

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

In the Matter of the First Amended
Accusation Against:

STEVEN ALFRED MARTIN
3939 South 6th Street, No. 189
Klamath Falls, Oregon 97603

Pharmacist License No. RPH 43299

Respondent.

Case No. 2363

OAH No. N-2001070463

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on November 1, 2001.

Ronald L. Diedrich, Deputy Attorney General, Department of Justice, State of California, represented the Board of Pharmacy.

There was no appearance by or on behalf of Steven Alfred Martin.

Evidence was received and the matter was argued. The record was closed on November 1, 2001.

FACTUAL FINDINGS

1. Patricia F. Harris made the charges and allegations contained in the First Amended Accusation in her official capacity as Executive Officer, Board of Pharmacy (hereafter "the Board"), Department of Consumer Affairs, State of California. The Deputy Attorney General on behalf of the Executive Officer signed the First Amended Accusation on October 22, 2001. The Board has jurisdiction to revoke, suspend or impose disciplinary

action upon any holder of a license to practice as a Pharmacist in the State of California, provided cause for the disciplinary action exists by clear and convincing evidence.¹

2. Notice of the date, time and place of the evidentiary hearing on the allegations contained in the First Amended Accusation was duly given by the Deputy Attorney General pursuant to Government Code section 11505 and 11509. Dr. Martin responded to service of the Accusation, First Amended Accusation and the Notice of Hearing with several letters and electronic mails to both the Deputy Attorney General and the Presiding ALJ. Dr. Martin's prodigious correspondence with the Board, the DAG and the PALJ reveal he was well aware of the date, time and place of the commencement of the evidentiary hearing, as evidenced by his frequent references to the evidentiary hearing date in his letters. Dr. Martin ultimately wrote to the Deputy Attorney General on October 27, 2001, and responded to a specific question by the DAG whether Dr. Martin intended to attend the evidentiary hearing to commence on November 1, 2001. Dr. Martin responded "No". Dr. Martin then furnished a lengthy explanation why he did not intend to appear. One of the reasons Dr. Martin advised he did not wish to appear was that the Deputy Attorney General had requested the presence of a bailiff furnished by the California Highway Patrol at the evidentiary hearing. Any party may request the presence of a bailiff at an OAH evidentiary hearing at any time, for any reason. The request is made to the Presiding ALJ, and the reasons for the request, if any, are not communicated to the ALJ assigned to preside at the evidentiary hearing. The presence or absence of a bailiff at an evidentiary hearing has no evidentiary implications whatsoever. Dr. Martin's concern that the presence of a bailiff at the evidentiary hearing somehow implies he is to be feared has no merit. Dr. Martin's comment that the presence of a bailiff at the proceedings deprives him of his civil liberties is nonsense. Dr. Martin failed to appear at the evidentiary hearing, as promised, and good cause was not proved to excuse his failure to appear. The matter was conducted as a default.²

3. Dr. Martin submitted a considerable amount of "discovery" to the Deputy Attorney General in the course of his communications with the DAG. The Deputy Attorney General offered and included these letters and documents in the record, when it became apparent at the evidentiary hearing that Dr. Martin was not planning to appear personally. Dr. Martin's correspondence requested the inclusion of the materials in the record, and the Deputy Attorney General agreed, to the extent the materials were relevant, material and if the hearsay offered in some of the documents were reliable and admissible pursuant to Government Code section 11513(c). The medical opinion expressed in some of the medical records was excluded as inadmissible hearsay and lacking in foundation and authentication. The medical records were not submitted directly from the physician or medical facility with an affidavit from the custodian of records, and were excerpts made by Dr. Martin. There was no testimony of a medical expert offered, not any opinion of a medical expert contained in a sworn declaration.

¹ Business and Professions Code section 4300, Ettinger v. Board of Medical Quality Assurance (1982) 135 Cal.App.3d 835, 857.

² Government Code section 11520.

4. The Board issued Original Pharmacist License number RPH 43299 to Steven Alfred Martin on March 20, 1990. The license is currently in full force and effect and has been continuously renewed since issuance. The license is due to expire on June 30, 2003, unless renewed. Dr. Martin was originally licensed in 1989 as a pharmacy intern. In that application, Dr. Martin disclosed to the Board the existence of a misdemeanor criminal conviction that occurred in 1984 for making an obscene telephone call to a supervisor. There is no history of previous disciplinary action by the Board against Dr. Martin or his license.

5. Dr. Martin filed an application with the Board in 1996 or 1997 to become the Pharmacist in Charge of a Rite-Aid/Thrifty Pharmacy in the Willits, California. Dr. Martin answered "Yes" to the question on the application that inquired whether the applicant had ever been convicted of a crime. Dr. Martin advised the Board in the part of the application calling for details of an affirmative response that the conviction "was many years ago", and mentioned the Board had "already reviewed it". Dr. Martin contends this affirmative response on the application constituted disclosure of his Federal convictions in Vermont. Board representatives assumed Dr. Martin was referring to the 1984 misdemeanor conviction, but also acknowledge the disclosure should have been investigated. In light of the other substantial evidence of Dr. Martin's consistent dishonesty on applications to licensing boards, Dr. Martin's contention this particular affirmative response constituted disclosure of his Federal convictions in Vermont patently lack credibility. The detailed disclosure following the simple "Yes" response to the existence of a conviction, that the conviction was "many years ago", and that the Board had already inquired about it, was misleading at best. The Federal felony convictions in Vermont were not "many years ago", Dr. Martin was still on supervised release for those crimes, and was an abscond from that supervised release, present in California illegally at the time, in violation of the conditions of his supervised release that he not leave Vermont without U.S. District Court permission and the knowledge of his probation officer, when he filed the application. He was filing a false application for a car loan about the same time. To believe this single disclosure was truthful and accurate at the time it was made would have this disclosure stand all alone among myriad other false disclosures made at about the same time. The evidence warrants no such conclusion. The disclosure was intentionally false and misleading, for the same reason Dr. Martin made intentionally false statements on his application for licensure in Oregon, set forth below. Dr. Martin feared that if he made truthful and accurate statements, he would face denial or disciplinary action, as he did earlier in Nevada, when the Nevada Board discovered his false statements on his application for licensure there. Dr. Martin did not disclose the 1992 federal criminal conviction set forth in detail below, or that he was on supervised release. Dr. Martin notified the Board in 1999 of a change in his address of record to the Klamath Falls address listed in the caption above.

6. Dr. Martin was granted his Doctor of Pharmacy degree from Mercer University, Southern School of Pharmacy, Atlanta Georgia in August 25, 1989. Dr. Martin was formerly licensed to practice as a Pharmacist in the States of Florida and Nevada, as detailed below, and is currently licensed to practice as a Pharmacist in the State of Oregon, but not likely for much longer, also as set forth below, as well as California. Dr. Martin has had significant contacts with the States of Georgia, where he received his Pharmacist

training, and Vermont, but there was no evidence in this record that he has ever sought or obtained a license to practice as a Pharmacist in either Georgia or Vermont.

7. Dr. Martin was convicted on August 12, 1992, upon his pleas of no contest in the United States District Court, District of Vermont of violations of Title 18, United States Code section 875(c), making threats by telephone, a felony, and Title 18, United States Code section 876, making threats by mail, a felony. Dr. Martin was sentenced to serve 37 months in Federal prison. Dr. Martin was ordered to refrain from any contact with Jeanne Dickinson and her parents, including any form of communication, to participate in a substance abuse program, which may include body fluids testing, and to participate in a mental health program as directed by a U.S. Probation officer following his release from custody. The sentencing judge also ordered that Mr. Martin be placed in a medical facility to receive mental health evaluation and treatment.

8. The facts and circumstances leading to the conviction occurred on July 3, 1991, in Burlington, Vermont. Dr. Martin acknowledged in his correspondence that he made threatening telephone calls and wrote threatening messages to a woman with whom he sought to have a romantic relationship. She rebuffed him, and he pursued her. The threatening calls were all made to the woman via her answering machine. The threats also were expressed towards the woman's parents. The threats were made because the woman was unwilling to enter into a romantic relationship with him and was dating other men. It appears Dr. Martin was engaging in behavior that amounted to stalking the woman, watching her private and personal affairs, and responding angrily when she had contacts with other males.

9. The U.S. District Court found Dr. Martin in violation of his probation on supervised release on June 12, 1996. Dr. Martin's probation was revoked upon Dr. Martin's admission that he had used a false social security number when submitting an application for a personal loan. Dr. Martin admitted he had used a false Social Security number in his correspondence with the Board and the Deputy Attorney General. Dr. Martin acknowledged in his correspondence, "I simply used the false social security number (in conjunction with the wrongful use of 'another' name, Jeff Beard) in an attempt to be "free" from my probation officer-in order to work out-of-state-and, in an attempt from being located"³. Dr. Martin advised he needed an auto for work, so he bought the car and submitted the falsified loan application. He advised never failed to make payments on the vehicle. Dr. Martin was sentenced to be imprisoned at a facility of the U.S. Bureau of Prisons for 18 additional months.

10. Dr. Martin failed to advise any regulatory Board or Agency licensing him as a Pharmacist that he had been convicted of felonies in the U.S. District Court in Vermont, or that he had sustained a second conviction in the form of a violation of his supervised release for the commission of an entirely new offense. Dr. Martin was licensed in active status in California, Nevada and Florida at the time of the 1992 conviction in Vermont.

³ Exhibit 16, October 27, 2001 letter from Dr. Martin to DAG, page 4 of 6, "Fifth Cause of Action".

11. Dr. Martin applied to the Nevada State Board of Pharmacy (hereafter “the Nevada Board”) for the issuance of a license to practice as a Pharmacist in the State of Nevada on December 21, 1989. Dr. Martin qualified for licensure before the Nevada Board by taking and passing an examination. Dr. Martin applied to the Nevada Board for licensure under the name of “Jeffrey Robert Beard”. He affirmatively declared to the Nevada Board on his application that the name given on the application, Jeffrey Robert Beard, was his true and correct name, and that his name had never been changed. The name and the declarations on the application were knowingly and intentionally false, made with the intention to deceive and mislead the Nevada Board. Dr. Martin submitted transcripts of his grades from Mercer University, Atlanta, Georgia, showing completion of his Pharm.D. degree, to the Nevada Board in support of his application for licensure. The Nevada Board issued a license to practice as a pharmacist in the State of Nevada on January 24, 1991, in the name of Jeffrey Robert Beard.

12. The Nevada Board’s Executive Officer wrote a letter dated May 27, 1992 to the Vermont Secretary of State inquiring whether the Secretary of State could be of assistance in tracking Mr. Martin’s residence or place of incarceration. The Executive Officer notified the Vermont Secretary of State that Mr. Martin had submitted transcripts in the name of Beard, stamped and certified from Mercer University, Atlanta, Georgia, showing completion of a degree in support the Nevada application for licensure. The Executive Officer of the Nevada Board expressed concern that the transcripts had been “doctored”, and asked for assistance in obtaining documentation of the convictions sustained by Dr. Martin in Vermont.

13. The Nevada Board sent Dr. Martin, aka Jeffrey Beard, a Notice of Intended Action dated June 9, 1992, care of his criminal attorney in Burlington, Vermont. The Notice advised Dr. Martin of the Nevada Board’s intention to pursue disciplinary action against him for submitting an application for licensure under a false name, making false statements on the application, submitting false documents in support of his application, and for suffering a criminal conviction. The Nevada Board advised Dr. Martin that he could respond in writing to show cause why the disciplinary action should not be taken.

14. Dr. Martin submitted three letters to the Nevada Board, one of which was written in and around the margins of his Notice of Defense, explaining his position and apologizing for admittedly submitting an intentionally fraudulent application to the Nevada Board. Dr. Martin took considerable pains to explain that he had been suffering from mental illness that included “racing thoughts”, impairment of his ability to reason, confusion and that he had been diagnosed during the criminal proceedings as suffering from a mental disease or defect. He advised he had been started on Lithium, which made him feel much better. He contended the “newly diagnosed mental disease” constituted mitigating circumstances for his criminal conduct and his wrongful behavior in seeking the Nevada license. He advised he was seeking a second psychiatric evaluation and that he and his attorney were considering a change of plea in the criminal matter to not guilty by reason of insanity. Dr. Martin advised that it was his opinion, based upon the comments of the court-

appointed psychiatrist and his own reading of the DSM-III manual of psychiatric disorders, that, "I did not 'realize' that other behaviors are not uncommon with the Bipolar Defect, such as that the offender often-times does not earnestly 'realize' the severity or consequences of associated immoral or criminal behavior-which might in fact be associated with the behaviors exhibited."⁴

15. Dr. Martin wrote two lengthy letters, 4 and 6 pages in length, from the Federal Correctional Institute where he was incarcerated on June 16 and 17, 1992, to the Nevada Board, in which he made considerable additional effort to explain and excuse his conduct leading to his convictions in Vermont and the filing of the false application in Nevada. In these letters to the Nevada Board, Dr. Martin characterized his use of a false name to obtain licensure and work as a pharmacist in Nevada as "using and working under the alias". Dr. Martin described in some detail suffering from thought and interpersonal behavior difficulties while still in pharmacy school in 1989 and earlier, which he described as "irrational ideation or delusions." He suggested he obtained little advantage from his conduct, and advised he had worked under the assumed name for only four months at the AARP Pharmacy in Sparks, Nevada, but he did not continue in the job. He made a historical explanation of his unhappy family circumstances and explained that one of his motivations for applying for the license under "the alias" was a thought that if he shed the name "Martin", he would also shed his unhappy, chaotic and hurtful past. "I had a definite "belief" that ridding of my "Martin" name would, in some way, help me forget about misunderstandings or problems in my past that I could not adequately deal with, because obviously I did not have any real intention or attempt to "use" the alias for any other illegal activity, for monetary gain, etc."⁵ He noted in these letters and in later correspondence with the DAG that he was struggling with thought disorders at the time of the filing of his Nevada application, which led to unclear and confused thinking when he completed his Nevada application. Dr. Martin advised he did actually consider formal, legal action to change his name. Dr. Martin referred the Nevada Board to the psychiatric evaluations he had been undergoing as part of the court proceedings against him. He advised the court appointed psychiatrist had determined Dr. Martin was bi-polar, manic-depressive, subject to wide swings in mood, which condition was responding well to administration of Lithium. Dr. Martin completed both letters to the Nevada Board by explaining both his criminal convictions and his behavior in completing his Nevada application in the fashion he did as the products of his then unknown but now diagnosed mental disease or defect.

16. Dr. Martin complained to the Deputy Attorney General assigned to prosecute these proceedings that his then "untreated chemical imbalance" was not fairly considered in the proceedings before the Nevada Board and the Florida Board. The contention is devoid of merit. The Nevada Board's Disciplinary Order specifically recited the fact that the Nevada Board read and considered all three letters written by Dr. Martin in considering the facts and making its Decision. The Florida Board's action and Disciplinary Order was entirely derivative of the Nevada Board's action.

⁴ Exhibit 11, June 17, 1992 letter, page 3.

⁵ Exhibit 11, June 16, 1992 letter, page 3.

17. The Nevada Board acted to revoke the Pharmacy license issued to Jeffrey Robert Beard (aka Dr. Martin) effective September 10, 1992. The Board found Dr. Martin violated Nevada Revised Statutes sections 639.210(8) and (9) by submitting false and fraudulent information in support of an application, and 639.261(2) by submitting a false application and documents in support of licensure. The Nevada Board also found Dr. Martin had suffered a criminal conviction in Vermont, which was a separate and distinct legal cause for revocation.

18. The State of Florida, Department of Health, Board of Pharmacy (hereafter "the Florida Board") issued Dr. Martin a license to practice as a pharmacist in the State of Florida on a date not proved but before 1990. Dr. Martin practiced pharmacy in the Tampa-St. Petersburg area in 1989 and 1990, after graduation from Mercer. The Florida Board acted to revoke Dr. Martin's license to practice pharmacy in Florida on March 26, 1998. The Florida Board's Order was based upon the Nevada Board's action to revoke Dr. Martin's license for the filing of an application with false documentation. The Florida Board found that the obtaining of a pharmacy license in another State by misrepresentation or fraud violated Florida law and was cause to revoke his Florida pharmacy license.

19. Dr. Martin applied to the Board of Pharmacy, State of Oregon (hereafter "the Oregon Board") for the issuance of a license to practice as a pharmacist in the State of Oregon on December 3, 1997. Dr. Martin did not seek licensure in Oregon based upon reciprocity, the fact that he had obtained licensure as a pharmacist in another State. Dr. Martin applied for the license on the basis of passing the NAPLEX examination and his receipt of his Pharm.D. degree from Mercer University School of Pharmacy.

20. Dr. Martin disclosed to the Oregon Board that he was licensed as a pharmacist in California on the application, but he failed to disclose that he currently or previously held licenses to practice pharmacy in Nevada or Florida, despite a specific question on the application that required disclosure of previous licensure in other States or jurisdictions. The Oregon Board's application asks specifically whether the applicant has ever been arrested and charged with a crime relating to liquor, drugs or pharmacy, or any felony, or been subjected to discipline by a professional board or agency for violation of any pharmacy, liquor or drug law. Dr. Martin answered the question "No". Dr. Martin also hand-wrote out a declaration that, "I have never been arrested for nor charged with the commission of a crime involving pharmacy, liquor or drug laws or any felony. I have never been charged with nor disciplined for the violation of a pharmacy, liquor or drug law or regulation by a professional licensing board or agency." Dr. Martin signed the application beneath the jurat, where he swore under penalty of perjury that the responses he made on his application were true and correct. The Oregon Board issued a license to Dr. Martin to practice as a pharmacist in the State of Oregon, based upon the assumed accuracy of the disclosures made in Dr. Martin's application, in early 1998.

21. Dr. Martin admitted he knowingly and intelligently furnished false and misleading information to the Oregon Board in support of his application for licensure as a

pharmacist in Oregon. "I informed Mr. Steve Shultie of the Oregon State Board of Pharmacy, over-the-telephone, a few weeks ago (prior to receiving the First Amended Accusation, dated October 22, '01 above) that I purposefully did not disclose on the Oregon Pharmacist application of both my prior convictions and pharmacist license revocations in the 'other' states. My reasoning (factual written statements) for such, above, are as follows: (a) I felt that, at the time the Oregon Pharmacist application was submitted, disclosure of such "old history" would certainly lead to non-licensure as a Pharmacist in Oregon-This has already been based on the fact that my previous Florida Pharmacist licensure was already revoked, and the Florida Board already had knowledge of my convictions, coupled to my Nevada Pharmacist revocation (yet neither State Pharmacy Board, above, had those Discovery items that I've presented in my case #2363, which I feel may have altered their overall 'revocation' decisions years ago); (c) I simply felt it 'better' for my mentality NOT to "rehash" old history, which is quite disturbing, since I did NOT WANT TO PRESENT ANY "DESIRES" TO RE-CONTACT THE VICTIM IN MY OTHERWISE "OLD" THREATENING COMMUNICATIONS CASES, and, I just wanted to forget about the past and move on in my career...(sic)"⁶ Dr. Martin acknowledged he failed to disclose his previous licensure in the States of Nevada and Florida. Dr. Martin falsely stated he had never been convicted of "any felony", and had never been subjected to a disciplinary action by regulatory board or agency. Dr. Martin was not under a duty to disclose the action by the Florida Board seeking to and ultimately revoking his license in Florida. The Florida Board's accusatory pleading seeking to revoke Dr. Martin's license, was filed December 3, 1997 and appears to have been served on the Board and Dr. Martin on December 8, 1997. The Florida Board's revocation Order was not issued until March 1998. However, Dr. Martin's declaration that he had never been disciplined by a regulatory board or agency was still false, in that the Nevada Board acted in 1992 to revoke his license in Nevada for false declarations on his application and the criminal conviction.

22. Dr. Martin's correspondence and "discovery" contends that there is a factually and legally significant distinction between his skill and competence in actually practicing the business of pharmacy, and the behaviors that resulted in the criminal convictions and disciplinary actions. Dr. Martin attributes all this illegal and unethical conduct to have been the product of his "newly diagnosed mental illness". He also implies in several instances that the illegal and unethical conduct resulting in the criminal convictions and license revocations in Nevada and Florida are now no longer a concern, because the mental illness is now adequately diagnosed and controlled with medication. The contentions lacks merit and are wholly without competent evidentiary support. A licensed Pharmacist is a trusted health care professional with a duty to have a deep and abiding concern for the health, welfare and well being of persons who use his or her services. This professional obligation implies well-founded trust, which is a necessary product of an unfailing honesty, integrity and trustworthiness. Honesty, high ethical standards and trustworthiness are part and parcel of the practice of pharmacy, and cannot be separated from the actual physical operations of formulating medications, handling controlled substances, managing a pharmacy and the various other tasks a pharmacist must capably and competently handle each day, as Dr.

⁶ Exhibit 16, October 27, 2001 letter from Dr. Martin to DAG, page 3 of 6, in pertinent part.

Martin appears to suggest. Dr. Martin has repeatedly contended that since he has never had a consumer complaint about his skill and competence in performing his duties as a pharmacist, the concerns about private ethical lapses are not relevant, especially when they were caused by an untreated mental illness. This is a convenient but untenable view. There is no such person as a skillful and competent, but occasionally intentionally dishonest, pharmacist. Private dishonesty does materially impact public professional practice. The distinction Dr. Martin attempts to draw in his contention assumes a pharmacist can be skillful and competent and still engage in intentionally dishonest or unethical conduct. Dr. Martin replied in response that his dishonest conduct and his criminal convictions should all be mitigated and were not the product of rational thought when making this evaluation because they were each the product of confused and irrational thinking that was caused by his previously undiagnosed mental disorder. He thus suggests that the dishonest acts and the conduct leading to the criminal convictions were the acts of the impaired Dr. Martin of the past, before his condition was brought under control by Lithium.

23. Dr. Martin's contentions fail for two separate reasons. There is no competent medical evidence in this record that Dr. Martin has been actually diagnosed by a competent medical professional as suffering from a mental disease, illness or defect, nor is there any competent medical evidence that if he does, the condition is or has been significant enough and of such a dimension as an impediment to Dr. Martin's mental processes such that it would excuse or mitigate the conduct leading to his criminal convictions in 1992 or his overt dishonesty in making applications for licensures in Nevada and Oregon, or for a Pharmacist in Charge endorsement in California. The medical records and the excerpt from the U.S. District's Court's Presentence Investigation and Report in Dr. Martin's discovery are hearsay and do not contain sufficient indicia or reliability to be admissible in a fashion that a Factual Finding may be made on the contents of those documents in the absence of other direct evidence.⁷ No medical professional testified in this matter, and there were no medical opinions submitted in the form of sworn declarations, giving notice to the Deputy Attorney General of the right and opportunity to cross-examine the person rendering the opinion.⁸ Dr. Martin offered no evidence that he is currently under a mental health professional's care and supervision for the management of a diagnosed mental illness or condition. There is no evidence he has ever been diagnosed or treated by a licensed mental health practitioner outside the prison environment.

24. Second, and perhaps even more significant, assuming all Dr. Martin's contentions are true; that the mental disease or defect exists just as Dr. Martin contends, that the condition constitutes an impairment significant enough to excuse or mitigate the criminal and dishonest conduct, and is and has been adequately controlled now by the administration of Lithium, the contention is rebutted by Dr. Martin's intentional dishonesty in applying for a personal loan under a false Social Security number in 1997, dishonest disclosure on his

⁷ Government Code Section 11513(c). At the time the medical records and other documents were presented for inclusion in the record, the Administrative Law Judge specifically ruled that the records could be admitted as hearsay, but the contents of the opinions contained therein did not appear to have the independent evidentiary support or corroboration in other direct evidence in the record required to support a Factual Finding.

⁸ Government Code Section 11514.

California application for a Pharmacist in Charge endorsement, and several intentionally dishonest statements or failures to disclose facts when under an obligation to do so on his Oregon application. The Oregon application is of particular significance, because Dr. Martin adamantly points to his conduct as a licensee in Oregon as proof of his competence and fitness for licensure. Yet the standing from which he makes these contentions was obtained by fraud. These later dishonest acts occurred well after the alleged condition had been diagnosed and brought under control with medication. Dr. Martin's contentions conflict when applied to his later conduct.

25. Dr. Martin's presentation of his defense attempts to walk a very fine line between the suggestion that his mental impairment condition was serious and disabling enough to constitute an excuse for or mitigation of significant criminal conduct and dishonesty, and yet is not so significant as to constitute an impairment to his then or present ability to practice safely the profession of pharmacy. It is noteworthy in this respect that there was no period of time in which Dr. Martin acknowledged that the alleged disabling mental condition was sufficiently severe as to preclude him from practicing pharmacy safely or competently. He actually made the contrary contention, in that he implied in his contentions that his practice of pharmacy in Florida in 1989 and 1990, and in Nevada at the AARP Pharmacy in 1991 was competent, skillful and problem free. Yet at these times, he was deep in the grip of his undiagnosed mental illness. The weight of the evidence is that the condition, to the extent it exists, may have had a material impact upon Dr. Martin's interpersonal relations and social relationships, but was not sufficient to excuse or mitigate his criminal conduct, or the repeated acts of intentional deceit, misrepresentations and fraud engaged in by Dr. Martin in 1992 (Nevada application under a fraudulent name), 1996 (fraudulent loan application) and 1997 (Oregon application containing affirmative false statements and misrepresentations by omission). The evidence reveals that the problem is ethical and one of character, a problem with telling the truth, especially in circumstances where an actual or perceived loss could occur if the truth were known.

26. Dr. Martin engaged in conduct on several occasions consisting of acts involving moral turpitude, dishonesty, fraud and deceit. Dr. Martin's application to the Nevada Board using a false name, his application for a personal loan using a false Social Security number, and his application to the Oregon Board, containing false declarations and material omissions all were dishonest, deceitful, constituted fraud in that each series of acts was indisputable intentional and knowing, and therefore all involved moral turpitude.

27. The criminal convictions suffered by Dr. Martin for making threatening communications by mail and telephone, are substantially related to the qualifications, functions and duties of a licensed pharmacist in the State of California. The Executive Officer's testimony regarding this issue was credible and persuasive. A pharmacist demonstrated fitness for practice not only by skill and competence in the formulation and dispensing of medications and controlled substances, and providing advice, but also in a larger context, by demonstrating a deep and abiding concern for the health, welfare and safety of others. Honesty, trustworthiness and integrity are also required. The making of threats to another person for the purpose of achieving the pharmacist's personal and social

objectives is incompatible with these requirements. A pharmacist making threats to another person, regardless of the context, is hardly demonstrating an abiding concern for the health, safety and welfare of that person. Private conduct in some limited instances is separable from public professional performance, but this is not one of those instances.

28. Costs of investigation and prosecution of this matter were introduced in the form of Certification of Costs from the Executive Officer of the Board, together with declarations from the two Deputy Attorney Generals who have worked on the case. Also attached was a very useful and informative detailed billing statement, showing tasks, time spent and dates of tasks undertaken by both the Deputies Attorney Generals assigned to prosecute the case. The Certifications of Costs certify that the Board has incurred costs in the amount of \$397.50 for 3.75 hours of Deputy Attorney General time before the filing of the Accusation, at a rate of \$106.00 per hour, and \$5,973.50 for a total of 50 hours of Deputy Attorney General time after the filing of the Accusation, at rates of \$106.00 per hour for the first 4 hours, and \$112.00 per hour for the next 46 hours, when the Attorney General's rates changed with the commencement of a new fiscal year. The Certifications total \$6370.00, for 53.75 hours of DAG time. Deputy Attorney General Almanzo's declaration attests to the fact that the Department of Justice, Office of the Attorney General has billed or will bill the Board the total of \$868.00 for her services in investigating, pleading, preparing, conducting discovery and prosecuting the case, at the rate of \$112.00 per hour for 7.75 hours of work. Deputy Attorney General Diedrich's declaration attests to the fact that the Department of Justice, Office of the Attorney General has billed or will bill the Board the total of \$5,544.00 for his services in investigating, pleading, preparing, conducting discovery and prosecuting the case, at the rate of \$112.00 per hour for 49.50 hours of work actually performed up to the date of the making of the declaration, October 24, 2001. The Deputy Attorney General also estimated that he would be incurring costs of an additional \$2,688.00 for work from October 25, 2001 forward to the evidentiary hearing for trial preparation, witness interviewing, exhibit assembly and so forth, a total of 24 hours at a rate of \$112.00. The Costs Certifications submitted by the Executive Officer, the most recent of which was made on October 26, 2001, account for 53.75 hours of DAG time. There are 3.5 hours of DAG time actually spend in the prosecution of the case not reflected on the Costs Certifications. At a rate of \$112.00, these costs amount to \$392.00. Therefore, the total costs sought to be recovered from Dr. Martin are \$9430.00, consisting of the costs set forth in the two Certifications (\$6370.00), the costs remaining for DAG time actually spent not accounted for in the Certifications (\$392.00) and the costs set forth in the DAG's declaration for time from October 24, 2001 forward (\$2668.00). The costs contained in the declarations are presumed reasonable, unless it appears otherwise from the declarations and any extrinsic challenge to the reasonableness of the costs.⁹

29. Dr. Martin contested the costs claim as excessive and sought a reduction. The case was multi-faceted, involved some cumbersome investigation, and required response to a prodigious amount of communication with Dr. Martin in first an effort to resolve the case, and then to place it in a posture to be taken to trial. The DAG was required to work closely

⁹ Business and Professions Code section 125.3

with the Executive Officer to plumb the Board's records and to communicate with the licensing boards in several states to determine the facts. The Board prevailed on all material allegations in the prosecution of the case. Even as a default, the case required a half of a day's trial time to present in an organized fashion. The costs of investigation and prosecution are reasonable and may be recovered in the amount proved, \$9430.00.

LEGAL CONCLUSIONS

1. "The Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to, the following:

"..."

"(n) The revocation, suspension or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any act for which a license is required by this chapter (Ch.9, of Div. 2, of the Business and Professions Code, Section 4000, et.seq.)..."¹⁰

2. Dr. Martin engaged in unprofessional conduct and violated Section 4301(n) on two separate occasions when his licenses to practice as a Pharmacist were revoked in both Nevada and Florida (First and Second Causes for Discipline). Legal cause therefore exists to revoke or suspend Dr. Martin's license to practice as a Pharmacist in the State of California.¹¹

3. "The Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to, the following:

"..."

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not..."¹²

4. Dr. Martin engaged in unprofessional conduct in violation of Section 4301(f) on six separate proved occasions. Dr. Martin was dishonest and deceitful in his application to the Oregon Board when he dishonestly declared he had not been charged with nor disciplined for a violation of a pharmacy, liquor or drug law by a professional regulatory board or agency (Third Cause for Discipline). Dr. Martin was dishonest and deceitful when he dishonestly declared in his application to the Oregon Board that he had never been arrested for or been convicted of any felony or a crime involving pharmacy, liquor or drug laws. (Fourth and Fifth Causes for Discipline). Dr. Martin was dishonest and deceitful on his

¹⁰ Business and Professions Code Section 4301(n).

¹¹ Business and Professions Code Section 4300.

¹² Business and Professions Code Section 4301(f).

application to the Oregon Board in that he intentionally failed to disclose he had been previously licensed as a Pharmacist in the States of Nevada and Florida. (Sixth Cause for Discipline). Dr. Martin was deceitful and dishonest when he applied for the issuance of a license to practice as a Pharmacist in the State of Nevada under the intentionally false name of Jeffrey Robert Beard. (Eighth Cause for Discipline). Dr. Martin deceitfully and dishonestly applied for a personal auto loan using a knowingly false Social Security number and a false name. (Tenth Cause for Discipline). Each of these separate and distinct acts of dishonesty and deceit were knowing and intentional and each constituted acts involving moral turpitude. "Moral turpitude" means a general "readiness to do evil"¹³, i.e., "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."¹⁴ "We recently summarized the moral character requirement this way: "Good moral character includes traits of 'honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.' [Citation omitted in original.] Persons of good character also do not commit acts or crimes involving moral turpitude—a concept that embraces a wide range of deceitful and depraved behavior. [Citations omitted in original.]"¹⁵ Acts and conduct involving forms of dishonesty and deceit such as Dr. Martin engaged in as detailed above are acts and conduct involving moral turpitude.¹⁶ Each constitutes a separate and distinct legal cause for the revocation or suspension of Dr. Martin's Pharmacist license in the State of California.

5. "The Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to, the following:

"..."

"(p) Actions or conduct that would have warranted the denial of a license..."¹⁷

"(a) A board may deny a license regulated by this code on the grounds that the applicant has done one of the following:

"..."

'(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another..."¹⁸

6. Dr. Martin engaged in dishonest and deceitful conduct that would have constituted cause for denial of an application for a Pharmacist license in California when he

¹³ People v. Castro (1985) 38 Cal. 3d 301, 314

¹⁴ Id., In re Craig (1938) 12 Cal. 2d 93, 97.

¹⁵ In re Lesansky (2001) 25 Cal.4th 11, 16, In re Gossage (2000) 23 Cal.4th 1080, 1095

¹⁶ People v. Castro (1985) 38 Cal.3d 301, 315-316, In re Rothrock (1940) 16 Cal. 2d 449, 454

¹⁷ Business and Professions Code section 4301(p).

¹⁸ Business and Professions Code Section 480(a)(2).

made intentionally false declarations and intentionally failed to disclose material facts upon his application for licensure to the Oregon Board. Dr. Martin admitted in his correspondence that he would likely not have received the license, had he been honest. Dr. Martin was dishonest and deceitful on the Oregon application in order to substantially benefit himself, to wit, to enhance his chances of obtaining the issuance of the license. (Seventh Cause for Discipline). Dr. Martin engaged in dishonest and deceitful conduct that would have constituted cause for denial of an application for a Pharmacist license in California when he made intentionally false declarations and intentionally failed to disclose material facts upon his application for a personal loan using a false name and Social Security number. Dr. Martin applied under an intentionally false name and identification, and used the false name and identification to enhance his chances of obtaining the loan and to evade arrest and prosecution for a violation of his supervised release. (Eleventh Cause for Discipline). It was not proved Dr. Martin engaged in dishonest and deceitful conduct that would have constituted cause for denial of an application for a Pharmacist license in California when he made intentionally false declarations and intentionally failed to disclose material facts upon his application for a Pharmacist license in the State of Nevada. There is no doubt that application under a false name would constitute a factual and legal cause for denial of the issuance of the license, but there was no reason evident in the record for Dr. Martin to use the false name. The criminal proceedings in Vermont did not occur for more than a year after the license issued, and there was no evidence of any disqualifying factor of note in Dr. Martin's background in 1991, when the license issued, that would provide any substantial gain to Dr. Martin to use an assumed rather than his own name in Nevada. Dr. Martin appeared to be otherwise fully qualified for licensure, and held a valid license in both Florida and California at the time. Dr. Martin's curious explanation of the reasons he used the assumed name, although raising significant mental health concerns, would not necessarily have disqualified him from licensure. Therefore it cannot be said clearly and convincingly that Dr. Martin used the assumed name in Nevada with an intention to substantially benefit himself or injure another. (Ninth Cause of Action). Therefore, two additional separate and distinct causes for the revocation or suspension of Dr. Martin's Pharmacist license exist.

7. "The Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to, the following:

"..."

"(l) The conviction of a crime substantially related to the qualifications, functions and duties of a licensee... The Board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions and duties of a licensee...¹⁹ The Board may suspend or revoke a license if the licensee has been convicted of a crime substantially related to the qualifications, functions and duties of the license."²⁰

¹⁹ Business and Professions Code Section 4301(l), in pertinent part.

²⁰ Business and Professions Code section 490.

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question”.²¹ 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 a 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.²²

8. Dr. Martin was convicted of federal felony offenses in 1992 (Twelfth and Fourteenth Causes for Discipline) and 1996 (Thirteenth and Fifteenth Causes for Discipline). The 1992 conviction was by plea, and the 1996 in the form of an admission of the offense as part of a supervised release probation revocation proceeding. There was no issue that the dishonesty and deceit involved in the conviction for filing a false loan application with a false name, false Social Security number, and for the purposes of avoiding detection by his probation officer are acts substantially related to the qualifications, functions and duties of a licensed Pharmacist. A Pharmacist is required to conduct himself in an honest and trustworthy fashion and with integrity. The 1996 false loan application conviction reflects conduct at considerable odds with the required character traits for licensure. Separate causes for revocation or suspension of Dr. Martin’s license exist for violations of Section 4301(l) and 490 for the 1996 conviction.

9. Dr. Martin has taken issue with the relationship between the 1992 conviction for threatening phone and mail communication and the qualifications, functions and duties of a licensed Pharmacist. As set forth in detail in the Factual Findings, private conduct does reflect unfitness for professional practice in some instances, as persuasively testified to by the Executive Officer. Dr. Martin’s contentions surrounding the threatening communications conviction dance on both sides of the bright line of mental health and fitness to practice as a Pharmacist. Dr. Martin has vigorously sought to excuse or mitigate his conduct leading to these convictions due to an “undiagnosed” mental illness or defect. He never acknowledged he was unfit or unsafe to practice when he was in the grips of this illness, and did so in both Florida and Nevada. Yet he contends he is fine and fit to practice now, because he presumably is taking his Lithium now, even there is no evidence of this following his release from prison in 1997. There is no competent, admissible medical evidence in this record to

²¹ Business and Professions Code section 493.

²² Title 16, California Code of Regulations Section 1770.

support any of those contentions. Dr. Martin's threats against the health, safety and welfare of another human being to achieve his personal or social goals, even if entirely outside the actual daily practice of pharmacy, nevertheless negatively impacts upon Dr. Martin's fitness to practice pharmacy safely and in the interest of public health and welfare. There is no evidence other than Dr. Martin's own statements and the Outstanding Achievement Award he received for his work at the Klamath Tribe's pharmacy that the mental health problem he contends was such a mitigating factor in his criminal conduct is controlled and he is safe and fit to practice. Dr. Martin's credibility is more than suspect. Separate additional causes for the revocation or suspension of Dr. Martin's license exist for violations of Sections 4301(1) and 490 for the 1992 felony convictions in Vermont.

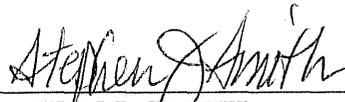
10. Circumstances in aggravation substantially outweigh very little evidence in mitigation, justification and rehabilitation. Dr. Martin's claim to suffering from a mental illness or condition does not constitute a mitigating factor to excuse any of the actionable behavior set forth above, except perhaps the confused thinking that accompanied the Nevada application under an assumed name. There did not appear to be any rational reason to do that nor any evident gain. There is enough evidence of a mental health issue in this record to require that Dr. Martin should not be reinstated or licensed again persuasive and satisfactory proof of fitness and health to practice pharmacy safely, including a comprehensive mental health evaluation from a competent licensed mental health professional and full compliance with any treatment plan recommended. There is a disturbing trend of significant deceit and dishonesty throughout these events over the course of more than a decade, and the apparent resolution of the mental health issues did nothing to prevent the continuing recurrence of lies and deceit to accomplish objectives, whether it was getting a loan, a license or an endorsement to be a Pharmacist in Charge. Dr. Martin has evidenced precious little insight into the wrongfulness of this repeated unethical and unprofessional behavior, and thus there exists little assurance the behavior will not recur the next time something valuable is at stake. Dr. Martin is evidently a skillful and competent Pharmacist, but it is difficult to really evaluate that claim because he has spent a good portion of the last decade in custody or bouncing from job to job with relatively short stays. There is no evidence from anyone but himself and the Certificate of Achievement to support his claims. Dr. Martin hopes to serve as a civilian Pharmacist overseas with the military. This is a noble goal, but unrecognized and unresolved problems will accompany him.

11. The costs of investigation and prosecution of this matter were proved to be \$9,430.00. The costs are reasonable. The costs are recoverable by the Board as part of the Order imposed as part of this decision, on terms and conditions to be determined by the Board.

ORDER

Pharmacist license number RPH 43299, issued to Steven Alfred Martin by the Board of Pharmacy is REVOKED, separately and severally for each of the causes set forth in the Legal Conclusions. The Board shall recover its costs of investigation and prosecution in the sum of \$9,430.00, on terms and conditions to be determined by the Board.

DATED: December 3, 2001



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

STEVEN ALFRED MARTIN
3939 South 5th Street, No. 189
Klamath Falls, Oregon 97603

Pharmacist License No. RPH 43299

Respondent.

Case No. 2363

OAH No. N-2001070463

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 February 7, 2002.

IT IS SO ORDERED January 8, 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
8 BEFORE THE
BOARD OF PHARMACY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No.

12 STEVEN ALFRED MARTIN
3939 South 6th Street#189
13 Kalmath Falls, OR 97603

A C C U S A T I O N

14 Pharmacist License No. RPH 43299

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about March 20, 1990, the Board of Pharmacy issued Pharmacist
23 License Number RPH 43299 to STEVEN ALFRED MARTIN ("Respondent"). The Pharmacist
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on June 30, 2001, unless renewed.
26
27
28

1. JURISDICTION

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

4. 4. Section 4301 of the Code states in pertinent part:

5. The Board shall take action against any holder of a license who is guilty of
6. unprofessional conduct or whose license has been procured by fraud or misrepresentation or
7. issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
8. following:

9. (f) The commission of any act involving moral turpitude, dishonesty, fraud,
10. deceit, or corruption, whether the act is committed in the course of relations as a licensee
11. or otherwise, and whether the act is a felony or misdemeanor or not.

12. (n) The revocation, suspension, or other discipline by another state of a license to
13. practice pharmacy, operate a pharmacy, or do any other act for which a license is required
14. by Chapter 9 (commencing with Section 4000) of the Business and Professions Code.

15. 5. California Code of Regulations section 1770 provides in pertinent part that for
16. the purpose of denial, suspension, or revocation of a personal license an act shall be considered
17. substantially related to the qualifications, functions or duties of a licensee if to a substantial
18. degree it evidences present or potential unfitness of a licensee to perform the functions
19. authorized by his license in a manner consistent with the public health, safety, or welfare.

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

24. FIRST CAUSE FOR DISCIPLINE

25. (out-of-state discipline)

26. 7. Respondent is subject to disciplinary action under section 4301
27. subdivisions (n) in that his license as a pharmacist was disciplined by the state of Nevada. The
28. circumstances are as follows:

1 a. On or about September 10, 1992, the Nevada State Board of
2 Pharmacy issued an order which revoked respondent's pharmacist certificate of registration on
3 the ground that he violated Nevada Revised Statutes sections 639.210 (8) and (9) and 639.281 for
4 submitting false or fraudulent information by filing a false application and documents to secure
5 licensure as a pharmacist in Nevada.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (out-of-state discipline)

9 8. Respondent is subject to disciplinary action under section 4301 subdivision (n)
10 in that his license as a pharmacist was disciplined by the state of Florida. The circumstances are
11 as follows:

12 a. On or about March 26, 1998, the Florida Board of Pharmacy issued
13 an order which revoked respondent's pharmacist license on the ground that he violated Section
14 465.016 (1) (h) of the Florida Statutes for having been disciplined by a regulatory agency of
15 another state for an offense which would constitute a violation of Florida's pharmacy laws.

16 THIRD CAUSE FOR DISCIPLINE

17 (out-of-state discipline)

18 9. Respondent is subject to disciplinary action under section 4301 subdivision (f)
19 and California Code of Regulations section 1770 in that he committed an act which involved
20 dishonesty and fraud. The circumstances are as follows:

21 a. On or about July 28, 1992, respondent admitted the following: on or about
22 December 21, 1989, the Nevada State Board of Pharmacy received a "New Pharmacist
23 Application" from respondent under the name of "Jeffrey Robert Beard". On the application
24 question number 6 states and was answered: "Is the name given above your true name?" Yes.
25 Has your name ever changed? No. If so, when and how N/A." Respondent also admitted that he
26 submitted other false documents supporting the application.

27 PRAYER

28 WHEREFORE, Complainant requests that a hearing be held on the matters herein

1 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

2 1. Revoking or suspending Pharmacist License Number RPH 43299, issued
3 to STEVEN ALFRED MARTIN;

4 2. Ordering STEVEN ALFRED MARTIN to pay the Board of Pharmacy the
5 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 125.3;

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

8 DATED: 5/3/01

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P. F. Harris

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

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