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

In the Matter of the Petition for Reinstatement of: ERIK P. BAILEY 32102 Harborview Lane Westlake Village, CA 91361 Pharmacist License No. RPH 47139 Petitioner.	Case No. L2005040457

DECISION

On July 21, 2005, in San Diego, California, a quorum of the Board of Pharmacy, comprised of Ruth Conroy, David Fong, Stanley Goldenberg, Clarence Hiura, John Jones, William Powers and Kenneth Schell heard this matter. Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, presided.

Joshua A. Room, Deputy Attorney General, represented the Attorney General of the State of California.

Ronald S. Marks, Esq. represented Petitioner, who was present during the hearing.

The matter was submitted on July 21, 2005.

FACTUAL FINDINGS

1. On August 29, 1994, the Board of Pharmacy (Board) issued Pharmacist License number RPH 47139 to Erik P. Bailey (Petitioner).

2. On August 26, 1994, the Colorado State Board of Pharmacy issued Pharmacist License number PHA-14172 to Petitioner. Effective June 11, 1998, the State of Colorado State Board of Pharmacy revoked this license. As of May 27, 2005, the status of this license has not changed.

3. On July 1, 1993, the Idaho State Board of Pharmacy issued Pharmacist License No. P4960 to Petitioner. Said license expired on June 30, 1998, without renewal. There is no evidence that disciplinary action has been taken against Respondent. Petitioner's application for reinstatement was denied on October 17, 2002, based on the revocation of his Colorado and California licenses.

4. On May 14, 2001, Patricia F. Harris, the Board's Executive Officer, filed Accusation, Case Number 2370 against Petitioner, based on:

- Revocation of his Colorado Pharmacist License effective June 16, 1998;[1]
- On duty, working as a pharmacist, while under the influence of barbiturates, benzodiazepines, cannabinoid and opiates;
- Knowingly providing false information to the Board about his drug use in a Change of Pharmacist-in-Charge Form; and
- Failing to secure a licensed premise (the unlicensed owner had a key to the licensed pharmacy area.)

Petitioner requested a hearing regarding the allegations in the Accusation. The hearing occurred on November 21, 2001, and Petitioner was represented by Michael Plaut, Esq. The Board adopted the Proposed Decision. Effective February 27, 2002, pursuant to Decision and Order, Case No. 2370, the Board determined that Petitioner committed the violations alleged, revoked his pharmacist license and ordered him to pay the Board's costs in the amount of $3,612.25.

Effective March 12, 2002, the Board denied the Petition for Reconsideration of the Board's Decision effective February 27, 2002.

5. Business and Professions Code section 4309 provides, in pertinent part, that a person whose license has been revoked may petition the Board for reinstatement after not less than three years have elapsed from the effective date of the decision ordering disciplinary action. The petition shall state any facts required by the Board and shall be accompanied by two or more verified recommendations from holders of licenses issued by the Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of Petitioner since the disciplinary penalty was imposed.

6. On March 25, 2005, Petitioner filed this Petition for Reinstatement, more than three years after the effective date of revocation of his license. The supporting documents included:

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[1] Petitioner had notice of the allegations and hearing but failed to appear. The allegations underlying that action were that he admitted to diverting Vicodin from an employer, voluntarily enrolled in the Colorado Diversion Program, failed to comply therewith and continued to work as a pharmacist when directed by the Program not to do so.

- Letters of Recommendation from Board licensees Jon Tyau, David M. Levy and Gordon Barron, verified;
- Letters of Recommendation from private citizens Julie A. Wright, M.F.T, Anthony Luskin and Jennifer Hayes; and
- Certificates of 31 hours of Board approved continuing education within the last two years, August 2003 through May 2005.

7. The Petition for Reinstatement is properly before the Board and includes the requisite number of verified recommendations from Board licensees and private citizens.

8. The underlying basis for discipline of Petitioner's licenses in California and Colorado has been his drug addiction to opiates (Vicodin) and alcohol. Petitioner's addiction has had a significant negative impact on his personal and professional life. He began his illegal drug use in 1994 and continued until July 2000, when he became serious about his taking control of his life and drug addiction.

9. Petitioner seeks reinstatement of his license because he has been sober since July 2000, has worked diligently to rehabilitate himself and to maintain his sobriety and hopes to recommit himself to a profession that he loves.

He admits that he did not comply with the diversion program or attend the hearing in Colorado in 1998 regarding discipline of his license because he had personal issues that he did not want to face and did not intend to cease his illegal drug use. When his license was revoked in Colorado, he divorced and moved to California and continued his substance abuse.

Prior to the hearing regarding the allegations set forth in Case No. 2370, on September 19, 2000 he enrolled in the Intensive Outpatient Chemical Dependency Program at Simi Valley Hospital. He was discharged on November 2, 2000, having successfully completed the course. In the Decision, the Administrative Law Judge determined, among other things, "... Respondent is on the road to recovery. However, his addiction was so long and deep, and his recovery so recent, it cannot be said that Respondent is sufficiently rehabilitated to the extent the public interest would be served in allowing him to retain his license. . . ."

Petitioner recognizes that he is an addict, has made a diligent effort to understand the triggers within his life that exacerbate his drug use, has changed his lifestyle to maintain his sobriety and has obtained assistance in doing so. In addition to completing the chemical dependency program at Simi Valley Hospital, Petitioner has been an active participant in Alcoholics' Anonymous (AA) since July 2000; he has a sponsor, has completed the 12-step program and attends meetings on a weekly basis; further, he has been in psychotherapy, on a bi-monthly basis, with Julie Wright (Wright), a marriage and family therapist, since April 2003. He maintains an active lifestyle; his daily focus is good nutrition and routine exercise. He has better coping skills to deal with anger issues and a higher level of communication skills to manage challenging events. According to Wright, Petitioner's prognosis for

maintaining his sobriety is excellent as long as he continues in the recovery program that he has established for himself.

Petitioner is involved in his community by working with Animal Avengers for the past 18 months or so. In this capacity, he assists in seeking homes and providing care for stray animals.

Since 2000, Petitioner has been an adjunct professor at Santa Barbara City College and at Antioch University since 2004. In addition he has been employed as a pharmacy clerk at Star Pharmacy, Inc., his employer at the time of revocation of his license. The pharmacist-in-charge and his supervisor are aware of his substance abuse history and his license status and provided letters in support of his petition.

Petitioner is described as an ethical, competent pharmacist and prepared to resume practice.

10. There is no evidence that Petitioner has paid the Board's reasonable costs of investigation and enforcement in Case No. 2370.

11. Considering the facts set forth in Findings 1, 2, 3, 4, 5, 6, 7, 8 and 9, Petitioner established that his petition and supporting documents satisfy the requirements set forth in Business and Professions Code section 4309 and that he is substantially rehabilitated.

LEGAL CONCLUSIONS

1. In a proceeding to restore a revoked license, the burden rests on the Petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. *Flanzer v. Board of Dental Examiners* (1990) 2002 Cal.App.3d 1392, 1398.

A person seeking reinstatement must present strong proof of rehabilitation and the showing of rehabilitation must be sufficient to overcome the Board's former adverse determination. The standard of proof is clear and convincing evidence. *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.

2. The Petition for Reinstatement and supporting documents and, among other things, the criteria set forth in Business and Professions Code section 4309, subdivision (d) have been considered. Given the foregoing and the facts set forth in Findings 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11, Petitioner established that he is sufficiently rehabilitated such that it would not be contrary to the public interest to reinstate his license as a probationary license at this time.

ORDER

The petition of Erik P. Bailey for reinstatement of License number 47139 issued by the Board of Pharmacy is granted. Respondent is placed on probation for five years upon the following terms and conditions:

1. Petitioner's license is suspended until he takes and passes the California Pharmacist Jurisprudence Examination (CPJE). He shall take the next examination scheduled by the Board at his expense. Failure to do so within one year of the effective date of this Decision shall be a violation of probation. Probation shall not commence until Petitioner is notified in writing that he has passed the examination.

2. At his own expense, Petitioner shall participate in random drug testing, including but not limited to biological testing (urine, blood) breathalyzer, hair follicle testing and/or a drug screening program approved by the Board. The length of time shall be for the entire period of probation; the frequency of testing shall be determined by the Board. At all times Petitioner shall fully cooperate with the Board; and, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in immediate suspension of practice by Petitioner. He may not resume the practice of pharmacy until notified by the Board in writing.

3. Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Within 72 hours of such occurrence, Petitioner shall report, in writing, any of the following to the Board:

- an arrest or the 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 substance laws,
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment,
- a conviction of any crime,
- discipline, citation or other administrative action filed by any state or federal agency which involves Petitioner's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing or charging for any drug, device or controlled substance.

4. Petitioner shall report to the Board on a quarterly basis. The report shall be made either in person or in writing, as directed by the Board. Petitioner shall state, under penalty of perjury, whether there has been compliance with 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.

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

6. Petitioner shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Petitioner's compliance with the terms and conditions of his probation. Failure to comply shall constitute a violation of probation.

7. Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

8. Petitioner shall notify all present and prospective employers of the Decision in Case Number L2005040457 and the terms, conditions and restrictions imposed on Petitioner by the Decision. Within 30 days of the effective date of this Decision, and within 15 days of Petitioner's undertaking new employment, he shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board, in writing, acknowledging that the employer has read the Decision in Case Number L2005040457.

If Petitioner works for, is employed by or through a pharmacy employment service, he must notify the direct supervisor, pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the Decision, Case Number L2005040457, prior to Petitioner commencing work at each pharmacy.

In this provision, "employment" includes any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether Petitioner is considered an employee or independent contractor.

9. Petitioner shall not supervise an intern pharmacist, perform any of the duties of a preceptor or be the pharmacist-in-charge of any entity licensed by the Board, unless otherwise specified in this Order.

10. Petitioner shall pay to the Board its costs of investigation and prosecution of $3,612.25 in Case No. 2370, at such time and in such manner as the Board directs, no later than three months prior to completion of probation.

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

11. Petitioner shall pay the costs associated with probation monitoring as determined by the Board for every year of probation. These 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.

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

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

13. Following the effective date of this Decision, should Petitioner cease practice due to retirement or health or otherwise be unable to satisfy the terms and conditions of probation, Petitioner may tender his license to the Board for surrender. The Board shall have the discretion to grant the request for surrender or to take other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Petitioner shall no longer be subject to the terms and conditions of probation.

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

14. Petitioner shall notify the Board within 10 days of 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. Petitioner shall notify the Board, in writing, within 10 days, of a change in name, mailing address or telephone number.

15. Petitioner shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months. Failure to do so will be a violation of probation. If Petitioner has not complied with this condition during the probationary term, and he has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, in its discretion, the Board may grant an extension of Petitioner's probationary period up to one year in order to comply with this condition.

16. If Petitioner violates probation in any respect, after giving him notice and an opportunity to be heard, the Board may revoke probation and carry out the stayed disciplinary order. If a Petition to Revoke Probation or an Accusation is filed against Petitioner during the probationary period, 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 a Petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Petitioner, and probation shall be extended automatically 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 which was stayed.

Upon successful completion of probation, Petitioner's license shall be fully restored.

DATED: November 15, 2005

Stanley Goldenberg
President

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

In the Matter of the Petition for Reinstatement: **ERIK P. BAILEY** 32102 Harborview Lane Westlake Village, CA 91361 Pharmacist License No. RPH 47139 Petitioner.	Case No. L2005040457

DECISION

The attached Decision is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This decision shall become effective on November 15, 2005.

It is so ORDERED on November 15, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

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

In the Matter of the Accusation Against:	)	Case No. 2370
	)	OAH No. L-2001080563
ERIK PADEN BAILEY	)	
	)	
Respondent.	)	
	)	

PROPOSED DECISION

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, on November 21, 2001, at Van Nuys, California.

Kimberlee D. King, Deputy Attorney General, represented Complainant.

Michael Plaut, Attorney at Law, represented Respondent.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Findings of Fact:

* * * * *

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

2. On August 29, 1994, the Board issued Original Pharmacist License Number RPH 47139 to Respondent Erik Paden Bailey. The License is in full force and effect and is due to expire on July 31, 2002, unless renewed.

3. Respondent had also held a pharmacist's license, number 1412, issued to him by the State of Colorado on August 26, 1994. Respondent practiced in that state for a number of years after licensure. By decision effective June 16, 1998, the Colorado Board of Pharmacy revoked Respondent's license. Respondent had due notice of the April 1, 1998 Colorado hearing, but failed to attend. A portion of the findings of that hearing are as follows:

> Respondent began using the narcotic drug Vicodin after a hand injury in 1994. Although Respondent initially used Vicodin pursuant to a prescription, shortly thereafter he began diverting Vicodin from his place of employment. Respondent applied for admission the Board's Diversion Program in March of 1997. In has application for the Diversion Program the Respondent admitted that his excessive use of alcohol and narcotics had lead to impaired functioning. As a condition [to entering the Colorado Diversion Program] Respondent agreed to abstain from the use of narcotics and alcohol. On December 31, 1997, the Board summarily suspended Respondent's license to practice pharmacy based upon non-compliance with the [Diversion] Contract. The acts of non-compliance include repeated failure to submit to random urine screens; repeated failure to submit urine collections that met screening standards; repeated failure to submit timely compliance reports; failure to submit therapist reports; failure to submit peer group attendance reports; failure to submit a 12 step sponsor report; failure to cease working as a pharmacist as directed; and, failure to abstain from the use of narcotics and alcohol while he was a participant in the Diversion Program.

4. In adopting the decision of the Administrative Law Judge, the Colorado Board revoked Respondent's pharmacist's license and stated, in part:

> The violations of this case are of a serious nature...Respondent has failed to comply with a rehabilitation program and continued to work as a pharmacist when directed not to do so. Probation or restriction of the Respondent's license are thus not appropriate options; the Respondent has already demonstrated an inability to comply with the restrictions or requirements of a probation-like program. Similarly, suspension of the Respondent's license is not an option. Because the Respondent has not shown himself to be rehabilitated there is no reason to believe that at the conclusion of a period of suspension he will be any more fit to practice pharmacy than he is today.

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5. During some point in 1998 (the exact date not having been established) Respondent moved to California and began working at Five Star Pharmacy in Van Nuys. On August 4, 1998, Respondent was working there as a pharmacist. On that date, Board inspectors visited that pharmacy. The inspectors knew of Respondents revoked Colorado license, and Respondent admitted his drug addiction to them. The inspectors demanded that Respondent provide a urine sample. Respondent complied and the urine tested positive for barbiturates, benzodiazepine, cannabinoid and opiates. During the trial of this matter, Respondent admitted he had stolen most of the drugs he ingested from various pharmacies at which he had worked since 1994. The inspectors also found the licensed area of the pharmacy to be unsecured, as the non-licensed owner was in possession of a key thereto. The inspectors directed Respondent to enroll in the California Pharmacist Recovery Program. Respondent did not do so. He later worked at another pharmacy, where his drug habit and theft of drugs increased.

6. Respondent completed and signed, under penalty of perjury, a change of Pharmacist in Charge form dated November 22, 1998. Part of the information Respondent provided the Board on that form was false and misleading, as follows:

(a) Respondent answered "no" to question 7, thereby falsely denying his Colorado pharmacist's license had been revoked.

(b) Respondent falsely denied he had ever been in violation of the pharmacy law, question 8, when he had already admitted to Board inspectors he had stolen Vicodin from various employers.

(c) Respondent falsely denied, question 11, he had a chemical dependency.

(d) In response to question 13, Respondent falsely denied he illegally used controlled substances.

7. It was not until autumn of last year that Respondent finally became serious about taking control of his life and his drug addiction. By this time, Respondent's wife had divorced him because of his habit, and his family finally persuaded him (and he persuaded himself) to go into rehab. On September 19, 2000, Respondent enrolled in the Intensive Outpatient Chemical Dependency Program at Simi Valley Hospital. He was discharged on November 2, 2000, having successfully completed the course. At his attorney's suggestion, Respondent has enrolled and is now successfully participating in the Board's Physician Recovery Program.

8. Respondent's manner and demeanor while testifying were consistent with that of one who is honest about his addiction and his recovery. Much of what Respondent testified to was clearly painful for him. Respondent is young, bright, and very respectful of the Board and these proceedings.

9. The Board reasonably incurred costs of investigation and prosecution of this matter, including fees of the Attorney General, in the total sum of $3612.25.

* * * * *

CONCLUSIONS OF LAW

1. Respondent's license is subject to discipline under Sections 4301 (n) and (p) of the Business and Professions Code ("Code") based on the revocation of his Colorado license, by reason of Findings 3 and 4.

2. Respondent's license is subject to discipline under the provisions of Sections 4301 (j) and (o) of the Code, in conjunction with Title 16, California Code of Regulations, Section 1714 (d) for his failure to secure the prescription department of the Five Star Pharmacy on August 4, 1998, as set forth in Finding 5.

3. Respondent's license is subject to discipline under the provisions of Sections 4301 (h), (j), (n) and (o) of the Code, in conjunction with Section 1170 of the Health and Safety Code, in that on August 4, 1998, he worked as a pharmacist while under the influence of a controlled substance, as set forth in Finding 5.

4. Respondent's license is subject to discipline under the provisions of Sections 4301 (f), (f), (o) and (p) of the Code, for the false information he provided to the Board, by reason of Finding 6.

5. The Board is entitled to recover its costs of investigation and prosecution of this matter, including charges of the Attorney General, in the total sum of $3612.25 under the provisions Section 125.3 of the Code, by reason of Finding 9.

6. As set forth in Findings 7 and 8, Respondent is on the road to recovery. However, his addiction was so long and deep, and his recovery so recent, it cannot be found that Respondent is sufficiently rehabilitated to the extent the public interest would be served in allowing him to retain his license. Respondent is admonished that despite the below Order, he may nevertheless continue to participate, at his own expense, in the Department's Pharmacist Recovery Program.

* * * * *

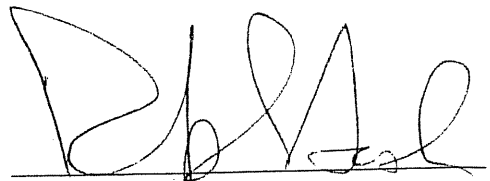
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Original Pharmacist License Number RPH 47139 issued to Respondent Erik Paden Bailey, together with all licensing rights appurtenant thereto, is revoked.

2. Respondent shall pay to the Board the sum of $3612.25 at such time and in such manner as the Board, in its discretion, may direct.

Date: 12-14-01



RALPH B. DASH
Administrative Law Judge

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

In the Matter of the Accusation Against:	)	
	)	
ERIK PADEN BAILEY	)	Case No. 2370
	)	OAH No. L-2001080563
Respondent.	)	
	)	

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 27, 2002

IT IS SO ORDERED January 28, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Steve Litsey
STEVE LITSEY
Board of President

rfm

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

In the Matter of the Accusation Against: ERIK PADEN BAILEY 32102 Harbor View Lane Westlake Village, CA 91361 Original Pharmacist License No. RPH 47139 Respondent.	Case No. 2370 A C C U S A T I O N

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.

2. On or about August 29, 1994, the Board of Pharmacy issued Original Pharmacist License Number RPH 47139 to Erik Paden Bailey ("Respondent"). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2002, unless renewed.

JURISDICTION

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

4. Section 4300 (a) of the Code provides that every license issued may be suspended or revoked.

5. Section 4301 of the Code provides that:

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.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under Chapter 9 (commencing with Section 4000) of the Business and Professions Code, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . .

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

. . .

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

(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 Chapter 9

(commencing with Section 4000) of the Business and Professions Code or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

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

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

6. Section 4327 of the Code provides that any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

7. Title 16 California Code of Regulations section 1714(d) provides that each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

8. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance to himself.

9. Title 21 Code of Federal Regulations section 1306.21(a) provides that a pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required in Sec. 1306.05, except for the signature of the practitioner.

10. Section 125.3 of the Code provides, 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.

DRUG CLASSIFICATIONS

11. Marijuana is a schedule I controlled substance as defined in Health and Safety Code section 11054 (d) (13). There is no legitimate indicated use for this drug.

12. Codeine is a dangerous drug according to Code section 4022. It is a schedule II controlled substance as defined in Health and Safety Code section 11055 (b)(1)(h) or a schedule II controlled substance as defined in section 11056 (e)(2). The indicated use for this drug is to alleviate moderate to severe pain.

13. Vicodin is a dangerous drug according to Code section 4022. It is a schedule II narcotic controlled substance as defined in Health and Safety Code section 11056 (e)(4). The indicated use for this drug is to alleviate moderate to severe pain.

14. Benzodiazepine is a dangerous drug according to Code section 4022. It is a schedule IV controlled substance as defined in Health and Safety Code section 11057 (D). The indicated use for this drug is the management of anxiety disorders or short-term relief of symptoms of anxiety.

15. Barbituates are dangerous drugs according to Code section 4022. They are schedule III controlled substances as defined in Health and Safety Code section 11056 (c)(1). The indicated use for this drug is for sedation, hypnotic sleep or as a pre-anesthetic or anti-convulsant.

FIRST CAUSE FOR DISCIPLINE

(Discipline in Another State)

16. Respondent is subject to disciplinary action under section 4301(n) and (p) of the Code for unprofessional conduct in that Respondent's Colorado Pharmacist License has been revoked. The circumstances are that the Colorado Board of Pharmacy revoked Erik P. Bailey's Pharmacist License Number 14172, effective June 16, 1998, in Case Number PH 97-06.

SECOND CAUSE FOR DISCIPLINE

(Working While Under the Influence)

17. Respondent is subject to disciplinary action under section 4301(h), (j), (n) and (o) and section 4327 of the Code in conjunction with Health and Safety Code section 11170

for unprofessional conduct in that Respondent was working in the capacity as a pharmacist while under the influence of a controlled substance. The circumstances are as follows:

On August 4, 1998, Board inspectors inspected Five Star Pharmacy in Van Nuys, California, the place of employment for Respondent. Respondent was conducting business in the capacity as a pharmacist. Acting upon information provided to the inspectors during the inspection, the Board inspectors requested that Respondent provide a urine sample. Respondent complied with the request. Respondent's urine sample tested positive for sample tested positive for barbituates, benzodiazepines, cannabinoid and opiates.

THIRD CAUSE FOR DISCIPLINE

(False Statements in Change of Pharmacist-in-Charge form)

18. Respondent is subject to disciplinary action under section 4301(f), (g), (o) and (p) of the Code for unprofessional conduct in that Respondent knowingly provided false information on the Change of Pharmacist-in-Charge form. On November 22, 1998, the Change of Pharmacist-in-Charge form was certified under penalty of perjury to the truthfulness of all statements and answers provided by Erik P. Bailey. The following are questions to which Respondent provided false statements:

a Question number seven which asks, "Have you ever had a pharmacy permit, or any professional or vocational license or registration denied, suspended, revoked, placed on probation or any other disciplinary action taken by this or any other governmental authority in this state or any other states?" Respondent answered "No" to this question when in truth and in fact his Colorado Pharmacist License was revoked as described above in paragraph 16.

b Question number eight which asks, "Have you ever been in violation of any provisions of pharmacy law?" Respondent answered "No" to this question when in truth and in fact, Respondent admitted to Board inspectors during the investigation that he stole Vicodin from the pharmacies he worked in and became addicted.

c Question No. 11 which asks, "Do you have a medical condition which in any way impairs or limits your ability to practice your profession with reasonable skill and safety

without exposing others to significant health and safety risks?" This question details "medical condition" to include but is not limited to; psychological condition or disorder including emotional, metal or behavioral disorders, and alcohol or chemical substance dependency or addiction. Respondent answered "No" to this question, when in truth and in fact, Respondent admitted to Board inspector during the investigation that he was addicted to Vicodin due to his self-described anxiety and depression.

d Question No. 13 which asks, "Do you engage in, or have been engaged in the past two years, in the illegal use of controlled substances?" Respondent answered "No"to this question, when in truth and in fact, Respondent admitted to Board inspectors that he was addicted to controlled substances. Further, Respondent's urine sample tested positive for controlled substance as described above in paragraph 17.

THIRD CAUSE FOR DISCIPLINE

(Failure to Secure Premises)

19. Respondent is subject to disciplinary action under section 4301 (j) and (o) of the Code in conjunction with Title 16 of the Code of Regulations section 1714(d) for failure to secure the prescription department of Five Star Pharmacy. On August 4, 1998, Board inspectors inspected Five Star Pharmacy and found that the non-licensed owner of the pharmacy was in possession of a key to the pharmacy licensed area. The possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

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 Original Pharmacist License Number RPH 47139, issued to Erik Paden Bailey;

2. Ordering Erik Paden Bailey 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;

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

DATED: 5/14/01.

P. F. Harris

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

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kk (4-3-01); rev. (4-6-01) cv