

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

In the Matter of the Accusation Against:

DANIEL MARK KALDAS

Designated Representative Certificate
No. EXC 19718,

Respondent.

Case No. 4176

OAH No. 2012110950

FINAL DECISION AFTER RECONSIDERATION

This case came on regularly for hearing on June 10, 2013, in Los Angeles, California. Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings (OAH), presided.

Michelle McCarron, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Herbert L. Weinberg, Attorney at Law, represented respondent Daniel Mark Kaldas (respondent), who was present throughout the hearing.

Because complainant did not offer respondent's signed notice of defense into evidence, official notice is taken of a copy of the notice of defense respondent signed on May 29, 2012, that complainant previously filed with OAH on or about November 28, 2012, as part of its request to set. The copy is received in evidence for jurisdictional purposes as Exhibit 10. Evidence was received, the case was argued, and the matter was submitted for decision on June 10, 2013.

The Administrative Law Judge issued his Proposed Decision on July 16, 2013. After due consideration thereof, the Board adopted said proposed decision on September 25, 2013, to become effective on October 25, 2013. On October 24, 2013, Complainant filed a Petition for Reconsideration. The Board issued a Stay of Effective Date and stayed the decision until November 4, 2013. On October 29, 2013, the Board issued an Order Granting Petition for Reconsideration and Stay of Execution of

the Effective Date of Decision and Order. On December 9, 2013, the Board issued an Order Fixing Date for Submission of Argument.

Written argument having been received from Complainant and Respondent, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Government Code section 11517, hereby decides this matter as follows:

FACTUAL FINDINGS

Jurisdiction and License History

1. On April 8, 2008, the Board issued Certificate Number EXC 19718 (certificate or license)¹ to respondent to act as a designated representative² in California. Respondent's certificate has been in effect continuously since that time.

2. Complainant filed the Accusation in her official capacity. Respondent filed a timely notice of defense contesting the charges and this hearing ensued.

2006 Arrest and Charges for Possession of Marijuana and Failing to Obey Traffic Sign

3a. On November 2, 2006, a police officer stopped respondent after he made an illegal U-turn at the intersection of Route 66 and Grand Avenue in Glendora, California. There were four visible signs prohibiting U-turns at that location. As respondent was trying to find his car registration and proof of insurance, the officer observed a plastic baggie sticking out of a smaller storage compartment on top of the central console lid. When respondent opened the smaller compartment, he tried to push the baggie further into the compartment to hide it. After calling for backup, the officer asked respondent if he had anything illegal on his person or in the car. He said he did not, except for a broken marijuana pipe in the glove compartment. Respondent gave the officer permission to search him and the car. The officer found the small plastic baggie respondent had attempted to hide earlier. It contained a small amount of marijuana (approximately .02 grams). The police also found the marijuana pipe.

3b. Respondent was arrested and charged with a misdemeanor violation of Vehicle Code section 23222, subdivision (b) (possession of marijuana in a motor vehicle) and a violation of Vehicle Code section 21461, subdivision (a) (failing to obey a traffic sign), an infraction. On January 8, 2007, the Superior Court, County of Los Angeles, in Case No. 6JB09353, ordered respondent to attend and complete the Orange Coast College alcohol and drug awareness program. He completed the

¹ Under Business and Professions Code section 4032, the term "license" means and includes any license, permit, registration, certificate, or exemption issued by the Board.

² A designated representative is a licensee who is authorized and qualified to work at a wholesale pharmacy. (Bus. & Prof. Code, § 4022.5, subd. (a).)

program on March 15, 2007. The court then dismissed all charges against him in the furtherance of justice under Penal Code section 1385, without ever requiring him to enter a plea in the case. Respondent was not convicted of any crime for the 2006 arrest.

2010 Arrest and Charges for Possession of Marijuana and Possession of Hashish

4a. On November 24, 2010, police officers observed respondent driving at a high rate of speed, perhaps in excess 80 miles per hour, on a road in Rowland Heights, California. Two police officers stopped him, approached the car, and detected an odor of marijuana in the car. Respondent had a passenger in the car. In response to the officers' question, respondent admitted that he had some marijuana inside the driver's door compartment. As respondent stepped out of the car and a small round clear plastic container containing a yellowish substance fell to the ground. Respondent told the officer that hashish, a concentrated form of marijuana, was in the container. The officers also found a purple pill bottle containing marijuana in the driver's side door compartment. Respondent admitted purchasing the hashish and marijuana. In the Superior Court, County of Los Angeles, Case No. KA092899, respondent was formally charged with a misdemeanor violation of Vehicle Code section 23222, subdivision (b) (possession of marijuana in a motor vehicle) and a felony violation of Health and Safety Code section 11350, subdivision (a)³ (possession of a controlled substance, namely tetrahydrocannabinols (THC), the active ingredient in hashish (and marijuana)).⁴ Respondent entered a plea of not guilty to both crimes.

4b. On April 1, 2011, the court called respondent's case for a preliminary hearing to determine whether probable cause existed to hold respondent to answer for the crimes. At its conclusion, the court dismissed the charges against respondent finding insufficient cause to prosecute him and finding further that respondent had a valid doctor's recommendation for medical use of marijuana on the date of the alleged offenses. The court did not convict respondent of any crime.

Mitigation/Rehabilitation/Aggravating Factors

5. Respondent used marijuana in the past for medical reasons, explaining at hearing that in 2004 he was in a serious motorcycle accident in 2004 and hurt his back. He did not break any bones or suffer an injury that required surgery or stitches, but he was airlifted by helicopter to a hospital where he stayed for about one week due to a concussion and internal injuries. He was initially prescribed over-the-counter pain

³ Unless otherwise specified, all statutory references are to the Health and Safety Code.

⁴ As alleged in Paragraph 11 of the Accusation, respondent was arrested for violating section 11357, subdivision (a) (possession of marijuana), a misdemeanor; Vehicle Code section 23222, subdivision (b) (possession of marijuana in a motor vehicle), a misdemeanor; and Vehicle Code section 22350, subdivision (a) (driving at an unsafe speed), an infraction. Subsequently, the felony complaint filed against respondent on December 28, 2010, charged him with violations of section 11350, subdivision (a) and Vehicle Code section 23222, subdivision (b), as referenced in Factual Finding 4a.

reliever for his back pain. Because it did not relieve his pain, he began using marijuana for pain relief sometime between 2004 and 2006. He did not have a doctor's recommendation for use of medical marijuana when he began using it.⁵ He stopped using marijuana "a few months ago." And now uses an over-the-counter pain medication for his back. At hearing, he presented a letter under the Venice Beach Physicians' letterhead, dated June 5, 2013, signed by Dr. Jonathan Serebrin, M.D., stating that respondent "no longer requires the use of medical marijuana." (Exhibit B.) He voluntarily submitted to drug testing at Quest Diagnostics, a medical laboratory, on June 4, 2013. The results were negative for the presence of marijuana and other controlled substances in his system. (Exhibit C.)

6. Respondent had a valid doctor's recommendation for medical use of marijuana covering the period between June 11, 2009 and June 11, 2010 (Exhibit A), in addition to the recommendation he presented to the court in April 2011. (Factual Finding 4b.) The evidence did not reveal whether he held a valid recommendation at any other time. Respondent admitted at hearing that he has used marijuana over the past seven to nine years intermittently to ease his back pain without having a valid physician's recommendation for medical use of marijuana.

7. Respondent is a designated representative for a wholesale pharmacy. As such, he is responsible for the security of dangerous devices and drugs, making sure they are dispensed to licensed retailers and keeping records of their distribution. No evidence showed that respondent has ever performed his job as a designated representative illegally or improperly. Nor is there any evidence that respondent has ever used marijuana, hashish or any other controlled substance, or been under the influence of these substances, while working in his job as a designated representative. Similarly, the evidence did not show that respondent currently has a problem with substance abuse or that he requires drug or alcohol counseling. He did complete a drug and alcohol awareness program at Orange Coast College as ordered by the court for his 2006 arrest. (Factual Finding 3b.)

8a. As mentioned, respondent's arrests did not lead to any convictions. The 2006 charges were dismissed in the interests of justice without entry of a plea and the 2010 charges were dismissed at the preliminary hearing for lack of probable cause.

8b. In connection with the 2006 charges, respondent possessed .02 grams, an extremely small amount of marijuana. At that time, he was charged with a misdemeanor violation of Vehicle Code section 23222, subdivision (b), for possessing marijuana while driving a motor vehicle. The statute has since been amended to reduce a violation from a misdemeanor to an infraction, punishable by a fine not to exceed \$100, for possessing not more than 28.5 grams while driving a motor vehicle. In making the crime an infraction, the Legislature determined to treat a violation with

⁵ Section 11362.5 permits use of marijuana for medical purposes upon a physician's recommendation or approval without being subject to criminal prosecution for possession of marijuana. (See Penal Code, § 11357.)

greater leniency.⁶ Comparing the 28.5 grams infraction limit to the .02 grams that respondent had when arrested in 2006, also illustrates that he actually possessed a very small amount.

8c. On November 24, 2010, the police stopped respondent at 1:30 p.m. The police report of the arrest stated, "As we [the two police officers] contacted the occupants of the vehicle via the open driver and passenger windows, we immediately smelled the odor of marijuana emitting from the interior of the vehicle." Yet, the police did not arrest respondent for driving under the influence of a controlled substance; they arrested him for speeding, possession of marijuana and possession of marijuana in a motor vehicle. Neither did the police ask respondent to submit to a blood, urine or breathing tests to determine whether he was driving under the influence, and no such tests were administered. The police report did not indicate that the speed respondent was driving before the officers stopped him was attributable to driving under the influence.

8d. The police did not determine how much marijuana or hashish respondent possessed when he was arrested on November 24, 2010. The police described the hashish in the police report as a "small amount." At the time of his arrest, respondent told the officers that because the hashish was very concentrated, he could get "dozens of hits" from it. He also told them he had purchased the drugs in Los Angeles and paid \$35 for the hashish. The police charged him with two misdemeanor possession charges when they arrested him.⁷

8e. The agency did not prove that respondent used hashish or marijuana, or that he drove under influence of controlled substances, on the date of his 2006 or 2010 arrests.

Credibility

9. After police officers stopped respondent in 2006 and 2010, he was not entirely candid when they questioned him, at first trying to hide a baggie of marijuana from them, and then, not telling them he had marijuana when they asked him whether he had anything illegal in the car. During the 2010 arrest, he told police he had marijuana in the car, but did not tell them about the hashish until they discovered it. Soon after he was detained, he admitted that he had purchased the hashish. At hearing, respondent presented himself as a credible witness. He answered questions without hesitation, and admitted using marijuana at times when he did not have a doctor's recommendation to use marijuana for health purposes. Overall, his previous

⁶ Stats. 2010, ch. 708, § 2.

⁷ The police report of the 2010 arrest lacks some clarity because it states that respondent's passenger told police the drugs belonged to him. Considering all the facts, including the subsequent charges against respondent, it was respondent who possessed the marijuana and hashish.

lack of candor with police during his 2006 and 2010 arrests does not significantly discredit his testimony at hearing.

Cost Recovery

10. The unsigned certification of costs shows that the Department of Justice billed the Board for prosecution costs of \$6,197.60, consisting of 36.75 hours of attorney and paralegal time, including a good faith estimate of four additional attorney hours (\$680) incurred or to be incurred for preparation of the case up to commencement of hearing. The good faith estimate does not include any specific information about what tasks were to be performed. The costs include 14 hours of attorney work by Deputy Attorney General Michelle McCarron in 2012 and 2013 at \$170 dollars per hour and another 16.50 hours of attorney work performed in 2011 and 2012 by Desiree Kellogg, Deputy Attorney General.

LEGAL CONCLUSIONS

Applicable Law

1. The Board may suspend or revoke any license issued under the Pharmacy Law. (Bus. & Prof. Code, §§ 4000 and 4300, subd. (a).)
2. Business and Professions Code section 4301 reads, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[REDACTED] . . . [REDACTED]

(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 this chapter, 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.

[REDACTED] . . . [REDACTED]

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

[REDACTED] . . . [REDACTED]

(o) Violating or attempting to violate, directly or indirectly, . . . any provision or term of [the Pharmacy Law] or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

[¶] . . . [¶]

3. Unless a licensee's conduct is substantially related to the qualifications, functions or duties of a licensee, the conduct may not serve as a basis for revoking or suspending a license. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.) A crime or act is considered substantially related to the qualifications, functions or duties of a Board of Pharmacy 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. (Cal. Code Regs., tit. 16, § 1770.)

4. Marijuana, hashish and tetrahydrocannabinols (concentrated marijuana) are hallucinogenic Schedule I controlled substances under State and federal law. (§11054, subds. (d)(13) and (20); 21 U.S.C. § 812.) Marijuana is also a dangerous drug as defined in Business and Professions Code section 4022. Possession of a controlled substance is illegal under federal law (21 U.S.C. § 844), and the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) prohibits a person from possessing any controlled substance without a valid prescription. (Bus. & Prof. Code, § 4060.)

5. In November 1996, the California voters approved an initiative statute designated on the ballot as Proposition 215 and entitled, "Medical Use of Marijuana." In pertinent part, the measure added Health and Safety Code section 11362.5, the Compassionate Use Act of 1996 (CUA) (Prop. 215, § 1, as approved by electors, Gen.Elec. (Nov. 5, 1996).)⁸ Section 11362.5 allows seriously ill Californians the right to obtain and use marijuana for medical purposes where the use of medical marijuana has been recommended by a physician. Section 11362.5 provides in part:

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996 [CUA].

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a

⁸ The Legislature further expanded the Compassionate Use Act by enacting the Medical Marijuana Program (MMP) (§ 11362.7 et seq., added by Stats. 2003, ch. 875, § 2.)

physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

[¶] . . . [¶]

Causes for Discipline

6a. Cause exists to suspend or revoke respondent's license as a designated representative for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), because he violated the statutes of this State and the United States that regulate controlled substances and dangerous drugs, pursuant to Factual Findings 3a through 4b, and Legal Conclusion 4. Although respondent was not convicted of a crime, the Board seeks to suspend or revoke his license for acts that constitute unprofessional conduct under the Pharmacy Law. He possessed marijuana and hashish in violation of State and federal laws regulating controlled substances. Federal and State law prohibit the possession of a marijuana and hashish, which are Schedule I controlled substances. (See Legal Conclusion 4; Bus. & Prof. Code, § 4060; Health & Saf. Code, § 11357 (possession of marijuana and concentrated cannabis, such as hashish); and 21 U.S.C. § 844 (possession of controlled

substance).) Respondent admitted possessing marijuana in 2006 and 2010 and using it at other times since his motorcycle accident in 2004. While he had a doctor's recommendation for medical marijuana in April 2011, and from June 11, 2009 through June 11, 2010, that recommendation does not dispense with the requirement that, as a licensee, he must comply with the Pharmacy Law.

One purpose of the CUA is also noteworthy here: "To ensure that patients . . . who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5, subd. (b)(1)(B).) Section 11362.5, subdivision (d) grants what the California Supreme Court has held is a "limited" immunity from criminal prosecution for possession and cultivation of marijuana under sections 11357 and 11358, respectively, if the patient produces a physician's recommendation or approval for medical marijuana use. (See *People v. Mower* (2002) 28 Cal.4th 457.) Respondent did not point to any law, including the CUA, that prohibits a State licensing agency, such as the Board, from taking action against a licensee for violating laws governing the license.

6b. Respondent's conduct in possessing marijuana and hashish (Factual Findings 3a through 4b), and using marijuana in violation of State and federal law over the last seven to nine years, is substantially related to the qualifications, functions or duties of a licensee. As a licensed designated representative of a pharmacy, respondent's duties are "to provide sufficient and qualified supervision" in a wholesale pharmacy. A "designated representative shall protect the public health and safety in the handling, storage, and shipment of dangerous drugs and dangerous devices" (Bus. & Prof. Code, § 4053, subd. (a).) Before licensure, a designated representative must complete a training program that includes knowledge and understanding of California law and federal law relating to the distribution of controlled substances. (Bus. & Prof. Code, § 4053, subd. (b)(3)(B).) While respondent has not had any problems in performing his job as a designated representative, his possession and use of marijuana and hashish, a Schedule I controlled substance, does, to a substantial degree, evidence present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. (Factual Finding 7; Legal Conclusions 1-3; Cal. Code Regs., tit. 16, § 1770.)

7. Cause also exists to suspend or revoke respondent's license for unprofessional conduct based on Business and Professions Code section 4301, subdivision (o) by violating the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) because on November 2, 2006, respondent possessed a controlled substance, marijuana, without a physician's recommendation, in violation of Business and Professions Code section 4060. This conduct is substantially related to the qualifications, functions or duties of a licensed designated representative. (Factual Finding 7; Legal Conclusions 1-3, 6a and 6b; Cal. Code Regs., tit. 16, § 1770.)

8. Cause exists to discipline respondent's license based on Business and Professions Code section 4301, for engaging in unprofessional conduct generally on November 2, 2006 and November 24, 2010 for possession of controlled substances.

Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.) Respondent has engaged in unprofessional conduct that is substantially related to the qualifications, functions or duties of a licensee based on Factual Findings 3a through 4b, 5 and 6, and Legal Conclusions 6a, 6b and 7.

9. Cause does not exist to discipline respondent's license for unprofessional conduct based on Business and Professions Code section 4301, subdivision (h) in that although he possessed controlled substances that are dangerous drugs, he did not administer any controlled substances or dangerous drugs to himself on November 2, 2006 or November 24, 2010, as alleged in Paragraph 14 of the Accusation. (Factual Findings 3a-4b). He admitted using marijuana on other occasions within the last seven to nine years, but the evidence did not reveal that he used controlled substances or dangerous drugs to the extent or in a manner as to be dangerous or injurious to himself, to a licensee, or to any other person or to the public, or to the extent that the use impairs respondent's ability to conduct with safety to the public the practice authorized by his license, on November 2, 2006 and November 24, 2010 or at any other time. (Factual Findings 3a through 4b, 5 and 6.)

Mitigation/Rehabilitation/Aggravating Factors

10. The Board has adopted disciplinary guidelines to apply in evaluating the level of discipline warranted in these proceedings. (Guidelines (Rev. 10/07.) Deviation from the guidelines is appropriate when the particular facts of a case, including mitigating factors, warrant it. (Cal. Code Regs., tit. 16, § 1760.)

11. In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the Guidelines set out various factors to consider (Guidelines, p. 3):

a. *Actual or potential harm to the public.* Respondent's actions in possessing a small amount of marijuana (November 2, 2006 arrest) and an undetermined amount of marijuana, and what the police characterized as a "small amount" of hashish in the police report (November 24, 2010 arrest) did not cause actual or potential harm to the public. The evidence did not show that he operated a motor vehicle while under the influence. During the 2010 arrest, the police smelled the odor of marijuana in the vehicle, but the officers did not later charge respondent with driving under the influence of a controlled substance or ask respondent to submit to any blood, urine or breathing tests at the time of his arrest. Nor was there sufficient evidence to show that his traffic violations, the illegal U-turn and speeding that caused police to stop in 2006 and 2010, demonstrated that he was under the influence of a controlled substance while driving. (Factual Findings 3a through 8e.) Respondent's conduct in possessing and using marijuana did not involve moral turpitude and did not show a disregard for the public. (See *In re Higbie* (1972) 6 Cal.3d 565, 572 and *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1015.)

b. *Actual or potential harm to any consumer.* The evidence did not show that respondent has actually or potentially harmed a consumer. He has had no complaints against him relating to licensed activities and no evidence was offered showing that he has ever been under the influence of controlled substances while working as a designated representative. (Factual Finding 7.)

c. *Prior disciplinary record, including level of compliance with disciplinary order.* Respondent has no prior disciplinary record.

d. *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s).* Respondent has had no previous warnings.

e. *Number and/or variety of current violations.* Respondent possessed marijuana and hashish and at hearing, he admitted using marijuana to relieve pain in his back. The allegations relate to two arrests for possessing marijuana. The allegations are neither numerous nor varied.

f. *Nature and severity of the act(s), offense(s) or crime(s) under consideration.* Respondent's conduct is not considered severe. He was not convicted of any crimes. Though the charge for possessing hashish is more serious, the court dismissed all charges resulting from the 2010 arrest for possession of a controlled substance and possession of marijuana and hashish in a motor vehicle. It is inferred that they were dismissed because he possessed a valid doctor's recommendation for use of marijuana for medical purposes. His 2006 arrest occurred almost seven years ago and involved a very small amount of marijuana. The CUA and MMP support the view that use of marijuana may be viewed with less severity based on its medical utility as a pain reliever.

g. *Aggravating evidence.* It is a significant factor that respondent used marijuana without a valid physician's recommendation or prescription at times over the last seven to nine years up until a few months ago.

h. *Mitigating evidence.* Facts in mitigation are included in Factual Findings 5 through 8e. Respondent was not convicted of any crimes; he has no other complaints relating to the use of his license and no previous record of discipline; the allegations giving rise to the charges are not recent; he has used marijuana for medical purposes and held a physician's recommendation approving medical use; and although he has used marijuana, the evidence does not show that he has a substance abuse problem.

i. *Rehabilitation evidence.* Respondent no longer uses marijuana. The June 4, 2013 drug test to which respondent voluntarily submitted was negative for the presence of marijuana and other controlled substances.

j. *Compliance with terms of any criminal sentence, parole, or probation.* Respondent completed the court-ordered drug awareness program in conjunction with his 2006 arrest and criminal charges.

k. *Overall criminal record.* Respondent has no record of convictions or any other arrests.

l. *Time passed since the act(s).* Almost three and seven years have elapsed since the 2006 and 2010 arrests alleged in Paragraphs 10 and 11 of the Accusation.

m. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another.* Respondent's conduct was intentional.

12. The Guidelines categorize the penalties to be considered in disciplinary cases from Category I to Category IV, with suggested penalties increasing based on the severity of the violation. (Guidelines, p. 5.) The Guidelines recommend a three-year probationary period for designated representatives when probation is imposed. (Guidelines, p. 55.) Here, a less severe penalty would be appropriate considering solely the 2006 and 2010 arrests and the outcome of the related criminal cases. The aggravating factor here is that until recently respondent continued to use marijuana for medical purposes intermittently, but without a physician's recommendation. However, other mitigating factors and evidence of rehabilitation (Factual Findings 3a through 9 and Legal Conclusion 11), on balance, support a two-year probationary period with standard terms and conditions. The fact that respondent has used marijuana (and perhaps its derivatives) does not warrant optional probationary conditions such as random drug testing or drug counseling. The evidence does not show that he abuses controlled substances. He will be required to abstain from the use of controlled substances without a valid prescription. Finally, it was not revealed whether respondent is the designated representative-in-charge of the wholesale pharmacy where he is employed. If he is, the applicable probationary condition allows him to remain as the representative-in-charge. In the event respondent seeks employment with another employer as a representative-in-charge, the Board must give prior approval.

Cost Recovery

13. Business and Professions Code section 125.3 provides in part:

(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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 three reasonable costs of investigation and enforcement of the case.

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). . . .

14. Complainant did not prevail on every charge in this case, failing to prove that cause existed to discipline respondent under Business and Professions Code section 4301, subdivision (h). Also, the factual allegations in this case were largely undisputed by the parties. Accordingly, reasonable costs of investigation and prosecution in this case are \$3,750.

ORDER

Respondent Daniel Mark Kaldas' designated representative license number EXC 19718 is revoked; however, the revocation is stayed and respondent is placed on probation for two years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

- 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
- an arrest or issuance of a criminal complaint for violation of any state or federal law
- 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 respondent's designated representative license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, upon request at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case (Case No. 4176) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause his direct supervisor (if any), designated representative-in-charge (including each new designated representative-in-charge employed during respondent's tenure of employment) (if any) and owner (if any) to report to the board in writing acknowledging that the listed individual(s) has or have read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, designated representative-in-charge and owner at each entity licensed by the board of the terms and conditions of the decision in this case (Case No. 4176) in advance of the respondent commencing work at each

licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in this case (Case No. 4176) and the terms and conditions imposed thereby. It shall be the respondent's responsibility to ensure that his employer(s) or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that or those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a designated representative or in any position for which a designated representative license is a requirement or criterion for employment, whether the respondent is considered an employee or independent contractor or volunteer.

6. No Being Designated Representative-in-Charge (Current Employment Excepted)

If respondent is currently employed as a designated representative-in-charge, he may continue his current employment in that position without the board's approval. Otherwise, during the period of probation, respondent shall not be the designated representative-in-charge of any entity licensed by the board without prior approval of the board or its designee. Assumption of any such unauthorized supervision responsibilities without the board's prior approval shall be considered a violation of probation.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$ 3,750. Respondent shall make said payments in equal monthly installments over the probationary term. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation 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.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current designated representative 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 designated representative license expires or is cancelled 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.

10. Abstain from Drug Use

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of controlled substances or their associated paraphernalia not supported by the documentation timely provided, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

11. Random Drug Screening

Respondent at his or her own expense shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered

a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a designated representative until notified by the board in writing.

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 licensed by the board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; 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 and controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his designated representative license to the board for surrender. The board or its designee 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. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his designated representative license to the board within ten days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration 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 a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten days of any change of employment. The notification shall include the reasons for leaving and the address of the new employer, supervisor and owner and work schedule, if known. Respondent shall further notify the board in writing within ten days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

14. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a designated representative in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a designated representative for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within ten days of cessation of work and must further notify the board in writing within ten days of the resumption of work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months.

"Cessation of work" means any calendar month during which respondent is not working as a designated representative for at least 80 hours as a designated representative as defined by Business and Professions Code section 4053.

"Resumption of work" means any calendar month during which respondent is working as a designated representative for at least 80 hours as a designated representative as defined by Business and Professions Code section 4053.

15. Violation of Probation

If a respondent has not complied with any term or condition of 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.

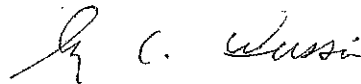
If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended, until the petition to revoke probation or accusation is heard and decided.

16. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's designated representative license will be fully restored.

This decision shall become effective on April 14, 2014.

IT IS SO ORDERED this 13th day of March, 2014.



STAN C. WEISSER
PRESIDENT

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

In the Matter of the Accusation Against:

DANIEL KALDAS

Designated Representative License No.
EXC 19718

Respondent.

Case No. 4176

OAH No. 2012110950

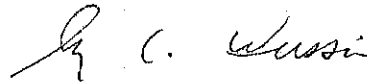
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER FIXING DATE FOR SUBMISSION OF ARGUMENT

The transcript of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written arguments in accordance with the Order Granting Petition for Reconsideration dated October 29, 2013. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: If cause for discipline exists, what penalty, if any, should be applied in this case.

Pursuant to said Order written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before January 8, 2014. **No new evidence may be submitted.**

IT IS SO ORDERD this 9th day of December 2013.



STAN C. WEISSER
President, Board of Pharmacy
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

DANIEL MARK KALDAS
19036 Summit Ridge Drive
Walnut, CA 91789

Designated Representative Certificate No.
EXC 19718

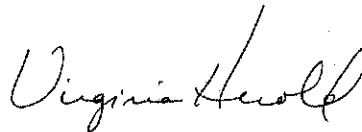
Respondent.

Case No. 4176

OAH No. 2012110950

STAY OF EFFECTIVE DATE

Complainant filed a Petition for Reconsideration in the above-entitled matter on October 24, 2013. In accordance with the provisions of Section 11521 of the Government Code, and for the sole purpose of considering the Petition for Reconsideration, the effective date of the Decision is hereby stayed until November 4, 2013.



Virginia K. Herold
Executive Officer
Board of Pharmacy
Department Of Consumer Affairs
State Of California

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

In the Matter of the Accusation Against:

DANIEL KALDAS

Designated Representative Certificate No.
EXC 19718

Respondent.

Case No. 4176

OAH No. 2012110950

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), first paragraph of term #15 of the order appearing on page 18 of the Proposed Decision, is hereby modified for technical reasons as follows:

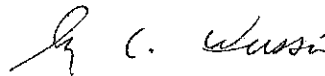
Upon written notice by the board indicating successful completion of probation, respondent's designated representative license will be fully restored.

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on October 25, 2013.

IT IS SO ORDERED this 25th day of September, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

Case No. 4176

DANIEL MARK KALDAS

OAH No. 2012110950

Designated Representative Certificate No.
EXC 19718,

Respondent.

PROPOSED DECISION

This case came on regularly for hearing on June 10, 2013, in Los Angeles, California. Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings (OAH), presided.

Michelle McCarron, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Herbert L. Weinberg, Attorney at Law, represented respondent Daniel Mark Kaldas (respondent), who was present throughout the hearing.

Because complainant did not offer respondent's signed notice of defense into evidence, official notice is taken of a copy of the notice of defense respondent signed on May 29, 2012, that complainant previously filed with OAH on or about November 28, 2012, as part of its request to set. The copy is received in evidence for jurisdictional purposes as Exhibit 10. Evidence was received, the case was argued, and the matter was submitted for decision on June 10, 2013. The Administrative Law Judge issues the following factual findings, legal conclusions, and order.

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FACTUAL FINDINGS

Jurisdiction and License History

1. On April 8, 2008, the Board issued Certificate Number EXC 19718 (certificate or license)¹ to respondent to act as a designated representative² in California. Respondent's certificate has been in effect continuously since that time.

2. Complainant filed the Accusation in her official capacity. Respondent filed a timely notice of defense contesting the charges and this hearing ensued.

2006 Arrest and Charges for Possession of Marijuana and Failing to Obey Traffic Sign

3a. On November 2, 2006, a police officer stopped respondent after he made an illegal U-turn at the intersection of Route 66 and Grand Avenue in Glendora, California. There were four visible signs prohibiting U-turns at that location. As respondent was trying to find his car registration and proof of insurance, the officer observed a plastic baggie sticking out of a smaller storage compartment on top of the central console lid. When respondent opened the smaller compartment, he tried to push the baggie further into the compartment to hide it. After calling for backup, the officer asked respondent if he had anything illegal on his person or in the car. He said he did not, except for a broken marijuana pipe in the glove compartment. Respondent gave the officer permission to search him and the car. The officer found the small plastic baggie respondent had attempted to hide earlier. It contained a small amount of marijuana (approximately .02 grams). The police also found the marijuana pipe.

3b. Respondent was arrested and charged with a misdemeanor violation of Vehicle Code section 23222, subdivision (b) (possession of marijuana in a motor vehicle) and a violation of Vehicle Code section 21461, subdivision (a) (failing to obey a traffic sign), an infraction. On January 8, 2007, the Superior Court, County of Los Angeles, in Case No. 6JB09353, ordered respondent to attend and complete the Orange Coast College alcohol and drug awareness program. He completed the program on March 15, 2007. The court then dismissed all charges against him in the furtherance of justice under Penal Code section 1385, without ever requiring him to enter a plea in the case. Respondent was not convicted of any crime for the 2006 arrest.

2010 Arrest and Charges for Possession of Marijuana and Possession of Hashish

4a. On November 24, 2010, police officers observed respondent driving at a high rate of speed, perhaps in excess 80 miles per hour, on a road in Rowland Heights, California.

¹ Under Business and Professions Code section 4032, the term "license" means and includes any license, permit, registration, certificate, or exemption issued by the Board.

² A designated representative is a licensee who is authorized and qualified to work at a wholesale pharmacy. (Bus. & Prof. Code, § 4022.5, subd. (a).)

Two police officers stopped him, approached the car, and detected an odor of marijuana in the car. Respondent had a passenger in the car. In response to the officers' question, respondent admitted that he had some marijuana inside the driver's door compartment. As respondent stepped out of the car and a small round clear plastic container containing a yellowish substance fell to the ground. Respondent told the officer that hashish, a concentrated form of marijuana, was in the container. The officers also found a purple pill bottle containing marijuana in the driver's side door compartment. Respondent admitted purchasing the hashish and marijuana. In the Superior Court, County of Los Angeles, Case No. KA092899, respondent was formally charged with a misdemeanor violation of Vehicle Code section 23222, subdivision (b) (possession of marijuana in a motor vehicle) and a felony violation of Health and Safety Code section 11350, subdivision (a)³ (possession of a controlled substance, namely tetrahydrocannabinols (THC), the active ingredient in hashish (and marijuana)).⁴ Respondent entered a plea of not guilty to both crimes.

4b. On April 1, 2011, the court called respondent's case for a preliminary hearing to determine whether probable cause existed to hold respondent to answer for the crimes. At its conclusion, the court dismissed the charges against respondent finding insufficient cause to prosecute him and finding further that respondent had a valid doctor's recommendation for medical use of marijuana on the date of the alleged offenses. The court did not convict respondent of any crime.

Mitigation/Rehabilitation/Aggravating Factors

5. Respondent used marijuana in the past for medical reasons, explaining at hearing that in 2004 he was in a serious motorcycle accident in 2004 and hurt his back. He did not break any bones or suffer an injury that required surgery or stitches, but he was airlifted by helicopter to a hospital where he stayed for about one week due to a concussion and internal injuries. He was initially prescribed over-the-counter pain reliever for his back pain. Because it did not relieve his pain, he began using marijuana for pain relief sometime between 2004 and 2006. He did not have a doctor's recommendation for use of medical marijuana when he began using it.⁵ He stopped using marijuana "a few months ago." And

³ Unless otherwise specified, all statutory references are to the Health and Safety Code.

⁴ As alleged in Paragraph 11 of the Accusation, respondent was arrested for violating section 11357, subdivision (a) (possession of marijuana), a misdemeanor; Vehicle Code section 23222, subdivision (b) (possession of marijuana in a motor vehicle), a misdemeanor; and Vehicle Code section 22350, subdivision (a) (driving at an unsafe speed), an infraction. Subsequently, the felony complaint filed against respondent on December 28, 2010, charged him with violations of section 11350, subdivision (a) and Vehicle Code section 23222, subdivision (b), as referenced in Factual Finding 4a.

now uses an over-the-counter pain medication for his back. At hearing, he presented a letter under the Venice Beach Physicians' letterhead, dated June 5, 2013, signed by Dr. Jonathan Serebrin, M.D., stating that respondent "no longer requires the use of medical marijuana." (Exhibit B.) He voluntarily submitted to drug testing at Quest Diagnostics, a medical laboratory, on June 4, 2013. The results were negative for the presence of marijuana and other controlled substances in his system. (Exhibit C.)

6. Respondent had a valid doctor's recommendation for medical use of marijuana covering the period between June 11, 2009 and June 11, 2010 (Exhibit A), in addition to the recommendation he presented to the court in April 2011. (Factual Finding 4b.) The evidence did not reveal whether he held a valid recommendation at any other time. Respondent admitted at hearing that he has used marijuana over the past seven to nine years intermittently to ease his back pain without having a valid physician's recommendation for medical use of marijuana.

7. Respondent is a designated representative for a wholesale pharmacy. As such, he is responsible for the security of dangerous devices and drugs, making sure they are dispensed to licensed retailers and keeping records of their distribution. No evidence showed that respondent has ever performed his job as a designated representative illegally or improperly. Nor is there any evidence that respondent has ever used marijuana, hashish or any other controlled substance, or been under the influence of these substances, while working in his job as a designated representative. Similarly, the evidence did not show that respondent currently has a problem with substance abuse or that he requires drug or alcohol counseling. He did complete a drug and alcohol awareness program at Orange Coast College as ordered by the court for his 2006 arrest. (Factual Finding 3b.)

8a. As mentioned, respondent's arrests did not lead to any convictions. The 2006 charges were dismissed in the interests of justice without entry of a plea and the 2010 charges were dismissed at the preliminary hearing for lack of probable cause.

8b. In connection with the 2006 charges, respondent possessed .02 grams, an extremely small amount of marijuana. At that time, he was charged with a misdemeanor violation of Vehicle Code section 23222, subdivision (b), for possessing marijuana while driving a motor vehicle. The statute has since been amended to reduce a violation from a misdemeanor to an infraction, punishable by a fine not to exceed \$100, for possessing not more than 28.5 grams while driving a motor vehicle. In making the crime an infraction, the Legislature determined to treat a violation with greater leniency.⁶ Comparing the 28.5 grams infraction limit to the .02 grams that respondent had when arrested in 2006, also illustrates that he actually possessed a very small amount.

⁵ Section 11362.5 permits use of marijuana for medical purposes upon a physician's recommendation or approval without being subject to criminal prosecution for possession of marijuana. (See Penal Code, § 11357.)

⁶ Stats. 2010, ch. 708, § 2.

8c. On November 24, 2010, the police stopped respondent at 1:30 p.m. The police report of the arrest stated, "As we [the two police officers] contacted the occupants of the vehicle via the open driver and passenger windows, we immediately smelled the odor of marijuana emitting from the interior of the vehicle." Yet, the police did not arrest respondent for driving under the influence of a controlled substance; they arrested him for speeding, possession of marijuana and possession of marijuana in a motor vehicle. Neither did the police ask respondent to submit to a blood, urine or breathing tests to determine whether he was driving under the influence, and no such tests were administered. The police report did not indicate that the speed respondent was driving before the officers stopped him was attributable to driving under the influence.

8d. The police did not determine how much marijuana or hashish respondent possessed when he was arrested on November 24, 2010. The police described the hashish in the police report as a "small amount." At the time of his arrest, respondent told the officers that because the hashish was very concentrated, he could get "dozens of hits" from it. He also told them he had purchased the drugs in Los Angeles and paid \$35 for the hashish. The police charged him with two misdemeanor possession charges when they arrested him.⁷

8e. The agency did not prove that respondent used hashish or marijuana, or that he drove under influence of controlled substances, on the date of his 2006 or 2010 arrests.

Credibility

9. After police officers stopped respondent in 2006 and 2010, he was not entirely candid when they questioned him, at first trying to hide a baggie of marijuana from them, and then, not telling them he had marijuana when they asked him whether he had anything illegal in the car. During the 2010 arrest, he told police he had marijuana in the car, but did not tell them about the hashish until they discovered it. Soon after he was detained, he admitted that he had purchased the hashish. At hearing, respondent presented himself as a credible witness. He answered questions without hesitation, and admitted using marijuana at times when he did not have a doctor's recommendation to use marijuana for health purposes. Overall, his previous lack of candor with police during his 2006 and 2010 arrests does not significantly discredit his testimony at hearing.

Cost Recovery

10. The unsigned certification of costs shows that the Department of Justice billed the Board for prosecution costs of \$6,197.60, consisting of 36.75 hours of attorney and paralegal time, including a good faith estimate of four additional attorney hours (\$680) incurred or to be incurred for preparation of the case up to commencement of hearing. The

⁷ The police report of the 2010 arrest lacks some clarity because it states that respondent's passenger told police the drugs belonged to him. Considering all the facts, including the subsequent charges against respondent, it was respondent who possessed the marijuana and hashish.

good faith estimate does not include any specific information about what tasks were to be performed. The costs include 14 hours of attorney work by Deputy Attorney General Michelle McCarron in 2012 and 2013 at \$170 dollars per hour and another 16.50 hours of attorney work performed in 2011 and 2012 by Desiree Kellogg, Deputy Attorney General.

LEGAL CONCLUSIONS

Applicable Law

1. The Board may suspend or revoke any license issued under the Pharmacy Law. (Bus. & Prof. Code, §§ 4000 and 4300, subd. (a).)

2. Business and Professions Code section 4301 reads, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

(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 this chapter, 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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

[¶] . . . [¶]

(o) Violating or attempting to violate, directly or indirectly, . . . any provision or term of [the Pharmacy Law] or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

[¶] . . . [¶]

3. Unless a licensee's conduct is substantially related to the qualifications, functions or duties of a licensee, the conduct may not serve as a basis for revoking or suspending a license. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.) A crime or act is considered substantially related to the qualifications, functions or duties of a Board of Pharmacy 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. (Cal. Code Regs., tit. 16, § 1770.)

4. Marijuana, hashish and tetrahydrocannabinols (concentrated marijuana) are hallucinogenic Schedule I controlled substances under State and federal law. (§11054, subs. (d)(13) and (20); 21 U.S.C. § 812.) Marijuana is also a dangerous drug as defined in Business and Professions Code section 4022. Possession of a controlled substance is illegal under federal law (21 U.S.C. § 844), and the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) prohibits a person from possessing any controlled substance without a valid prescription. (Bus. & Prof. Code, § 4060.)

5. In November 1996, the California voters approved an initiative statute designated on the ballot as Proposition 215 and entitled, "Medical Use of Marijuana." In pertinent part, the measure added Health and Safety Code section 11362.5, the Compassionate Use Act of 1996 (CUA) (Prop. 215, § 1, as approved by electors, Gen.Elec. (Nov. 5, 1996).)⁸ Section 11362.5 allows seriously ill Californians the right to obtain and use marijuana for medical purposes where the use of medical marijuana has been recommended by a physician. Section 11362.5 provides in part:

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996 [CUA].

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

⁸ The Legislature further expanded the Compassionate Use Act by enacting the Medical Marijuana Program (MMP) (§ 11362.7 et seq., added by Stats. 2003, ch. 875, § 2.)

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

[¶] . . . [¶]

Causes for Discipline

6a. Cause exists to suspend or revoke respondent's license as a designated representative for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), because he violated the statutes of this State and the United States that regulate controlled substances and dangerous drugs, pursuant to Factual Findings 3a through 4b, and Legal Conclusion 4. Although respondent was not convicted of a crime, the Board seeks to suspend or revoke his license for acts that constitute unprofessional conduct under the Pharmacy Law. He possessed marijuana and hashish in violation of State and federal laws regulating controlled substances. Federal and State law prohibit the possession of a marijuana and hashish, which are Schedule I controlled substances. (See Legal Conclusion 4; Bus. & Prof. Code, § 4060; Health & Saf. Code, § 11357 (possession of marijuana and concentrated cannabis, such as hashish); and 21 U.S.C. § 844 (possession of controlled substance).) Respondent admitted possessing marijuana in 2006 and 2010 and using it at other times since his motorcycle accident in 2004. While he had a doctor's recommendation

for medical marijuana in April 2011, and from June 11, 2009 through June 11, 2010, that recommendation does not dispense with the requirement that, as a licensee, he must comply with the Pharmacy Law.

One purpose of the CUA is also noteworthy here: "To ensure that patients . . . who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5, subd. (b)(1)(B).) Section 11362.5, subdivision (d) grants what the California Supreme Court has held is a "limited" immunity from criminal prosecution for possession and cultivation of marijuana under sections 11357 and 11358, respectively, if the patient produces a physician's recommendation or approval for medical marijuana use. (See *People v. Mower* (2002) 28 Cal.4th 457.) Respondent did not point to any law, including the CUA, that prohibits a State licensing agency, such as the Board, from taking action against a licensee for violating laws governing the license.

6b. Respondent's conduct in possessing marijuana and hashish (Factual Findings 3a through 4b), and using marijuana in violation of State and federal law over the last seven to nine years, is substantially related to the qualifications, functions or duties of a licensee. As a licensed designated representative of a pharmacy, respondent's duties are "to provide sufficient and qualified supervision" in a wholesale pharmacy. A "designated representative shall protect the public health and safety in the handling, storage, and shipment of dangerous drugs and dangerous devices . . ." (Bus. & Prof. Code, § 4053, subd. (a).) Before licensure, a designated representative must complete a training program that includes knowledge and understanding of California law and federal law relating to the distribution of controlled substances. (Bus. & Prof. Code, § 4053, subd. (b)(3)(B).) While respondent has not had any problems in performing his job as a designated representative, his possession and use of marijuana and hashish, a Schedule I controlled substance, does, to a substantial degree, evidence present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. (Factual Finding 7; Legal Conclusions 1-3; Cal. Code Regs., tit. 16, § 1770.)

7. Cause also exists to suspend or revoke respondent's license for unprofessional conduct based on Business and Professions Code section 4301, subdivision (o) by violating the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) because on November 2, 2006, respondent possessed a controlled substance, marijuana, without a physician's recommendation, in violation of Business and Professions Code section 4060. This conduct is substantially related to the qualifications, functions or duties of a licensed designated representative. (Factual Finding 7; Legal Conclusions 1-3, 6a and 6b; Cal. Code Regs., tit. 16, § 1770.)

8. Cause exists to discipline respondent's license based on Business and Professions Code section 4301, for engaging in unprofessional conduct generally on November 2, 2006 and November 24, 2010 for possession of controlled substances. Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession.

(*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.) Respondent has engaged in unprofessional conduct that is substantially related to the qualifications, functions or duties of a licensee based on Factual Findings 3a through 4b, 5 and 6, and Legal Conclusions 6a, 6b and 7.

9. Cause does not exist to discipline respondent's license for unprofessional conduct based on Business and Professions Code section 4301, subdivision (h) in that although he possessed controlled substances that are dangerous drugs, he did not administer any controlled substances or dangerous drugs to himself on November 2, 2006 or November 24, 2010, as alleged in Paragraph 14 of the Accusation. (Factual Findings 3a-4b). He admitted using marijuana on other occasions within the last seven to nine years, but the evidence did not reveal that he used controlled substances or dangerous drugs to the extent or in a manner as to be dangerous or injurious to himself, to a licensee, or to any other person or to the public, or to the extent that the use impairs respondent's ability to conduct with safety to the public the practice authorized by his license, on November 2, 2006 and November 24, 2010 or at any other time. (Factual Findings 3a through 4b, 5 and 6.)

Mitigation/Rehabilitation/Aggravating Factors

10. The Board has adopted disciplinary guidelines to apply in evaluating the level of discipline warranted in these proceedings. (Guidelines (Rev. 10/07.) Deviation from the guidelines is appropriate when the particular facts of a case, including mitigating factors, warrant it. (Cal. Code Regs., tit. 16, § 1760.)

11. In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the Guidelines set out various factors to consider (Guidelines, p. 3):

a. *Actual or potential harm to the public.* Respondent's actions in possessing a small amount of marijuana (November 2, 2006 arrest) and an undetermined amount of marijuana, and what the police characterized as a "small amount" of hashish in the police report (November 24, 2010 arrest) did not cause actual or potential harm to the public. The evidence did not show that he operated a motor vehicle while under the influence. During the 2010 arrest, the police smelled the odor of marijuana in the vehicle, but the officers did not later charge respondent with driving under the influence of a controlled substance or ask respondent to submit to any blood, urine or breathing tests at the time of his arrest. Nor was there sufficient evidence to show that his traffic violations, the illegal U-turn and speeding that caused police to stop in 2006 and 2010, demonstrated that he was under the influence of a controlled substance while driving. (Factual Findings 3a through 8e.) Respondent's conduct in possessing and using marijuana did not involve moral turpitude and did not show a disregard for the public. (See *In re Higbie* (1972) 6 Cal.3d 565, 572 and *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1015.)

b. *Actual or potential harm to any consumer.* The evidence did not show that respondent has actually or potentially harmed a consumer. He has had no complaints against him relating to licensed activities and no evidence was offered showing that he has ever

been under the influence of controlled substances while working as a designated representative. (Factual Finding 7.)

c. *Prior disciplinary record, including level of compliance with disciplinary order.* Respondent has no prior disciplinary record.

d. *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s).* Respondent has had no previous warnings.

e. *Number and/or variety of current violations.* Respondent possessed marijuana and hashish and at hearing, he admitted using marijuana to relieve pain in his back. The allegations relate to two arrests for possessing marijuana. The allegations are neither numerous nor varied.

f. *Nature and severity of the act(s), offense(s) or crime(s) under consideration.* Respondent's conduct is not considered severe. He was not convicted of any crimes. Though the charge for possessing hashish is more serious, the court dismissed all charges resulting from the 2010 arrest for possession of a controlled substance and possession of marijuana and hashish in a motor vehicle. It is inferred that they were dismissed because he possessed a valid doctor's recommendation for use of marijuana for medical purposes. His 2006 arrest occurred almost seven years ago and involved a very small amount of marijuana. The CUA and MMP support the view that use of marijuana may be viewed with less severity based on its medical utility as a pain reliever.

g. *Aggravating evidence.* It is a significant factor that respondent used marijuana without a valid physician's recommendation or prescription at times over the last seven to nine years up until a few months ago.

h. *Mitigating evidence.* Facts in mitigation are included in Factual Findings 5 through 8e. Respondent was not convicted of any crimes; he has no other complaints relating to the use of his license and no previous record of discipline; the allegations giving rise to the charges are not recent; he has used marijuana for medical purposes and held a physician's recommendation approving medical use; and although he has used marijuana, the evidence does not show that he has a substance abuse problem.

i. *Rehabilitation evidence.* Respondent no longer uses marijuana. The June 4, 2013 drug test to which respondent voluntarily submitted was negative for the presence of marijuana and other controlled substances.

j. *Compliance with terms of any criminal sentence, parole, or probation.* Respondent completed the court-ordered drug awareness program in conjunction with his 2006 arrest and criminal charges.

k. *Overall criminal record.* Respondent has no record of convictions or any other arrests.

l. *Time passed since the act(s).* Almost three and seven years have elapsed since the 2006 and 2010 arrests alleged in Paragraphs 10 and 11 of the Accusation.

m. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another.* Respondent's conduct was intentional.

12. The Guidelines categorize the penalties to be considered in disciplinary cases from Category I to Category IV, with suggested penalties increasing based on the severity of the violation. (Guidelines, p. 5.) The Guidelines recommend a three-year probationary period for designated representatives when probation is imposed. (Guidelines, p. 55.) Here, a less severe penalty would be appropriate considering solely the 2006 and 2010 arrests and the outcome of the related criminal cases. The aggravating factor here is that until recently respondent continued to use marijuana for medical purposes intermittently, but without a physician's recommendation. However, other mitigating factors and evidence of rehabilitation (Factual Findings 3a through 9 and Legal Conclusion 11), on balance, support a two-year probationary period with standard terms and conditions. The fact that respondent has used marijuana (and perhaps its derivatives) does not warrant optional probationary conditions such as random drug testing or drug counseling. The evidence does not show that he abuses controlled substances. He will be required to abstain from the use of controlled substances without a valid prescription. Finally, it was not revealed whether respondent is the designated representative-in-charge of the wholesale pharmacy where he is employed. If he is, the applicable probationary condition allows him to remain as the representative-in-charge. In the event respondent seeks employment with another employer as a representative-in-charge, the Board must give prior approval.

Cost Recovery

20. Business and Professions Code section 125.3 provides in part:

(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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 three reasonable costs of investigation and enforcement of the case.

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). . . .

21. Complainant did not prevail on every charge in this case, failing to prove that cause existed to discipline respondent under Business and Professions Code section 4301, subdivision (h). Also, the factual allegations in this case were largely undisputed by the parties. Accordingly, reasonable costs of investigation and prosecution in this case are \$3,750.

ORDER

Respondent Daniel Mark Kaldas' designated representative license number EXC 19718 is revoked; however, the revocation is stayed and respondent is placed on probation for two years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

- 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
- an arrest or issuance of a criminal complaint for violation of any state or federal law
- 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 respondent's designated representative license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of

delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, upon request at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case (Case No. 4176) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause his direct supervisor (if any), designated representative-in-charge (including each new designated representative-in-charge employed during respondent's tenure of employment) (if any) and owner (if any) to report to the board in writing acknowledging that the listed individual(s) has or have read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, designated representative-in-charge and owner at each entity licensed by the board of the terms and conditions of the decision in this case (Case No. 4176) in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report

to the board in writing acknowledging that he or she has read the decision in this case (Case No. 4176) and the terms and conditions imposed thereby. It shall be the respondent's responsibility to ensure that his employer(s) or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that or those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a designated representative or in any position for which a designated representative license is a requirement or criterion for employment, whether the respondent is considered an employee or independent contractor or volunteer.

6. No Being Designated Representative-in-Charge (Current Employment Excepted)

If respondent is currently employed as a designated representative-in-charge, he may continue his current employment in that position without the board's approval. Otherwise, during the period of probation, respondent shall not be the designated representative-in-charge of any entity licensed by the board without prior approval of the board or its designee. Assumption of any such unauthorized supervision responsibilities without the board's prior approval shall be considered a violation of probation.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$ 3,750. Respondent shall make said payments in equal monthly installments over the probationary term. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation 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.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current designated representative 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 designated representative license expires or is cancelled 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.

10. Abstain from Drug Use.

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of controlled substances or their associated paraphernalia not supported by the documentation timely provided, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his designated representative license to the board for surrender. The board or its designee 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. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his designated representative license to the board within ten days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration 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.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten days of any change of employment. The notification shall include the reasons for leaving and the address of the new employer, supervisor and owner and work schedule, if known. Respondent shall further notify the board in writing within ten days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a designated representative in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a designated representative for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within ten days of cessation of work and must further notify the board in writing within ten days of the resumption of work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months.

"Cessation of work" means any calendar month during which respondent is not working as a designated representative for at least 80 hours as a designated representative as defined by Business and Professions Code section 4053.

"Resumption of work" means any calendar month during which respondent is working as a designated representative for at least 80 hours as a designated representative as defined by Business and Professions Code section 4053.

14. Violation of Probation

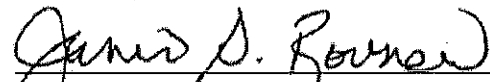
If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the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

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 that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended, until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's designated representative license will be fully

Dated: July 16, 2013



JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4176

12 **DANIEL MARK KALDAS**
13 **19036 Summit Ridge Drive**
14 **Walnut, CA 91789**

ACCUSATION

15 **Designated Representative Certificate No.**
EXC 19718

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about April 8, 2008, the Board of Pharmacy issued Designated Representative
24 Certificate Number EXC 19718 to Daniel Mark Kaldas (Respondent). The Designated
25 Representative Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 1, 2012, unless renewed.

1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states in pertinent part, "every license
10 issued may be suspended or revoked."

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 4060 of the Code states:

13
14 No person shall possess any controlled substance, except that furnished to a
15 person upon the prescription of a physician, dentist, podiatrist, optometrist,
16 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
17 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
18 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
19 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
20 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
21 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
section shall not apply to the possession of any controlled substance by a
22 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
23 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
24 practitioner, or physician assistant, when in stock in containers correctly labeled
25 with the name and address of the supplier or producer.

26 Nothing in this section authorizes a certified nurse-midwife, a nurse
27 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
28 stock of dangerous drugs and devices.

7. Section 4301 of the Code states:

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

1 (h) The administering to oneself, of any controlled substance, or the use of
2 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter,
4 or to any other person or to the public, or to the extent that the use impairs the
5 ability of the person to conduct with safety to the public the practice authorized by
6 the license.

7
8 (j) The violation of any of the statutes of this state, or any other state, or of the
9 United States regulating controlled substances and dangerous drugs.
10

11 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
12 abetting the violation of or conspiring to violate any provision or term of this chapter or of
13 the applicable federal and state laws and regulations governing pharmacy, including
14 regulations established by the board or by any other state or federal regulatory agency.
15

16 **COST RECOVERY**

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

21 **DRUG**

22 9. Marijuana is a Schedule I controlled substance as designated by Health and Safety
23 Code section 11054(d)(13), and is a dangerous drug pursuant to Business & Professions Code
24 section 4022.

25 **FACTUAL ALLEGATIONS**

26 10. On or about November 2, 2006, Respondent made an illegal U-turn at Route 66 and
27 Grand Avenue in Glendora, California even though there were a total of four, clearly visible
28 traffic signs stating that U-turns were prohibited at the intersection. A police officer then initiated
a traffic stop of Respondent's vehicle. While Respondent was searching his vehicle for his
registration and insurance, the police officer observed a plastic baggie which Respondent
attempted to conceal. The police officer then asked Respondent if there was anything illegal in

1 his vehicle and Respondent stated that he only had a broken marijuana pipe in his glove
2 compartment. The police officers then searched Respondent's vehicle and located approximately
3 .02 grams of marijuana in Respondent's vehicle. Respondent was subsequently arrested for
4 violating Vehicle Code section 23222(b), possession of marijuana in a vehicle and section
5 21461(a), failing to obey a traffic sign. Criminal charges were filed against Respondent in *The*
6 *People of the State of California v. Daniel Mark Kaldas*, Los Angeles County Superior Court
7 Case No.6JB09353. On March 15, 2007, the Court subsequently dismissed the charges pursuant
8 to Penal Code section 1385 on the grounds that Respondent had completed the Orange Coast
9 College Alcohol and Awareness Program.

10 11. On or about November 24, 2010, Respondent drove his vehicle at a speed in excess of
11 80 miles per hour on San Jose Road in Rowland Heights, California. Los Angeles County sheriff
12 deputies observed Respondent's vehicle and conducted a traffic stop of his vehicle. As the police
13 officers approached the vehicle, they smelled the odor of marijuana emitting from the interior of
14 the vehicle which prompted them to ask Respondent if he possessed marijuana. Respondent
15 admitted that he had marijuana inside the driver's side door compartment. Respondent then
16 exited his vehicle and a yellowish substance fell to the ground from Respondent's vehicle.
17 Respondent told the deputies that this substance was hashish. The deputies then searched
18 Respondent's vehicle and located a purple pill bottle containing a green leafy substance
19 resembling marijuana inside the driver's side door compartment. It appeared that Respondent had
20 been smoking marijuana while in a motor vehicle that was being operated. Respondent was
21 subsequently arrested for violating Health and Safety Code section 11357(a), Vehicle Code
22 section 23222(b) and Vehicle Code section 22350(a). Criminal charges were filed against
23 Respondent in *The People of the State of California v. Daniel Mark Kaldas*, Los Angeles County
24 Superior Court Case No. KA092899. On April 1, 2011, the Court dismissed the charges against
25 Respondent on the grounds there was insufficient cause because Respondent had a valid
26 physician's recommendation for marijuana on the date of the arrest.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violating Law Regulating Controlled Substances)

12. Respondent is subject to disciplinary action under section 4301(j) of the Code in that on or about November 2, 2006 and November 24, 2010, Respondent violated the California Uniform Controlled Substances Act (Health and Safety Code sections 11000, *et seq.*) as is more fully described in paragraphs 10-11, above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violations of the Chapter)

13. Respondent is subject to disciplinary action under section 4301(o) of the Code for violation of the Pharmacy Act in that on or about November 2, 2006, Respondent possessed a controlled substance, marijuana, without a physician's recommendation, in violation of Code section 4060 as is more fully described in paragraph 10, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Administration of Controlled Substance To An Extent or In A Manner Dangerous to Oneself or Others)

14. Respondent is subject to disciplinary action under section 4301(h) of the Code in that on or about November 2, 2006 and November 24, 2010, Respondent administered a controlled substance, marijuana to himself to an extent or in a manner dangerous to himself or others as is more fully described in paragraphs 10-11, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under section 4301 of the Code in that on or about November 2, 2006 and November 24, 2010, Respondent engaged in unprofessional conduct as is more fully described in paragraphs 10-11, above.

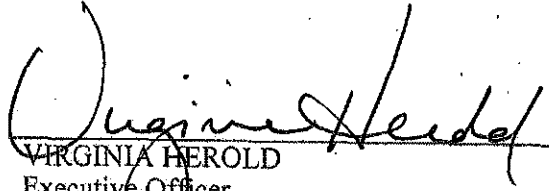
PRAYER

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:

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1. Revoking or suspending Designated Representative Certificate Number EXC 19718, issued to Daniel Mark Kaldas;
2. Ordering Daniel Mark Kaldas 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/4/12


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

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