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

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| In the Matter of the Accusation Against:<br><br>REGINALD MARVIN MILES,<br>Pharmacist License Number RPH 28124,<br><br>and<br><br>DOMINGUEZ PHARMACY,<br>Reginald Marvin Miles, Pharmacist In Charge<br>Pharmacy Permit Number PHY 39783, | Case No. 2918<br><br>OAH No. L2006040091 |
| and | |
| In the Matter of the Automatic Suspension of License of:<br><br>REGINALD MARVIN MILES,<br>Pharmacist License Number RPH 28124,<br><br>Respondents. | OAH No. L2006040096 |

## PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard these consolidated matters on June 20, 2006, at Los Angeles, California.

Nancy A. Kaiser, Deputy Attorney General, represented Complainant.

Reginald Marvin Miles (Respondent) represented himself. There was no appearance by or on behalf of Respondent Dominguez Pharmacy (Pharmacy).[1]

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

[1] The pleadings were served and due notice of the hearing was given to Pharmacy as required by law.

## FINDINGS OF FACT

1. Patricia F. Harris made the Accusation in her official capacity as the Executive Officer of the Board of Pharmacy (Board).

2. The Board issued Original Pharmacist License Number RPH 28124 to Respondent on March 22, 1972. Said license is due to expire on September 30, 2007. On February 26, 2006, the Board issued a Notice of Automatic Suspension of License pursuant to Business and Professions Code section 4311, subdivision (a), based on Respondent's incarceration for the crime set forth in Finding 4 below. The automatic suspension was to remain in effect until Respondent's release.[2] On April 4, 2006, the Board issued a Notice of Summary Suspension of License, under the provisions of Business and Professions Code section 4311, subdivision (b), based on the same conviction. Respondent did not request a hearing on the summary suspension.[3]

3. On October 6, 1994, the Board issued Original Pharmacy Permit Number PHY 39783 to Luverne A. Maye and Respondent to do business as Dominguez Pharmacy. Respondent was the designated Pharmacist-In-Charge. Said license is delinquent, with an expiration date of October 1, 2003.

4. On May 25, 2005, in the United States District Court, Eastern District of California, Respondent was convicted, on his plea of guilty, to one count of violating Title 18 United States Code section 1347, health care fraud, a felony inherently involving moral turpitude and one that is substantially related to the functions, duties and qualifications of a Board licensee. Respondent was sentenced to probation for a period of 48 months on certain terms and conditions, including that he "reside and participate in a residential community corrections center [halfway house] in the Central District of California for a period of 12 months." Respondent was also ordered to make restitution totaling $141,000, payable one-half to the California Department of Health Services and one-half to the Center for Medicare and Medicaid Services.

5. The facts and circumstances of the crime are that Respondent filed claims for reimbursement for prescription medicine, and for health care equipment, which he never delivered. Respondent owned two board and care homes, the residents of which were receiving Medi-Cal benefits. Under the terms of their coverage, each resident was entitled to receive up to six paid prescriptions per month. For each resident who was not then receiving the full number of prescriptions allowed, Respondent would nevertheless file claims for six prescriptions. Respondent, as an approved Medi-Cal provider, would electronically bill

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[2] As of the date of hearing, Respondent was due to be released on July 4, 2006. At the time of hearing, he was confined to a halfway house on evenings and weekends. Respondent filed a timely request for hearing regarding the automatic suspension

[3] The Summary Notice of Suspension was issued to "bridge the gap" if any, between Respondent's release from custody (the date the Automatic Suspension is due to end) and the Board's final decision in this matter, thereby ensuring Respondent could not continue the practice of pharmacology without Board approval.

Medi-Cal for the prescriptions, using a Medi-Cal beneficiary number, prescription code and date of service. When audited, and he had to account for all of the prescriptions for which claims had been made, Respondent obtained false prescriptions on which the signature of the supposedly prescribing physician was forged. Respondent also falsified genuine prescriptions to increase the number of tablets, pills or capsules actually ordered. In addition, Respondent falsified delivery receipts for individuals who were supposedly customers of the Pharmacy.

6. Respondent offered no excuse or rationale for his criminal conduct, other than to state that "the Pharmacy was not doing well." Respondent was permitted to work as a pharmacist while serving his time in the halfway house, but had to stop once his license was suspended. He has been unable to secure other employment. Respondent filed for protection under the Bankruptcy Law in October, 2005. He is 58 years old and currently has no income except for a $320 monthly retirement benefit from a previous employer. Respondent has always earned his living as a pharmacist. He has no other job experience, except making deliveries for a pharmacy when he was a student.

7. In other matters, Respondent was disciplined by the Board in 1983, in Case Number 1144. His license was revoked, the revocation was stayed, and Respondent was placed on probation for a period of three years. That discipline was based on Respondent's admitted possession of Valium, Dalmane and codeine for which he did not have valid prescriptions. On April 16, 2004, the Board issued Citation Number CI 2003 25821 to the Pharmacy, naming Respondent as the Pharmacist-In-Charge. The citation, which was not contested, imposed a fine of $500 for failure to respond to Board investigatory inquiries, and $500 for failure to file a discontinuance of business form.

8. The Board incurred costs for the investigation and prosecution of this matter in the sum of $9,671.50. In light of the below order, it is unnecessary to determine whether those costs were reasonably incurred.

* * * * *

## CONCLUSIONS OF LAW

1. Respondent's license, and the Pharmacy's permit, are subject to discipline under the provisions of Business and Professions Code sections 490, 4300 and 4301, subdivisions (f), (l) and (o), by reason of the criminal conviction set forth in Finding 4.

2. Respondent's license, and the Pharmacy's permit, are subject to discipline under the provisions of Business and Professions Code sections 810, 4300 and 4301, subdivisions (g) and (o), based on the unprofessional conduct described in Finding 5.

3. Business and Professions Code section 125.3 permits the Board to recover from Respondent its reasonable costs of investigation and prosecution of this disciplinary matter. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme

Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether that respondent has raised a colorable challenge; the Board must consider a respondent's ability to pay; and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman*, *supra* at 45.) In light of Respondent's minimal income and job skills, as set forth in Finding 6, and the severity of the below Order, it would be unduly punitive to require Respondent to pay any cost recovery.

* * * * *

## ORDER

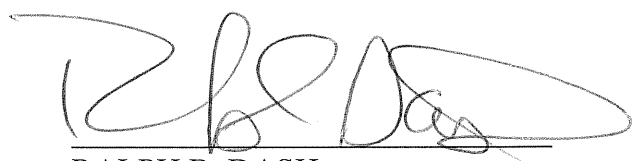
WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The automatic suspension and the summary suspension of Pharmacist License Number RPH 28124 are affirmed.

2. Pharmacist License Number RPH 28124, issued to Respondent Reginald Marvin Miles, together with all licensing rights appurtenant thereto, is revoked.

3. Pharmacy Permit Number PHY 39783, issued to Dominguez Pharmacy, Reginald Marvin Miles, Pharmacist-In-Charge, together with all licensing rights appurtenant thereto, is revoked.

Date: 7-13-06



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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

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| In the Matter of the Accusation Against:<br><br>REGINALD MARVIN MILES,<br>Pharmacist License Number RPH 28124,<br><br>and<br><br>DOMINGUEZ PHARMACY,<br>Reginald Marvin Miles, Pharmacist In Charge<br>Pharmacy Permit Number PHY 39783, | Case No.: 2918<br><br>OAH No.: L2006040091 |
| and | |
| In the Matter of the Automatic Suspension of License of:<br><br>REGINALD MARVIN MILES,<br>Pharmacist License Number RPH 28124,<br><br>Respondents. | OAH No.: L2006040096 |

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 September 13, 2006.

IT IS SO ORDERED August 14, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

rfm

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Attorneys for Complainant

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

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|---|---|
| In the Matter of the Accusation Against:<br><br>REGINALD MARVIN MILES<br>1232 E. Martin Luther King Jr. Blvd.<br>Los Angeles, CA 90011<br><br>Pharmacist License No. RPH 28124,<br><br>and<br><br>DOMINGUEZ PHARMACY<br>20930 S. Bonita St., Suite R<br>Carson, CA 90746<br><br>Reginald Marvin Miles, Pharmacist-In-Charge<br>Pharmacy Permit No. PHY 39783<br><br>Respondents. | Case No. 2918<br><br>**FIRST AMENDED ACCUSATION** |

Complainant alleges:

PARTIES

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

2. On or about March 22, 1972, the Board issued Pharmacist License No. RPH 28124 to Reginald Marvin Miles (Respondent Miles). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on or about

September 30, 2007, unless such license is renewed. On or about February 27, 2006, the Board notified Respondent that his Pharmacist License was automatically suspended per Business and Professions Code section 4311, subdivision (a) and shall remain suspended until at least July 4, 2006 or until further order of the Board.

3. On or about October 6, 1994, the Board of Pharmacy issued Pharmacy Permit No. PHY 39783 to Dominguez Pharmacy (Respondent Dominguez Pharmacy) with Reginald Marvin Miles, Pharmacist-In-Charge. The Pharmacy Permit expired on October 1, 2003, and has not been renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 4300 provides that every license issued may be suspended or revoked.

6. Section 118, subdivision (b), 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.

7. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Section 810 states:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim. . . ."

9. Section 4301 states, in pertinent part:

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

. . . .

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

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter . . .

. . . .

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

10. 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."

11. Section 125.9, subdivision (b) (5) states that a failure of a licensee to pay a fine within 30 days of the date of assessment, unless appealed, may result in disciplinary action being taken by the Board.

12. California Code of Regulations, title 16, section 1775.3, states, in pertinent part, that failure to comply with an order of abatement within the time specified in a citation shall constitute a ground for revocation or suspension of the license.

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

14. Respondents are subject to disciplinary action under section 490, 4300 and 4301, subdivisions (f), (l), and (o) as defined in California Code of Regulations, title 16, section 1770, in that on or about May 25, 2005, in a criminal proceeding entitled *United States of America v. Reginald M. Miles* in United States District Court, Eastern District of California, Case No. CR-S-04-27 WBS, Respondent Miles, d.b.a. Dominguez Pharmacy, was convicted on a plea of guilty to one count of violating Title 18, United States Code, section 1347 (health care fraud). The circumstances underlying the conviction are that beginning in or about November 2001, and continuing through in or about December 2002, Respondent billed the Medi-Cal Program for pharmaceuticals ordered pursuant to invalid prescriptions (i.e., not issued by California licensed

medical providers) and/or added products or items to valid prescriptions that were not delivered to the beneficiaries. Through this scheme, Respondent defrauded and attempted to defraud the State of California Medi-Cal Program out of approximately $141,000.00.

SECOND CAUSE FOR DISCIPLINE

(Presentation of False or Fraudulent Claims)

15. Respondents are subject to disciplinary action under Code Sections 810, 4300, 4301(g) and (o), on the grounds of unprofessional conduct, in that Respondents knowingly presented or caused to presented false or fraudulent claims for payment of health care insurance claims to the State of California Medi-Cal Program, as more fully set forth above in paragraph 14 above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply)

Citation CI 2003 26999

16. Respondent Miles is subject to disciplinary action under Code Section 125.9, subdivision (b)(5), and California Code of Regulations, title 16, section 1775.3, subdivision (b), for his failure to comply with Citation No. CI 2003 26999 as described in paragraph 26 below.

17. Pursuant to Citation No. CI 2003 26999, Respondent Miles was issued an Order of Abatement to submit to the Board a discontinuance of business form as required by California Code of Regulations, title 16, section 1708.2, no later than May 16, 2004.

18. In addition, pursuant to Citation No. CI 2003 26999, Respondent Miles was ordered to pay a civil penalty (fine) in the amount of $1,000.00 in accordance with California Code of Regulations, title 16, section 1775, for the violation of section 4301, subdivision (q) and for the violation of California Code of Regulations, title 16, section 1708.2.

19. Respondent Miles did not appeal Citation No. CI 2003 26999. As a result the citation became final on May 16, 2004.

20. Respondent Miles has failed to comply with the Order of Abatement.

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21. Respondent Miles has failed to remit the civil penalties as assessed in Citation No. CI 2003 26999.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply)

Citation CI 2003 25821

22. Respondent Dominguez Pharmacy is subject to disciplinary action under California Code of Regulations, title 16, section 1775.3, subdivision (b), for its failure to comply with the Order of Abatement pursuant to Citation No. CI 2003 25821 as described in paragraph 26 below.

23. Pursuant to Citation No. CI 2003 25821, Respondent Dominguez Pharmacy was issued an Order of Abatement to submit to the Board a discontinuance of business form as required by California Code of Regulations, title 16, section 1708.2, no later than May 16, 2004.

24. Respondent Dominguez Pharmacy did not appeal Citation No. CI 2003 25821. As a result the citation became final on May 16, 2004.

25. Respondent Dominguez Pharmacy has failed to comply with the Order of Abatement.

DISCIPLINE CONSIDERATIONS

26. To determine the degree of discipline, Complainant alleges:

Accusation, Case No. 1144

a. On or about November 29, 1983, in a prior disciplinary action entitled *In the Matter of the Accusation Against Reginald M. Miles* before the Board of Pharmacy, in Case No. 1144, Respondent Miles' license was revoked, however, said revocation was stayed and Respondent was placed on three (3) years probation effective December 29, 1983 subject to certain terms and conditions. That decision is final.

Citation No.CI 2003 26999

b. On or about April 16, 2004, the Board issued Citation No. CI 2003 26999 to Respondent Miles, for the following violations:

(1) Business and Professions Code section 4301, subdivision (q), (conduct that subverts or attempts to subvert investigation of the Board of Pharmacy). Respondent, as Pharmacist-In-Charge of Dominguez Pharmacy, failed to respond to Board investigatory inquiries.

(2) California Code of Regulations, title 16, section 1708.2 (Discontinuance of business). Respondent, as Pharmacist-In-Charge of Dominguez Pharmacy, failed to ensure that Dominguez Pharmacy filed a discontinuance of business form with the Board, as required by law.

Citation No. CI 2003 25821

c. On or about April 16, 2004, the Board issued Citation No. CI 2003 25821 to Respondent Dominguez Pharmacy, for the following violations:

(1) Business and Professions Code section 4301, subdivision (q), (conduct that subverts or attempts to subvert investigation of the Board of Pharmacy) Respondent Dominguez Pharmacy, while under the supervision of Pharmacist-in-Charge Reginald Marvin Miles, failed to respond to Board investigatory inquiries.

(2) California Code of Regulations, title 16, section 1708.2 (Discontinuance of business). Respondent Dominguez Pharmacy, while under the supervision of Pharmacist-in-Charge Reginald Marvin Miles, terminated business and failed to file a discontinuance of business form with the Board as required by law.

PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 28124, issued to Reginald Marvin Miles.

2. Revoking or suspending Pharmacy Permit No. PHY 39783, issued to Dominguez Pharmacy, Reginald Marvin Miles, Pharmacist-In-Charge.

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3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/29/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
State of California

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Attorneys for Complainant

**BEFORE THE**
**BOARD OF PHARMACY**
**DEPARTMENT OF CONSUMER AFFAIRS**
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| In the Matter of the Accusation Against:<br><br>REGINALD MARVIN MILES<br>1232 E. Martin Luther King Jr. Blvd.<br>Los Angeles, CA 90011<br><br>Pharmacist License No. RPH 28124,<br><br>and<br><br>DOMINGUEZ PHARMACY<br>20930 S. Bonia St., Suite R<br>Carson, CA 90746<br><br>Reginald Marvin Miles, Pharmacist-In-Charge<br>Pharmacy Permit No. PHY 39783<br><br>Respondent. | Case No. 2918<br><br>**ACCUSATION** |

Complainant alleges:

PARTIES

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

2. On or about March 22, 1972, the Board issued Pharmacist License No. RPH 28124 to Reginald Marvin Miles (Respondent Miles). The Pharmacist License expired on September 30, 2005, and has not been renewed.

3. On or about October 6, 1994, the Board of Pharmacy issued Pharmacy Permit No. PHY 39783 to Dominguez Pharmacy (Respondent Dominguez Pharmacy) with Reginald Marvin Miles, Pharmacist-In-Charge. The Pharmacy Permit expired on October 1, 2003, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 4300 provides that every license issued may be suspended or revoked.

6. Section 118, subdivision (b), 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.

7. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Section 810 states:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim. . . ."

9. Section 4301 states, in pertinent part:

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

. . . .

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

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . .

. . . .

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

10. 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."

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

12. Respondents are subject to disciplinary action under section 490, 4300 and 4301, subdivisions (f), (l), and (o) as defined in California Code of Regulations, title 16, section 1770, in that on or about May 25, 2005, in a criminal proceeding entitled *United States of America v. Reginald M. Miles* in United States District Court, Eastern District of California, Case No. CR-S-04-27 WBS, Respondent Miles, dba Dominguez Pharmacy was convicted on a plea of guilty to one count of violating Title 18 United States Code section 1347 (health care fraud). The circumstances underlying the conviction are that beginning in or about November 2001, and continuing through in or about December 2002, Respondent billed the Medi-Cal Program for pharmaceuticals ordered pursuant to invalid prescriptions (i.e. not issued by California licensed medical providers) and/or added products or items to valid prescriptions that were not delivered to the beneficiaries. Through this scheme, Respondent defrauded and attempted to defraud the State of California Medi-Cal Program out of approximately $141,000.00.

SECOND CAUSE FOR DISCIPLINE

(Presentation of False or Fraudulent Claims)

13. Respondents are subject to disciplinary action under Code Sections 810, 4300, 4301(g) and (o), on the grounds of unprofessional conduct, in that Respondents knowingly presented or caused to presented false or fraudulent claims for payment of health care insurance claims to the State of California Medi-Cal Program, as more fully set forth above in paragraph 12.

## DISCIPLINE CONSIDERATIONS

14. To determine the degree of discipline, Complainant alleges:

Accusation, Case No. 1144

a. On or about November 29, 1983, in a prior disciplinary action entitled *In the Matter of the Accusation Against Reginald M. Miles* before the Board of Pharmacy, in Case No. 1144, Respondent Miles' license was revoked, however, said revocation was stayed and Respondent was placed on three (3) years probation effective December 29, 1983 subject to certain terms and conditions. That decision is final.

Citation No.CI 2003 26999

b. On or about April 16, 2004, the Board issued Citation No. CI 2003 26999 to Respondent Miles, for the following violations:

(1) Business and Professions Code section 4301, subdivision (q), (conduct that subverts or attempts to subvert investigation of the Board of Pharmacy). Respondent, as Pharmacist-In-Charge of Dominguez Pharmacy, failed to respond to Board investigatory inquiries.

(2) California Code of Regulations, title 16, section 1708.2 (Discontinuance of business). Respondent, as Pharmacist-In-Charge of Dominguez Pharmacy, failed to ensure that Dominguez Pharmacy filed a discontinuance of business form with the Board, as required by law.

## PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 28124, issued to Reginald Marvin Miles.

2. Revoking or suspending Pharmacy Permit No. PHY 39783, issued to Dominguez Pharmacy, Reginald Marvin Miles, Pharmacist-In-Charge.

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3. Ordering Reginald Marvin Miles to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 1/25/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
State of California

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