

12 "Failure to timely contact or enroll in the PRP, or successfully participate in and complete
13 the treatment contract and/or any addendums, shall be considered a violation of probation.

14 "Probation shall be automatically extended until Respondent successfully completes the
15 PRP. Any person terminated from the PRP program shall be automatically suspended by the
16 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
17 writing."

18 24. Respondent's probation is subject to revocation because he failed to comply with
19 Probation Condition 17, referenced above. Effective May 18, 2011, Respondent was terminated
20 from the PRP for failing to complete his intake process and enroll in the PRP, as required. Due to
21 Respondent's termination from the PRP program, Respondent's pharmacist license was
22 automatically suspended by the Board.

23 **DISCIPLINE CONSIDERATIONS**

24 25. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that on or about March 28, 2011, in a prior disciplinary action entitled *In the*
26 *Matter of the Accusation Against Norman Bruce Shibley* before the Board of Pharmacy in Case
27 No. 3370, Respondent's license was revoked, with revocation stayed, suspended for nine (9)
28 months, and placed on probation for six (6) years with terms and conditions for committing

1 violations of Business and Professions Code sections 4301, subdivisions (k) and (l), and 490
2 (Convictions of Substantially Related Crimes: alcohol related misconduct while camping on
3 federal grounds and driving while under the influence of alcohol) and Business and Professions
4 Code section 4301(h) (alcohol abuse). That decision, attached as Exhibit A, is now final and is
5 incorporated by reference.

6 **PRAYER**


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

9 1. Revoking the probation that was granted by the California State Board of Pharmacy
10 in Case No. 3370 and imposing the disciplinary order that was stayed thereby revoking
11 Pharmacist License No. RPH 39528 issued to Norman Bruce Shibley;

12 2. Revoking or suspending Pharmacist License No. RPH 39528, issued to Norman
13 Bruce Shibley; and

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

15
16 DATED: 8/15/11


17 VIRGINIA K. HEROLD
18 Executive Officer
19 California State Board of Pharmacy
20 State of California
21 Complainant

22 LA2011600884
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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3370