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

In the Matter of the Accusation and Petition to Revoke Probation Against: NORMAN BRUCE SHIBLEY 45446 Genoa Avenue Lancaster, CA 93534 Pharmacist License No. RPH 39528 Respondent.	Case No. 4094 OAH No. 2011100897

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 1, 2012.

It is so ORDERED on August 30, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

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PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), on May 15, 2012, in Los Angeles, California. Complainant was represented by Nancy A. Kaiser, Deputy Attorney General. No appearance was made by or on behalf of Norman Bruce Shibley (Respondent).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 15, 2012.

FACTUAL FINDINGS

1. On August 15, 2011, Complainant Virginia K. Herold (Complainant) filed the Accusation and Petition to Revoke Probation while acting in her official capacity as Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs.

2. Respondent filed a Notice of Defense requesting a hearing.

3. On February 1, 2012, a Notice of Hearing, setting forth the date, time and place of hearing, was served by certified mail on Respondent. Service of the Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509. Respondent signed and returned the certified mail receipt.

4. Respondent did not appear at the May 15, 2012 hearing.[1] At Complainant's request, the matter proceeded as a default, pursuant to Government Code section 11520.

5. On September 4, 1985, the Board issued Pharmacist License No. RPH 39528 to Respondent. The Pharmacist License expired on December 31, 2010, and has not been renewed. Effective May 28, 2011, the Board suspended Respondent's Pharmacist License due to his violation of one of his probationary terms (see Factual Finding 14).

6(a). Effective March 28, 2011, in Case No. 3370, entitled *In the Matter of the Accusation against Norman Bruce Shibley* (Probation Order), the Board adopted a Stipulated Settlement and Disciplinary Order which revoked Respondent's Pharmacist License. However, the revocation was stayed and Respondent's license was suspended for nine months and placed on probation for six years under terms and conditions which included the following:

> [Condition] 2. **Obey All Laws.**
> Respondent shall obey all state and federal laws and regulations. . . .
>
> [¶] . . . [¶]
>
> [Condition] 6. **Continuing Education**. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.
>
> [¶] . . . [¶]
>
> [Condition] 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. Failure to maintain an active, current license shall be considered a violation of probation.
>
> If Respondent's license expires or is canceled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.
>
> [¶] . . . [¶]

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[1] On May 14, 2012, at approximately 4:15 p.m., Respondent sent to OAH, via facsimile, a request to continue the May 15, 2012 hearing. That request was immediately denied by the Presiding Administrative Law Judge.

> [Condition] 17. **Pharmacists Recovery Program (PRP).** Within thirty (30) days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, 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 or its designee. The costs for PRP participation shall be borne by the Respondent.
>
> [¶] . . . [¶]
>
> Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.
>
> Probation shall be automatically extended until Respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing.
>
> (Exhibit 4.)

6(b). The Probation Order was based on facts, the truth of which Respondent admitted in the Stipulated Settlement and Disciplinary Order, which included Respondent's state convictions in 2007 and 2008 (driving with a blood alcohol content greater than .08 percent) and his federal conviction in 2005 (being under the influence of alcohol, having an open alcohol container, and out of bounds camping).

7. On April 15, 2012, Respondent met with Board Supervising Inspector Coyne and reviewed all the terms and conditions of his probation. At the conclusion of the meeting, Respondent signed a declaration confirming that he understood the terms and conditions of his probation.

8. On December 28, 2009, Respondent renewed his pharmacist license and indicated that he had completed the required continuing education (CE) hours for license renewal.

9. On April 21, 2011, the Board sent Respondent a letter by certified mail advising him that the Board was conducting an audit of his continuing education (CE) hours. The April 21, 2011 letter stated:

> Pursuant to Section 4231 of the California Business and Professions Code, registered pharmacists must complete 30 hours of [CE] as a prerequisite for renewal of their pharmacist license. To assure

> compliance with the renewal requirements, the Board conducts audits of CE hours declared completed at the time of license renewal. Your license has been selected for a CE audit.
>
> Please provide copies of CE certificates documenting that you completed at least 30 hours of CE between January 1, 2008, to December 21, 2010. These certificates should be mailed with a copy of this notice by May 18, 2011, . . . to the address listed above. Failure to submit proof of having obtained these credited hours by May 18, 2011, will result in enforcement action.
>
> (Exhibit 5.)

10. On April 23, 2011, Respondent signed the certified mail receipt for the April 21, 2012 letter. On that date, he also signed his pharmacist license renewal application for his expired license (expired December 31, 2010), again declaring that he had successfully completed the CE hours required for license renewal. However, Respondent failed to provide proof to the Board that he had completed the CE requirements necessary for license renewal.

11. As of the date of the administrative hearing, Respondent had not provided the requested CE documents to the Board.

12. Respondent's failure to provide the requested CE documents to satisfy the CE requirement constitutes: a failure to "provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board"; a violation of California Code of Regulations, title 16, section 1773; and a violation of Conditions 2 and 6 of his probation.

13. On May 25, 2011, the Board received a letter from the Diversion Program Manager for Maximus, the contractor administering the PRP. The letter notified the Board that Respondent's case had been closed, effective May 19, 2011. The letter set forth the following:

> [Respondent] initially contacted MAXIMUS on May 3, 2011. MAXIMUS confirmed his eligibility, and his telephone intake was scheduled for May 9, 2011 with the Clinical Case Manager (CCM). During his initial contact with the CCM, [Respondent] informed the CCM he wanted to begin working again, after a 22 year hiatus, to allow him access to medical insurance which he needs for his current medical problems. [Respondent] reported that he was currently taking prescribed Percocet and Xanax. At times, while speaking with the CCM, Respondent sounded impaired, as evidenced by slowed speech and long pauses between responses. The CCM explained that the PRP is an abstinence-based program, requiring abstinence from all mood altering substances and both Percocet and Xanax are banned drugs

> while participating in the PRP. Upon learning that participants in the PRP may not use narcotic pain medications or benzodiazepines, [Respondent] became agitated and he did not want to continue with the intake. The CCM told [Respondent] that the CCM would follow up with him the next day to complete the intake. The CCM left a voice message for [Respondent] on May 11, 2011 requesting a return call to complete the intake process. On May 16, 2011, when he had not contacted MAXIMUS, we sent a letter to [Respondent] advising him that he needed to call MAXIMUS by May 18, 2011 or his file would be closed. As of May 20, 2011, [Respondent] has not made contact with MAXIMUS. Due to his failure to contact MAXIMUS, MAXIMUS will be closing [Respondent's] case. As a result of [Respondent's] admission that he is currently taking narcotic pain medication and benzodiazepines, along with [Respondent's] failure to complete the intake process, the inability to monitor [Respondent], and with the applicant's stated desire to return to work as a pharmacist, MAXIMUS believes he may pose risk to the public. (Exhibit 5.)

14. As a result of Respondent's termination from the PRP, his pharmacist license was automatically suspended.

15. Respondent's failure to participate in the PRP constitutes a violation of Condition 17 of his probation.

16. Respondent's failure to maintain an active current license with the Board constitutes a violation of Condition 11 of his probation.

17. Complainant submitted evidence establishing that the Board had incurred costs of $2,652.50 for the prosecution of this matter, all of which are deemed reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's pharmacist license, pursuant to Business and Professions Code sections 4301, for unprofessional conduct in that he failed to provide records documenting completion of the continuing education required as a condition of licensure, as set forth in Factual Findings 5 through 12.

2. Cause exists to revoke or suspend Respondent's pharmacist license, pursuant to Business and Professions Code sections 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1773, in that Respondent failed to "provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board," as set forth in Factual Findings 5 through 12.

3. Cause exists to revoke Respondent's probation and impose the stayed order of revocation, in that Respondent failed to comply with Probation Condition Number 2 (Obey All Laws), as set forth in Factual Findings 5 through 12.

4. Cause exists to revoke Respondent's probation and impose the stayed order of revocation, in that Respondent failed to comply with Probation Condition Number 6 (Continuing Education – "provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board"), as set forth in Factual Findings 5 through 12.

5. Cause exists to revoke Respondent's probation and impose the stayed order of revocation, in that Respondent failed to comply with Probation Condition Number 11 (Status of License - maintain active and current license), as set forth in Factual Findings 5 through 12 and 16.

6. Cause exists to revoke Respondent's probation and impose the stayed order of revocation, in that Respondent failed to comply with Probation Condition Number 17 (completion of PRP), as set forth in Factual Findings 13 through 15.

7. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to the recover reasonable costs of prosecution of this matter in the amount of $2,652.50, as set forth in Factual Finding 17.

8. Since Respondent provided no evidence regarding the allegations against him, no mitigation was established and no assurance of future compliance with probationary terms was provided. Consequently, continued probation in this matter would not be appropriate and would not ensure adequate public protection.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

1. Pharmacist License, No. RPH 39528, issued to Norman Bruce Shibley, is hereby revoked.

2. If Respondent later applies for a new pharmacist license or reinstatement of his revoked license, Respondent shall reimburse the Board $2,652.50 for its prosecutorial costs in this case and shall reimburse any outstanding costs from his probation in Case No. 3370, prior to reinstatement or issuance of any pharmacist license or as the Board in its discretion may otherwise order.

DATED: May 24, 2012

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings