

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

In the Matter of the Accusation Against:

STEVEN MICHAEL MARGOLIN

Original Pharmacist License No. RPH 36992

Respondent.

Case No. 2928

OAH No. 2007030018

**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 August 19, 2009.

It is so ORDERED on July 20, 2009.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
\_\_\_\_\_  
KENNETH H. SCHELL  
Board President

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**PROPOSED DECISION**

On August 28, 2007, Steven Michael Margolin (respondent) orally entered into a settlement agreement with Virginia K. Herold (complainant), Executive Officer of the Board of Pharmacy (board). On May 1, 2009, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, granted complainant's motion to reduce the settlement to a written proposed decision due to respondent's failure or refusal to sign the proffered written settlement agreement. This Proposed Decision is submitted in furtherance of the granting of complainant's motion.

**FACTUAL FINDINGS**

1. The Accusation was filed by complainant in her official capacity.
2. On August 18, 1982, the board issued Original Pharmacist License No. RPH 36992 to respondent.
3. From on or about May 18, 2004, to on or about August 22, 2004, respondent dispensed Hydrocodone at a high frequency, and in excess of patient D.W.'s prescribed rate of usage. The number of pills dispensed in the three months represented a nearly 20-month supply of the pills. Hydrocodone is a controlled substance. There was no documentation that respondent contacted any of the prescribers to verify the refills or alert them of early refill requests.
4. The prescription forms that had been presented to respondent by D.W. had been altered. Respondent knowingly filled those prescriptions.
5. On August 24, 2005, respondent was convicted by his plea of nolo contendere in Los Angeles Superior Court case number BA 278579 of violating Penal Code section 653, subdivision (d), solicitation to purchase a controlled substance, a

misdemeanor. Respondent had solicited an undercover officer to purchase rock cocaine. The conviction is substantially related to the qualifications, functions or duties of a pharmacy licensee.

6. Complainant incurred costs for the investigation and enforcement of the matter in the sum of \$12,070.75. The sum is reasonable.

### LEGAL CONCLUSIONS

1. By reason of Factual Findings 3 and 4, cause for the discipline of respondent's license exists pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (d), (e) and (o), in that respondent knowingly filled and dispensed a controlled substance in clearly excessive amounts.

2. By reason of Factual Findings 3 and 4, cause for the discipline of respondent's license exists pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (f), (j) and (o), in that respondent knowingly filled and dispensed altered prescriptions.

3. By reason of Factual Findings 3 and 4, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (i) and (o), in that respondent knowingly sold or furnished controlled substances to an addict.

4. By reason of Factual Finding 5, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), and California Code of Regulations, title 16, section 1770, in that respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy licensee.

5. Business and Professions Code section 125.3 provides that an agency 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.

### ORDER

Pharmacist License No. RPH 36992 issued to respondent Steven Michael Margolin is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions.

1. Actual Suspension: License No. RPH 36992, issued to respondent Steven Michael Margolin, is suspended for a period of six months.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. Obey All Laws: Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

a) An arrest or issuance of a criminal complaint for violation of any provision of the pharmacy law, state and federal food and drug laws, or state and federal controlled substances laws.

b) A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.

c) A conviction of any crime.

d) Discipline, citation or other administrative action filed by any state and federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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

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

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

6. Continuing Education: Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

7. Notice to Employers: Respondent shall notify all present and prospective employers of the decision in case number 2928 and the terms, conditions and restrictions imposed on respondent by this decision. Within 30 days of the effective date of this decision, and within 15 days of respondent's undertaking new employment, respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the board in writing acknowledging the employer has read the decision in case number 2928.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of the decision in case number 2928 in advance of the respondent commencing work at each pharmacy. "Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the respondent is considered an employee or independent contractor.

8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC) or Serving as a Consultant: Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

9. Reimbursement of Board Costs: Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$12,070.75. Respondent shall make said payments as follows: Equal monthly payments. Full costs must be paid by the end of the fourth year of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

10. Probation Monitoring Costs: Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of

probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

11. Status of License: Respondent shall, at all times while on probation, maintain an active current license with the board, including any period during which suspension or probation is tolled. If respondent's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. License Surrender while on Probation/Suspension: Following the effective date of this decision, should respondent cease to practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

13. Notification of Employment/Mailing Address Change: Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

14. Tolling of Probation: Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, respondent must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years. "Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of pharmacy as defined in Business and Professions Code section 4052.

15. Violation of Probation: If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to

revoke probation or an accusation is filed against respondent during probation, or if the board has requested that the Office of the Attorney General prepare a petition to revoke probation or an accusation, the board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If respondent has not complied with any term or condition or probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

16. Ethics Course: Respondent shall take and successfully complete a board-approved course in ethics that must contain at least 22 hours of instruction. This course shall be in addition to respondent's continuing education requirements. Failure to successfully complete the board-approved ethics course within one year of the effective date of this decision shall be considered a violation of probation.

17. Rehabilitation Program – Pharmacists Recovery Program (PRP): Within 30 days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board. The costs for PRP participation shall be borne by respondent.

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

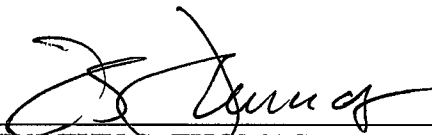
18. Random Drug Screening: Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the board. At all times respondent shall fully cooperate with the board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Any confirmed positive drug test shall result in the immediate

suspension of practice by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

19. Abstain from Drugs and Alcohol Use: Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner a part of a documented medical treatment. Upon request by the board, respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of respondent.

20. Completion of probation: Upon successful completion of probation, respondent's license will be fully restored.

DATED: May 2, 2009

  
TIMOTHY S. THOMAS  
Administrative Law Judge  
Office of Administrative Hearings



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

12 In the Matter of the Accusation Against:

Case No. 2928

13 STEVEN MICHAEL MARGOLIN  
6855 Oak Park Avenue  
Van Nuys, CA 91406

**ACCUSATION**

14 Original Pharmacist License No. RPH 36992

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her

20 official capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department  
21 of Consumer Affairs.

22 2. On or about August 18, 1982, the Board issued Original Pharmacist  
23 License No. RPH 36992 to Steven Michael Margolin (Respondent). The Original Pharmacist  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on November 30, 2007, unless renewed.

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## JURISDICTION

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

5           4.     Section 118, subdivision (b) states:

6           "The suspension, expiration, or forfeiture by operation of law of a license issued  
7 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or  
8 by order of a court of law, or its surrender without the written consent of the board, shall not,  
9 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board  
10 of its authority to institute or continue a disciplinary proceeding against the licensee upon any  
11 ground provided by law or to enter an order suspending or revoking the license or otherwise  
12 taking disciplinary action against the licensee on any such ground.

13           5.     Section 4300 of the Code provides, in pertinent part, that every license  
14 issued by the Board is subject to discipline, including suspension or revocation.

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

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

20           .....

21           (d) The clearly excessive furnishing of controlled substances in violation of  
22 subdivision (a) of Section 11153 of the Health and Safety Code.

23           (e) The clearly excessive furnishing of controlled substances in violation of  
24 subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in  
25 determining whether the furnishing of controlled substances is clearly excessive shall include,  
26 but not be limited to, the amount of controlled substances furnished, the previous ordering  
27 pattern of the customer (including size and frequency of orders), the type and size of the  
28 customer, and where and to whom the customer distributes its product.

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

4 . . . .

5 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving  
6 away, or administering or offering to sell, furnish, give away, or administer any controlled  
7 substance to an addict.

8 (j) The violation of any of the statutes of this state or of the United States  
9 regulating controlled substances and dangerous drugs.

10 . . . .

11 (l) The conviction of a crime substantially related to the qualifications, functions,  
12 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
14 substances or of a violation of the statutes of this state regulating controlled substances or  
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
17 The board may inquire into the circumstances surrounding the commission of the crime, in order  
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
19 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
21 or a conviction following a plea of nolo contendere is deemed to be a conviction within the  
22 meaning of this provision. The board may take action when the time for appeal has elapsed, or  
23 the judgment of conviction has been affirmed on appeal or when an order granting probation is  
24 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
25 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a  
26 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,  
27 or indictment.

28 . . . .

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

5 7. Section 490 provides that the Board may suspend or revoke a license when  
6 it finds that the licensee has been convicted of a crime, if the crime is substantially related to the  
7 qualifications, functions, or duties of that license.

8 8. California Code of Regulations, title 16, section 1716, states:

9 “Pharmacists shall not deviate from the requirements of a prescription except  
10 upon the prior consent of the prescriber or to select the drug product in accordance with Section  
11 4073 of the Business and Professions Code.

12 Nothing in this regulation is intended to prohibit a pharmacist from exercising  
13 commonly-accepted pharmaceutical practice in the compounding or dispensing of a  
14 prescription.”

15 9. California Code of Regulations, title 16, section 1761, states:

16 “(a) No pharmacist shall compound or dispense any prescription which contains  
17 any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of  
18 any such prescription, the pharmacist shall contact the prescriber to obtain the information  
19 needed to validate the prescription.

20 (b) Even after conferring with the prescriber, a pharmacist shall not compound or  
21 dispense a controlled substance prescription where the pharmacist knows or has objective reason  
22 to know that said prescription was not issued for a legitimate medical purpose.”

23 10. Title 16, California Code of Regulations section 1770 provides that for  
24 purpose of denial, suspension, or revocation of a license, a crime or act shall be considered  
25 substantially related to the qualifications, functions or duties of a licensee if to a substantial  
26 degree it evidences present or potential unfitness of a licensee to perform the functions  
27 authorized by his license in a manner consistent with public health, safety, or welfare.

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

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Excessive Filling and Dispensing Prescriptions)

7 12. Respondent is subject to disciplinary action under sections 4300 and 4301,  
8 subdivisions (d), (e) and (o) of the Code, on the grounds of unprofessional conduct, in that  
9 Respondent knowingly filled and dispensed Hydrocodone, a controlled substance, to D. W. with  
10 very short intervals in between each prescription or refill. The circumstances are as follows:

11 a. From on or about May 18, 2004 to on or about August 22, 2004,  
12 Respondent dispensed Hydrocodone at a high frequency, and in excess of D.W.'s proscribed rate  
13 of usage, as follows:

<u>RX No.</u>	<u>Date Filled</u>	<u>Quantity</u>	<u>Days Supply</u>
116698	5/18/2004	90	15
116936	5/21/2004	90	15
117627	5/28/2004	100	25
117627	5/31/2004	100	25
117627	6/01/2004	100	25
117627	6/03/2004	100	25
117627	6/06/2004	100	25
117627	6/08/2004	100	25
117627	6/12/2004	100	25
119055	6/14/2004	90	22
119279	6/16/2004	120	14
119279	6/19/2004	120	14
119279	6/25/2004	120	14
119279	6/28/2004	120	14
119279	7/01/2004	120	14
119279	7/06/2004	120	14
121065	7/10/2004	80	20
121283	7/13/2004	80	20
121525	7/15/2004	90	22
121525	7/15/2004	90	22
121525	7/20/2004	90	22
121525	7/24/2004	90	22
121525	7/24/2004	90	22
121525	8/01/2004	90	22
123189	8/07/2004	90	22

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1 California Code of Regulations, title 16, section 1716, in that Respondent knowingly sold,  
2 furnished or gave away controlled substances to addict D. W., as more fully set forth in  
3 paragraphs 12 and 13, above.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (Conviction of Substantially Related Crime)

6 15. Respondent is subject to disciplinary action pursuant to section 490, in  
7 conjunction with Title 16, California Code of Regulations section 1770, by reason of his  
8 conviction of a crime which is substantially related to the qualifications, functions, and duties of  
9 the profession for which the license was issued, as follows:

10 On August 24, 2005, Respondent was convicted by his plea of *nolo contendere*, of  
11 violating Penal Code section 653F(D), a misdemeanor [Solicitation to purchase a controlled  
12 substance], in the County of Los Angeles Superior Court, Case No. BA278579.

13 The circumstances of the crime is that Respondent solicited an undercover officer  
14 to purchase a controlled substance, to wit, rock cocaine.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct - Conviction)

17 16. Respondent has subjected his license to discipline pursuant to section 4300  
18 for unprofessional conduct as defined in section 4301(I), by reason of his conviction, as  
19 described in paragraph 15 above, of a crime which is substantially related to the qualifications,  
20 functions, and duties of a pharmacist licensee.

21 **PRAYER**

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

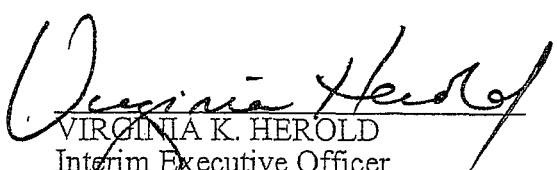
24 1. Revoking or suspending Original Pharmacist License No. RPH 36992,  
25 issued to Steven Michael Margolin.

26 2. Ordering Steven Michael Margolin to pay the Board of Pharmacy the  
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
28 Professions Code section 125.3;

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

DATED: 1/5/07

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

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