

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

In the Matter of the Petition for Reinstatement by:

MICHAEL TODD PETERS, Petitioner

Agency Case No. 4334

OAH No. 2020120030

DECISION

This matter was heard by video conference before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on December 3, 2020. Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided at the hearing.

Kristina Jarvis, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Michael Todd Peters was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on December 3, 2020.

FACTUAL FINDINGS

Background and Procedural History

1. On August 21, 1995, the Board issued petitioner Pharmacist License No. RPH 48263 (license). Petitioner's license was revoked on December 20, 2013.

2. On September 25, 2012, complainant Virginia Herold, the former Executive Officer for the Board filed an Accusation against petitioner seeking to discipline his license as the owner and Pharmacist-in-Charge (PIC) of Country Club Drug Store (Country Club.) Complainant alleged that between March 15, 2010, and December 1, 2011, petitioner engaged in violations of the Business and Professions Code sections 4081, subdivision (a), 4105, subdivision (a), 4300, and 4301, subdivisions (j), (o), and (q), by failing to maintain complete accountability of dangerous drugs, subverting or attempting to subvert a Board investigation and failing to follow the Board's instructions regarding submission of documentation to the Board. In aggravation, petitioner had two previous citations.

3. On September 9 and 10, 2013, a hearing concerning the Accusation was conducted before ALJ Marcie Larson, OAH, State of California. Petitioner was present at the hearing and represented himself. On October 8, 2013, ALJ Larson issued a Proposed Decision finding cause to revoke petitioner's license. On November 20, 2013, the Board adopted the Proposed Decision, which became effective on December 20, 2013.

Petition for Reinstatement

4. On January 20, 2019, petitioner signed and thereafter filed with the Board a Petition for Reinstatement (Petition). Petitioner has not previously applied for

reinstatement of his license. Petitioner submitted in support of his Petition a written statement, letters of recommendation, and proof of continuing education. In his Petition, as well as his testimony at hearing, petitioner explained the circumstances surrounding the events that gave rise to the revocation of his license and his rehabilitation efforts.

5. Petitioner explained that as the owner and PIC of Country Club he was responsible for failing to abide by the Board's laws and regulations. He failed to submit the proper documentation to the Board when he closed Country Club. He also did not maintain an accurate drug inventory. Petitioner understands that he had an obligation to ensure he was responding to the Board's request for information and he failed to do so.

6. Since petitioner's license was revoked, he has worked various jobs, including as a commercial truck driver. Petitioner would like to return to the pharmacy profession. He has no interest in owning a pharmacy. He would like to work as a staff pharmacist at Dameron Hospital, Stockton, California. The hospital has a pharmacist's training program to which petitioner hopes to be accepted if his license is reinstated.

7. Petitioner has not worked as a pharmacist for seven years. He has tried to stay current with pharmacy laws, regulations and best practices by completing continuing education and reading various online sources of information. He is willing to comply with any terms of probation the Board imposes on his license.

Letters of Recommendation

8. Pursuant to Business and Professions Code section 4309, subdivision (b), petitioner submitted five letters of recommendation.¹ The letters' authors describe petitioner as a dependable, motivated and professional. The authors also explain that petitioner has grown and learned important lessons as the result of the revocation of his license. Petitioner is eager to return to the pharmacy profession.

Analysis

9. Petitioner demonstrated he understands the seriousness of his conduct that resulted in the revocation of his license. For the past seven years he has attempted to stay current with pharmacy practice with the hope of returning to the profession. Although petitioner has demonstrated sufficient rehabilitation to reinstate his license on a probationary basis, because he has not practiced as a pharmacist for seven years he must take and pass the California Pharmacist Jurisprudence

¹ Business and Professions Code section 4309, subdivision (b), provides:

The petition shall state any facts required by the Board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of the petitioner since the disciplinary penalty was imposed.

Examination and the North American Pharmacist Licensure Examination, to ensure he is safe to return to practice.

LEGAL CONCLUSIONS

1. In a proceeding for reinstatement of a revoked license, the burden at all times is on the petitioner to establish rehabilitation. (See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Business and Professions Code section 4309, subdivision (d), sets forth the following factors to consider when the Board reviews a petition reinstatement:

- (1) All the activities of the petitioner since the disciplinary action was taken.
- (2) The offense for which the petitioner was disciplined.
- (3) The petitioner's activities during the time the license was in good standing.
- (4) The petitioner's documented rehabilitative efforts.
- (5) The petitioner's general reputation for truth and professional ability.

3. When all the relevant criteria set forth in Business and Professions Code section 4309, subdivision (d), are considered, petitioner established that it would be

consistent with the public health, safety, and welfare to reinstate his license on a probationary basis, with terms and conditions designed to protect the public health, safety and welfare.

ORDER

It is hereby ordered that the Petition for Reinstatement filed by Michael Todd Peters is hereby granted. Upon satisfaction of the following conditions precedent to licensure, petitioner's License No. RPH 48263 will be reinstated:

Conditions Precedent to Reinstatement of License

1. **Pharmacist Examination:** Petitioner shall take and pass the California Pharmacist Jurisprudence Examination (CPJE) and the North American Pharmacist Licensure Examination (NAPLEX) within one (1) year of the effective date of this Order. Failure to take and pass the examinations within one (1) year of the effective date of this Order shall invalidate the Order granting the Petition for Reinstatement. Petitioner shall be deemed to have failed the conditions precedent for re-licensure, and petitioner's License No. RPH 48263 shall remain revoked.

Petitioner must pay the fees in place at the time for these examinations. Petitioner must pay all applicable application and licensing fees as well as any cost recovery owed from the prior action.

Reinstatement of License Upon Completion of Conditions Precedent

Upon the reinstatement petitioner's License No. RPH 48263, the license will be immediately revoked, with revocation stayed and petitioner placed on probation for a period of three (3) years on the following terms and conditions:

2. **Obey All Laws:** Petitioner shall obey all state and federal laws and regulations. Petitioner shall report any of the following occurrences to the Board, in writing, within seventy-two (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
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves petitioner's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

3. **Report to the Board:** Petitioner 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, petitioner 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.

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

4. **Interview with the Board:** Upon receipt of reasonable prior notice, petitioner shall appear in person for interviews with the Board or its designee, 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 (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. **Cooperate with Board Staff:** Petitioner shall timely cooperate with the Board's inspection program and with the Board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

6. **Continuing Education:** Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

7. **Reporting of Employment and Notice to Employers:** During the period of probation, petitioner shall notify all present and prospective employers of the decision in OAH No. 2020120030 and the terms, conditions and restrictions imposed on petitioner by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, petitioner shall report to the Board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Petitioner shall also include the reason(s) for leaving the prior employment. Petitioner shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of petitioner's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning petitioner's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment, petitioner shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in OAH No. 2020120030 and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the petitioner's

responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, petitioner shall cause the person(s) taking over the role(s) to report to the Board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in OAH No. 2020120030 and the terms and conditions imposed thereby.

If petitioner works for or is employed by or through an employment service, petitioner must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in OAH No. 2020120030 and the terms and conditions imposed thereby in advance of petitioner commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment by or through an employment service, petitioner shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in OAH No. 2020120030, and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacist

or any position for which a pharmacist license is a requirement or criterion for employment, whether the petitioner is an employee, independent contractor or volunteer.

8. Notification of Change(s) in Name, Address(es), or Phone

Number(s): Petitioner shall further notify the Board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number. Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

9. Restrictions on Supervision and Oversight of Licensed Facilities:

During the period of probation, petitioner shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the Board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

10. Probation Monitoring Costs: Petitioner 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.

11. Status of License: Petitioner shall, at all times while on probation, maintain an active, current pharmacist license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacist license shall be considered a violation of probation.

If petitioner's pharmacist 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 petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. **License Surrender While on Probation/Suspension:** Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may relinquish his license, including any indicia of licensure issued by the Board, along with a request to surrender the license. The Board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, petitioner 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 petitioner's license history with the Board.

Upon acceptance of the surrender, petitioner shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the Board within ten (10) days of notification by the Board that the surrender is accepted if not already provided. Petitioner may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

13. **No Ownership or Management of Licensed Premises:** Petitioner shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Petitioner

shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

14. **Violation of Probation:** If petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over petitioner, and the Board shall provide notice to petitioner that 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. The Board or its designee may post a notice of the extended probation period on its website.

If petitioner violates probation in any respect, the Board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against petitioner during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, 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.

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15. **Completion of Probation:** Upon written notice by the Board or its designee indicating successful completion of probation, petitioner's license will be fully restored.

This decision shall become effective on March 26, 2021.

It is so ORDERED on February 24, 2021.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg Lippe", is written over a light gray rectangular background.

By

Greg Lippe
Board President

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

In the Matter of the Accusation Against:

MICHAEL TODD PETERS

7302 Larkspur Lane
Stockton, CA 95207

Pharmacist License No.RPH 48263

Respondent.

Case No. 4334

OAH 2012110523

DECISION AND ORDER

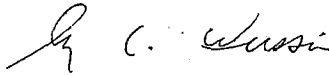
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 20, 2013.

It is so ORDERED on November 20, 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:

MICHAEL TODD PETERS
Stockton, CA 95207

Pharmacist License No. RPH 48263

Respondent.

Case No. 4334

OAH No. 2012110523

PROPOSED DECISION

This matter was heard on September 9 and 10, 2013, before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California.

Complainant, Virginia K. Herold (complainant), Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California, was represented by Leslie Burgermyer, Deputy Attorney General, with the Office of the Attorney General.

Respondent Michael Todd Peters (respondent) was present and represented by Albert Ellis, Attorney at Law.

Evidence was received, the record was closed, and the matter was submitted for decision on September 10, 2013.

FACTUAL FINDINGS

1. On August 21, 1995, the Board of Pharmacy (Board) issued Pharmacist License number RPH 48263 (license) to respondent. The license was in full force and effect at all times relevant to this proceeding.
2. On July 17, 2008, the Board issued Pharmacy License number PHY 49019 to Country Club Drug Store (Country Club), located at 1919 Vista Del Lago, Suite 6, Valley Springs, California. At all relevant times to this proceeding, respondent was the owner and pharmacist-in-charge (PIC) of Country Club.

3. On September 25, 2012, complainant, in her official capacity, signed and thereafter filed the Accusation against respondent.

4. Respondent timely filed a Notice of Defense to the Accusation, pursuant Government Code sections 11505 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge with the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, *et. seq.*

Background

5. As a result of an anonymous complaint submitted to the Board in March 2011, the Board initiated an investigation to determine if Country Club and respondent were in compliance with the Pharmacy laws and regulations. Supervising Inspector William Young and Inspector Lin Hokana, both employed by the Board, were assigned to investigate the complaint and to conduct an inspection of Country Club. Inspector Young testified at the hearing in this matter.

6. Inspector Young has been employed as a supervising inspector with the Board since May 2011. Inspector Young became a licensed pharmacist in 1994. Prior to working for the Board, Inspector Young worked as an intern, pharmacist, pharmacy manager, and district manager for Walmart, for approximately eight years. Inspector Young also worked for Rite Aid as a pharmacy manger, for the Target Stores Pharmacy Division, and at Kaiser Permanente Pharmacy Division for eight years. As a pharmacist and manager, Inspector Young participated in approximately 30 drug inventory audits. As a supervising inspector for the Board, Inspector Young leads a team of inspectors who investigate and inspect pharmacies, hospitals, clinics, and investigate consumer complaints made against licensees. Inspector Young also conducts inspections and investigations.

7. Prior to the inspection of Country Club, the inspectors identified the following commonly abused and diverted drugs (audit drugs) to audit as part of the investigation:

| Generic Name and Dosages | Brand Names | Controlled Substance Per Health & Saf. Code¹ | Indications for Use |
|--|--------------------------------|--|----------------------------|
| oxycodone with acetaminophen (10mg/325mg; 5mg/325mg) | Percocet Endocet Roxicet | Schedule II per Health & Saf. Code § 11055, subd. (b) | Pain |
| hydrocodone with acetaminophen (10mg/325mg; 10mg/500mg; 5mg/500mg) | Lortab Norco Vicodin | Schedule III per Health & Saf. Code § 11056, subd. (e)(4) | Pain |
| alprazolam (1 mg) | Xanax | Schedule IV per Health & Saf. | Anxiety |

¹ The drugs selected for the audit are dangerous drugs that are classified by the California Health and Safety Code and Business and Professions Code, section 4022.

| | | | |
|------------------|---------|--|---------|
| | Niravam | Code § 11057, subd. (d) | |
| diazepam (10 mg) | Valium | Schedule IV per Health & Saf. Code § 11057, subd. (d) | Anxiety |

8. The audit period for the audit drugs was from March 15, 2010, through December 1, 2011 (audit period). The investigators selected March 15, 2010, as the start date of the audit period because Country Club was burglarized on that date. Respondent reported the burglary to the Board. At hearing, respondent testified that the majority of the controlled substances were stolen during the burglary, in addition to all of the paperwork that documented the amount of controlled substances received by Country Club. Therefore, March 15, 2010, served as the zero drug inventory date for the investigation.

Investigation and Inspection of Country Club

9. On December 1, 2011, Inspector Young and Inspector Hokana conducted an unannounced inspection of Country Club. When the inspectors arrived, respondent informed them that he was closing the business at the end of the day and that he sold his pharmacy inventory to CVS Pharmacy (CVS). Respondent informed the inspectors that CVS was scheduled to conduct a drug inventory the next day on December 2, 2011, and that CVS would move the drug inventory along with the pharmacy files.

10. Respondent also informed the inspectors that he sent a letter to the Board that stated Country Club would close on December 1, 2011. At the time of the inspection, the inspectors had not seen the letter and were not aware that respondent planned to close Country Club. Respondent provided the inspectors a copy of a November 18, 2011, letter he sent to the Board concerning the planned closure of Country Club and the sale of the drug inventory to CVS in Valley Springs. The letter states that “[w]ithin 30 days of closing, the State license, discontinuance of business form, and [sic] copy of CII through CV closing inventory will be returned...” At hearing, respondent testified that CVS prepared the letter which he signed and sent it to the Board. After the inspection, Mr. Young confirmed that on November 30, 2011, the Board received respondent’s letter.

11. During the inspection, Inspector Young informed respondent that within 30 days of the closure of Country Club, he was required to file with the Board a Discontinuance of Business form. The purpose of the form is to provide information to the Board concerning the closing pharmacy, where the pharmacy drug inventory will be transferred to, and where records of drug acquisition and disposition will be maintained after the pharmacy closure.

RETURNS TO STOCK AND TAKE-BACK DRUGS

12. The December 1, 2011, inspection took place from approximately 9:30 a.m. until after 3:30 p.m. During the inspection, Inspector Young observed next to respondent’s work station, a bin of dangerous drugs in amber prescription bottles with patient specific information on the bottles. Respondent informed the inspectors that the drugs were “returns

to stock” which were prescriptions that were not picked up by the customers. Respondent informed the inspectors that the returns to stock had not been reversed in the computer system and placed back into the drug inventory. Inspector Hokana informed respondent that he needed to process all the returns to stock before the end of the day. The purpose of returning the drugs to stock was to ensure that Country Club’s drug inventory was accurate. Respondent informed the inspectors that CVS was not purchasing many of the bottles of returns to stock and that he hoped that CVS would give him the name of a reverse distributor that would take the drugs. Respondent had no plan on how he would dispose of the drugs.

13. The inspectors also observed in the back room of Country Club, a box containing patient prescription containers, including two prescriptions of Cymbalta and one prescription of morphine sulfate.² Respondent informed the inspectors that the prescriptions were returned by patients. At hearing, Inspector Young referred to the returned prescriptions as “take-back” drugs. Respondent had no record of how he acquired the take-back drugs and Country Club did not participate in a sanctioned take-back drug program. The inspectors informed respondent that it was illegal to take-back drugs from customers. Respondent told the inspectors that he was not aware that it was illegal to take-back drugs and that he was providing a service to his customers who were unsure of how to dispose of unused pills.

14. At the end of the inspection, the inspectors prepared on-site at Country Club, an Inspection Report, which the inspectors discussed with respondent. The Inspection Report listed the deficiencies identified by the inspectors and directives for respondent to follow. One directive required respondent to send Inspector Young a detailed copy of the drug inventory he was required to send to a reverse distributor for the destruction of drugs not acquired by CVS. Respondent reviewed, signed, and was given a copy of the Inspection Report.

15. At hearing, respondent testified that CVS did not acquire any pharmaceuticals in prescription bottles. Respondent explained that after the inspection, the pharmaceuticals that were not acquired by CVS were shipped to EXP Pharmaceuticals for disposal. Respondent does not know how many pills he sent to EXP Pharmaceuticals, because he did not look closely at the paperwork. Respondent admitted that he did not send Inspector Young a copy of the drug inventory sent to EXP Pharmaceuticals. Respondent did not keep any records of the returns to stock or take-back drugs he claimed he sent to EXP Pharmaceuticals.

DISCREPANCIES IN THE DRUG INVENTORY

16. During the inspection, the inspectors asked respondent to provide a copy of Country Club’s last controlled drug inventory. However, the inventory was not available for

² Cymbalta and morphine sulfate are classified as dangerous drugs pursuant to Business and Professions Code, section 4022. Morphine sulfate is also classified as a Schedule II controlled substance pursuant to California Health and Safety Code section 11055, subsection (b)(1)(m).

inspection. At hearing, respondent testified that he was not able to locate the drug inventory, which was performed by California Inventory Specialist. Respondent testified that California Inventory Specialist performed an audit of the drug inventory after the March 15, 2010, burglary and in July 2011. Respondent explained that he provided the inspectors a billing receipt for the cost of the inventory, but the inspectors did not want the receipt. Inspector Young denied that respondent provided a receipt for the inventory.

17. As detailed in the Inspection Report, respondent was directed to send Inspector Young: (1) a copy of the physical inventory, including controlled substances; (2) an "end of day" report for December 1, 2011; and (3) Drug Usage Reports for the audit period, listing the date, prescription number, patient name, drug and quantity of audit drugs sold by Country Club. Respondent was instructed to send the requested documents to Inspector Young by the end of the day on December 2, 2012.

18. In the evening of December 1, 2011, respondent faxed to Inspector Young the "end of day" dispensing summary report for December 1, 2011. The end of day report consists of six pages, which summarizes all prescriptions dispensed by Country Club for that day. At hearing, respondent admitted that the end of day report would have shown credits to the inventory from returns to stock, had the returns been entered into the computer system. However, there were no returns to stock credits listed on the end of day report. Respondent testified that returns to stock had previously been entered in the computer system, so on the evening of December 1, 2011, he prepared a handwritten document listing the returns to stock with the drug name and pill count. Respondent stated that only a few of the returns to stock were the audit drugs. Respondent's testimony was inconsistent with his statement to the inspectors that as of December 1, 2011, the returns to stock had not been entered in the computer system. Respondent also testified that he then faxed the handwritten document to Inspector Young. However, Inspector Young did not receive any records from respondent listing the returns to stock.

19. On December 2, 2011, respondent faxed to Inspector Young, seven pages of Drug Usage Reports. The Drug Usage Reports included the quantity of each of the audit drugs sold by County Club during the audit period and the names of the manufacturers of the audit drugs.

20. Respondent testified that on December 1, 2011, he faxed approximately 60 to 100 pages of documents to Inspector Young, including Drug Usage Reports and on December 2, 2011, he faxed another 15 pages of documents. Respondent explained that the Drug Usage Reports he faxed listed additional manufacturers of the audit drugs sold by Country Club during the audit period. Respondent contends the additional 60 to 100 pages of documents would demonstrate that Country Club sold more quantities of the audit drugs than the drug quantities listed on the seven pages of Drug Usage Reports Inspector Young relied upon in his investigation. Respondent did not keep a copy of the documents he faxed to Inspector Young. Respondent testified that he is not sure if CVS took the documents he faxed to Inspector Young. Respondent explained that he shredded any documents left at Country Club at the end of the day on December 2, 2011.

21. Respondent's testimony that he faxed additional documents to Inspector Young is not credible. At hearing, Inspector Young denied that he received any documents from respondent other than those he included as attachments to his Investigation Report. Inspector Young explained that his Board office is located in his home and he has a Board issued fax machine. Inspector Young explained that if there were any documents faxed by respondent that did not print, an error message would have printed from the fax machine, which would have listed the reason for any type of transmission failure. Inspector Young did not receive any error message with the faxes sent by respondent.

22. On December 2, 2011, Ly Smith, a pharmacy supervisor for CVS, performed a controlled substance inventory of the drugs acquired from Country Club. Respondent was present during the inventory. Nancy Morita, a licensed pharmacist employed by CVS testified at the hearing in this matter. Ms. Morita authenticated a copy of the "Controlled Substances Inventory" form and supporting documents which lists the names and amounts of controlled substances counted at Country Club by CVS on December 2, 2011.³ Respondent does not dispute the controlled substances inventory amounts.

23. Respondent was required to send Inspector Young a copy of the controlled substances inventory by the end of the day on December 2, 2011. Respondent failed to do so. On December 9, 2011, at Inspector Young's request, Ms. Smith emailed him a copy of the controlled substances inventory. Thereafter, by email, Inspector Young confirmed with Ms. Smith the amount of audit drugs listed on the controlled substances inventory.

24. The inspectors determined that Valley Wholesale Drug Company and Anda, Inc. supplied Country Club with the audit drugs during the audit period. On December 5, 2011, Valley Wholesale Drug Company sent Inspector Hokana, at his request, a summary sales report listing the quantity of audit drugs sold to Country Club during the audit period.

25. On December 27, 2011, Anda Inc. sent Inspector Young, at his request, a summary sales report listing the quantity of audit drugs sold to Country Club during the audit period.

26. Inspector Young used the summary of sales reports from Valley Wholesale Drug Company and Anda Inc. to determine the total acquisition of audit drugs purchased by Country Club during the audit period. Inspector Young subtracted from the acquisition totals the dispositions of audit drugs by Country Club during the audit period. The disposition refers to the amount of audit drugs sold by Country Club. Inspector Young obtained the total disposition amount by adding the audit drug disposition numbers from the seven pages of Drug Usage Reports provided by respondent, to the total amount of audit drugs sold to CVS which were documented on the controlled substances inventory performed by CVS on December 2, 2011. By subtracting the disposition totals from the acquisition totals, Inspector

³ The form lists the inventory date as December 2, 2012. Ms. Morita testified that the date should be listed as December 2, 2011.

Young determined that for the audit period respondent could not account for the following variance, or inventory shortage of audit drugs:

| Generic Name and Dosages | Variance⁴ |
|---|-----------------------------|
| oxycodone with acetaminophen (5mg/325mg) | 1,366 |
| oxycodone with acetaminophen (10mg/325mg) | 17,780 |
| hydrocodone with acetaminophen (5mg/500mg) | 21,885 |
| hydrocodone with acetaminophen (10mg/325mg) | 81,538 |
| hydrocodone with acetaminophen (10mg/500mg) | 19,974 |
| alprazolam (1 mg) | 1,997 |
| diazepam (10 mg) | 1,680 |
| Total shortage of audit drugs | 146,220 |

FAILURE TO PROVIDE DOCUMENTS TO THE BOARD

27. On January 4, 2012, Debbie Anderson, a Licensing Manager for the Board, sent respondent a letter to his home address, which acknowledged receipt of respondent's November 18, 2011, letter informing the Board of the impending closure of Country Club. The letter from Ms. Anderson instructed respondent to submit within 15 days, the Discontinuance of Business form, the inventory of controlled substances, and the original wall/renewal license. The letter was sent regular mail and was not returned to the Board as undeliverable. Respondent did not respond to the January 4, 2012, letter, and he did not submit the requested documents to the Board.

28. Respondent testified that he did not receive the January 4, 2012, letter from Ms. Anderson. Respondent acknowledged that the letter was sent to his home address. However, respondent explained that he and his wife were "traveling quite a bit" around the time the letter was sent. Respondent denied that he failed to submit the requested information. Respondent testified that he submitted the required documents to the Board on January 3, 2012. Respondent stated that he sent to the Board by certified mail, a packet of information prepared by CVS to assist with the closure of Country Club, which contained all of the required paperwork, including the Discontinuance of Business form, the inventory paperwork and his wall license. Respondent did not keep a copy of any of the documents he claimed he mailed to the Board. At hearing, respondent submitted a certified mail receipt addressed to the Board.⁵ There is no information on the receipt concerning what documents were mailed to the Board. The return receipt was signed on January 4, 2012. However, the signature is unintelligible.

⁴ At hearing, Inspector Young explained that the "variance" in the audit drugs in this matter means the amount of missing audit drugs.

⁵ On October 16, 2012, along with the Accusation, respondent was served a Request for Discovery, which demanded any documents relevant to the hearing in this matter. Respondent did not produce the certified return receipt until the first day of hearing in this matter. Respondent testified that he had recently located the receipt.

29. On February 2, 2012, Inspector Young mailed to respondent a written notice of non-compliance (notice). In the notice, Inspector Young instructed respondent to provide information concerning the status of the dangerous drugs CVS did not acquire and the status of the returns to stock drugs. The notice also detailed the significant discrepancy between the acquisitions and dispositions of the audit drugs. Respondent was instructed to provide a written explanation for the discrepancy. Finally, the notice referenced the January 4, 2012, letter sent to respondent which instructed him to submit the Discontinuance of Business form, the inventory of controlled substances, and the original wall/renewal license. Inspector Young instructed respondent to submit all of the requested information by February 15, 2012. Respondent failed to respond to the notice and did not submit the requested information. The notice was sent regular mail and was not returned to the Board as undeliverable.

30. Respondent testified that he did not receive the February 2, 2012 notice and he did not learn about the notice until he was served with the Accusation in this matter by certified mail. Respondent was served with the Accusation on October 16, 2012.

Factors in Justification, Mitigation, and Rehabilitation

31. Respondent is 48 years old. After respondent obtained his pharmacist license in 1995, he worked for Longs, Rite Aid and several hospitals. In approximately 2003 respondent owned and was the PIC of Park Woods Drugstore in Stockton, California. He sold Park Woods to Safeway in 2007. In 2008 he opened Country Club. Respondent testified that he opened Country Club in Valley Springs, because CVS was the only pharmacy in Valley Springs, which is located in a remote area. Respondent wanted to give the community another pharmacy option. Respondent testified that he provided valuable services to his customers. Respondent did not submit any letters of reference and no witnesses testified on his behalf.

32. Respondent testified that when he decided to sell Country Club, in October 2011, he contacted CVS. As part of the purchase agreement with CVS, respondent agreed not to compete with CVS. Respondent is not employed and has not worked as a pharmacist since Country Club closed. However, respondent would like to work as a pharmacist and eventually own a pharmacy again.

33. Respondent denies that he used, sold, or diverted the missing audit drugs. Respondent was the only pharmacist at Country Club. He employed three or four staff. He does not believe his staff used, sold, or diverted the missing audit drugs.

34. Respondent testified that he does not know what happened to the missing audit drugs. However, he provided several justifications for the shortage. First, respondent claimed that Inspector Young miscounted the audit drugs inventory because he failed to count the disposition of audit drugs listed in the over 60 pages of additional Drug Usage Reports respondent claimed he faxed. Respondent stated that all of the physical files and computer files were taken by CVS. However, he provided inconsistent testimony concerning

the documents he allegedly faxed to Inspector Young. He does not know if CVS took those documents. He testified that he shredded any documents left at Country Club on December 2, 2011. Respondent did not acknowledge that it was improper to shred the documents and took no responsibility for the loss of the documents.

Second, respondent testified that when he trained Country Club staff, they would create “dummy” prescriptions using fictitious names. Respondent explained that the prescriptions were not filled. Respondent claimed that the fictitious entries could account for some of the shortage. Respondent did not inform the inspectors during the December 1, 2011 inspection, about the staff computer training. Inspector Young testified that if respondent had informed him that he was training staff by creating “dummy” prescriptions, he would have recalled the conversation and documented it in the Inspection Report. Inspector Young explained that such information would have been significant because it is illegal to alter a permanent record involving drug inventory.

Third, respondent testified that he sold audit drugs to doctors, which were not entered in the computer. The sales were documented on paper invoices. Respondent did not provide any estimate of how many sales were made to doctors and he did not keep records of the pharmaceuticals he sold. He claims that CVS acquired the invoices. Respondent testified that after he was served with the Accusation in this matter, he contacted CVS three times to inquire about obtaining copies of Country Club documents, but he received no response. Inspector Young testified that during the inspection, respondent did not provide any information or documents evidencing sales to doctors. Inspector Young explained that a pharmacy is permitted to sell drugs to physicians for office use. However, he explained, it would be rare for a physician to purchase any of the audit drugs from a pharmacy, because a physician would typically write a prescription for a patient, rather than supply the patient a controlled substance.

Factors in Aggravation

35. On November 3, 2010, the Board issued respondent a Modified Citation and fined respondent \$750.00, for the following violations:

- a. From June 15, 2009 through April 20, 2010, respondent failed to report CURES data for Schedule II, III, and IV controlled substances and dispensed an unknown number of those drugs. (Health & Saf. Code § 11165, subd. (d).)
- b. On July 6, 2009, respondent made a drug dispensing error, the customer was not informed of the error and a quality assurance evaluation was not performed. (Bus. & Prof. Code § 4125; Cal. Code Regs., tit. 16, § 1771.)
- c. Respondent failed to have written policies and procedures regarding an impaired licensed employee or theft of dangerous drugs by a licensed employee. (Bus. & Prof. Code § 4104, subd. (b).)

- d. On April 10, 2010, failed to follow the pharmacy technician ratio which allows only one pharmacy technician to perform technician duties when only one pharmacist is on duty. Respondent allowed pharmacy technician Vick Sturdevant to fill prescriptions and pharmacy technician Kelly Peters to compound ointments and creams while respondent was the only pharmacist on duty. (Bus. & Prof. Code § 4115, subd. (f)(1).)
- e. On October 12, 2007, November 14, 2007, December 11, 2007, April 10, 2008, April 29, 2008, and March 12, 2010, respondent furnished controlled substances without a prescription. (Health & Saf. Code § 11158, subd. (a).)
- f. On April 15, 2010, respondent knowingly signed a false DEA 106 Theft or Loss Report, estimating the amount of controlled substances stolen from Country Club on March 15, 2010. (Bus. & Prof. Code § 4301, subd. (g).)

Discussion

36. Pursuant to California Code of Regulations, title 16, section 1760, the Board has adopted Disciplinary Guidelines (Guidelines). The Guidelines provide that when determining the penalty to be imposed in a given case, the following applicable factors should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. time passed since the act(s) or offense(s)

11. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
12. financial benefit to the respondent from the misconduct

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

37. Applying the Guideline factors, the potential harm to the public created by respondent's failure to account for over 146,000 controlled substances is substantial. As the PIC and owner of Country Club, respondent was required to exercise care and good judgment in the accounting of his drug inventory and adherence to Pharmacy laws and regulations. Respondent failed to do so. Respondent failed to provide the Board with the documents demanded during the investigation, despite repeated requests. Respondent shredded documents and failed to keep copies of numerous vital documents that were relevant to the investigation. Respondent also improperly engaged in the take-back of drugs for which he had no records of acquisition. Furthermore, respondent was previously cited by the Board for failing to comply with Pharmacy laws and regulations. Respondent submitted no evidence of rehabilitation and took no responsibility for his failure to comply with the Pharmacy laws and regulations at issue in this matter. Rather, respondent had numerous excuses and baseless justifications for his conduct and his lack of accounting. It is unclear whether respondent's conduct was intentional or negligent. Regardless, his conduct created an inexcusable harm to the public.

The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) When all the evidence presented in this case is weighed and balanced, protection of the public can only be achieved through revocation of respondent's license.

Costs of Investigation and Enforcement

38. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. As of September 6, 2013, the Board incurred \$6,205 in attorney charges in connection with the prosecution of this case. The Deputy Attorney General assigned to the matter submitted a certification of prosecution costs at hearing. Additionally, as of August 30, 2013, the Board incurred \$4,488 in investigation costs. At hearing, the Board submitted declarations and statements of prosecution and investigation costs. As set

forth in Legal Conclusion 13, the costs of prosecution, investigation, and enforcement totaling \$10,693, are reasonable.

LEGAL CONCLUSIONS

1. A profession is a vocation or occupation requiring special and advanced education and skill predominately of an intellectual nature. The practice of pharmacy, like the practice of medicine, is a profession. (*Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19.)

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence" requires a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing as long as there is a high probability that the charge is true. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

3. Business and Professions Code section 4300, provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

Failure to Maintain Complete Accountability of Dangerous Drugs

4. Business and Professions Code section 4301, subdivisions (j) and (o) provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including:

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

[¶] ... [¶]

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

5. Business and Professions Code section 4081, subdivision (a), provides:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours

open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

6. California Code of Regulations, title 16, section 1718, provides that:

“Current Inventory” as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory.

7. Business and Professions Code section 4105, subdivision (a), provides:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

8. It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code sections 4300 and 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16, section 1718, in that respondent failed to comply with Business and Professions Code section 4081, subdivision (a) and section 4105, subdivision (a), independently and collectively due to his failure to account for 146,200 controlled substances and his possession of “take-back” prescription drugs, with no record of acquisition of the take-back drugs, as set forth in Factual Findings 7, 8, and 12 through 29.

Subversion of Board Investigation

9. Business and Professions Code section 4301, subdivision (q) provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including:

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

10. It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code sections 4300 and 4301, subdivision (q), in that respondent failed to comply with the Board's instructions to submit to the Board copies of records of disposition of dangerous drugs, as set forth in Factual Findings 12, 14, 15, 18, and 29.

Failure to Follow Board Instructions

11. California Code of Regulations, title 16, section 1708.2 provides that:

Any permit holder shall contact the board prior to transferring or selling any dangerous drugs, devices or hypodermics inventory as a result of termination of business or bankruptcy proceedings and shall follow official instructions given by the board applicable to the transaction.

12. It was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code sections 4300 and 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1708.2, in that respondent failed to comply with the Boards' instruction to submit to the Board the Discontinuance of Business form, a copy of the closing controlled substances inventory report, and the original wall/renewal license, as set forth in Factual Findings 11, 27 through 29.

Costs of Investigation and Enforcement

13. The Board may request the administrative law judge to direct a licensee found to have committed a violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. Respondent did not establish a basis to reduce or eliminate the costs in this matter. In the absence of evidence to the contrary, costs, in the amount of \$10,693, as set forth in Factual Finding 38, are reasonable.

Conclusion

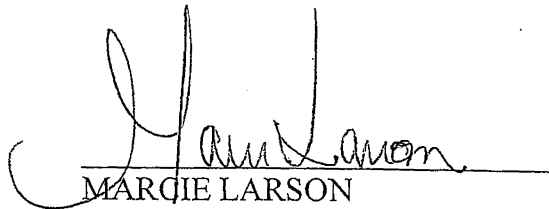
14. When considering the Factual Findings and Legal Conclusions as a whole, it would be contrary to the public interest to allow respondent to retain his pharmacist license.

ORDER

1. Pharmacist License number RPH 48263, issued to Michael Todd Peters is REVOKED.

2. Michael Todd Peters is ordered to pay the Board of Pharmacy \$10,693, within 30 days of the effective date of this Decision, or in accordance with a payment schedule as agreed to between respondent and the Board.

Dated: October 8, 2013


MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 4334

12 **MICHAEL TODD PETERS**
7302 Larkspur Lane
13 Stockton, CA 95207

ACCUSATION

14 Pharmacist License No. RPH 48263

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 21, 1995, the Board of Pharmacy ("Board") issued Pharmacist
22 License Number RPH 48263 to Michael Todd Peters ("Respondent"). The Pharmacist License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 June 30, 2013, unless renewed. Respondent was the Pharmacist-In-Charge of Country Club Drug
25 Store, located in Valley Springs, California, Pharmacy License Number PHY 49019, at all times
26 relevant to the charges brought herein.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code authorizes the Board to suspend or revoke any license
6 issued by the Board or to take any other action in relation to disciplining the licensee as the Board
7 in its discretion may deem proper.

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

12 **STATUTORY PROVISIONS**

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

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

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

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

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

23 7. Section 4081 of the Code states, in pertinent part:

24 (a) All records of manufacture and of sale, acquisition, or disposition of
25 dangerous drugs or dangerous devices shall be at all times during business hours
open to inspection by authorized officers of the law, and shall be preserved for at
26 least three years from the date of making. A current inventory shall be kept by
every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
27 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
or establishment holding a currently valid and unrevoked certificate, license,
28 permit, registration, or exemption under Division 2 (commencing with Section
1200) of the Health and Safety Code or under Part 4 (commencing with Section

1 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
2 of dangerous rugs or dangerous devices.

3 8. Section 4105 of the Code states, in pertinent part:

4 (a) All records or other documentation of the acquisition and disposition of
5 dangerous drugs and dangerous devices by any entity licensed by the board shall
6 be retained on the licensed premises in a readily retrievable form.

7 9. Section 4113 of the Code states, in pertinent part:

8 (a) Every pharmacy shall designate a pharmacist-in-charge and, within 30
9 days thereof, shall notify the board in writing of the identity and license number
10 of that pharmacist and the date he or she was designated.

11 (c) The pharmacist-in-charge shall be responsible for a pharmacy's
12 compliance with all state and federal laws and regulations pertaining to the
13 practice of pharmacy.

14 10. Section 4332 of the Code states:

15 Any person who fails, neglects, or refuses to maintain the records required
16 by Section 4081 or who, when called upon by an authorized officer or a member
17 of the board, fails, neglects, or refuses to produce or provide the records within
18 reasonable time, or who willfully produces or furnishes records that are false, is
19 guilty of a misdemeanor.

20 11. Section 4022 of the Code states, in pertinent part:

21 "Dangerous drug" . . . means any drug . . . unsafe for self-use in humans or
22 animals, and includes the following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits
24 dispensing without prescription," "Rx only," or words of similar import.

25 (c) Any other drug . . . that by federal or state law can be lawfully
26 dispensed only on prescription or furnished pursuant to Section 4006.

27 **REGULATORY PROVISION**

28 12. California Code of Regulations, title 16, section 1708.2 provides:

Any permit holder shall contact the board prior to transferring or selling
any dangerous drugs, devices or hypodermics inventory as a result of termination
of business or bankruptcy proceedings and shall follow official instructions given
by the board applicable to the transaction.

13. California Code of Regulations, title 16, section 1718, states:

'Current Inventory' as used in Sections 4081 and 4332 of the Business and
Professions Code shall be considered to include complete accountability for all
dangerous drugs handled by every licensee enumerated in Sections 4081 and
4332.

1 The controlled substances inventories required by Title 21, CFR, Section
2 1304 shall be available for inspection upon request for at least 3 years after the
3 date of inventory.

4 **14. DRUGS**

| 5 BRAND NAME | 6 GENERIC NAME | 7 DANGEROUS DRUG PER CODE SEC. 4022 | 8 CONTROLLED SUBSTANCE PER HEALTH & SAFETY CODE SEC. | 9 INDICATIONS FOR USE |
|---|--------------------------------------|--|---|------------------------------|
| 10 Xanax 11 Nirvam | alprazolam | Yes | HSC 11057(d) – Schedule IV | Anxiety |
| 12 Valium | diazepam | Yes | HSC 11057(d) – Schedule IV | Anxiety |
| 13 Lortab 14 Norco 15 Vicodin | hydrocodone with acetaminophen | Yes | HSC 11056(e)(4) – Schedule III | Pain |
| 16 Percocet 17 Endocet 18 Roxicet | oxycodone with acetaminophen | Yes | HSC 11055(b) – Schedule II | Pain |

19 **COST RECOVERY**

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

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Complete Accountability of Dangerous Drugs)**

26 16. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
27 subdivision (j) and (o), on the grounds of unprofessional conduct, and in conjunction with
28 California Code of Regulations, title 16, section 1718, in that Respondent failed to comply with
Code sections 4081, subdivision (a), and 4105, subdivision (a). The circumstances are as follows:

a. A Board audit for the period of March 15, 2010, to December 1, 2011, at Country
Club Drug Store, while Respondent was the pharmacist-in-charge, determined an inventory
shortage (acquisitions greater than dispositions) of dangerous drugs as follows: (i) 1,997
alprazolam 1mg tablets; (ii) 1,680 diazepam 10mg tablets; (iii) 17,780 oxycodone with
acetaminophen 10/325mg tablets; (iv) 1,366 oxycodone with acetaminophen 5/325mg tablets;

1 (v) 81,538 hydrocodone with acetaminophen 10/325 tablets; (vi) 19,974 hydrocodone with
2 acetaminophen 10/500mg tablets; and, (vii) 21,885 hydrocodone with acetaminophen 5/500mg
3 tablets; for a total of 146,220 tablets unaccounted for.

4 b. During a December 1, 2011, Board inspection of Country Club Drug Store, while
5 Respondent was the pharmacist-in-charge, Respondent had in his possession a box of "take back"
6 prescription drugs which patients of the pharmacy provided to the store to discard on their behalf.
7 Respondent had no records of acquisition to account for the "take back" inventory and had no
8 records to account for the destruction of those drugs.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Subverted or Attempted to Subvert Board Investigation)**

11 17. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
12 subdivision (q), on the grounds of unprofessional conduct, in that Respondent engaged in conduct
13 that subverted or attempted to subvert a Board investigation. The circumstances are as follows:

14 a. Respondent failed to comply with the Board's official instructions to provide
15 copies of records of disposition for the dangerous drugs in prescription bottles for return to stock
16 (which had not been acquired by the successor company purchasing Country Club Drug Store).
17 The records were relevant to the Board's audit and inspection of December 2, 2011.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Failure to Follow Board's Instructions – Dangerous Drugs)**

20 18. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
21 subdivision (o), on the grounds of unprofessional conduct, in conjunction with California Code of
22 Regulations, title 16, section 1708.2. The circumstances are as follows:

23 a. Respondent failed to comply with the Board's official instructions to submit to the
24 Board, the Discontinuance of Business form, a copy of the closing controlled substances
25 inventory report, and the original wall/renewal license.

26 **DISCIPLINARY CONSIDERATIONS**

27 19. To determine the degree of discipline, if any, to be imposed on Respondent,
28 Complainant alleges:

1 a. On or about September 1, 2010, the Board issued Citation Number CI-2010-
2 45568 to Respondent for the following violations: Health and Safety Code ("HSC") section
3 11165, subdivision (d) (\$750.00 fine); Business and Professions Code ("Code") section 4125 and
4 California Code of Regulations ("CCR") title 16, section 1771 (\$250.00 fine); CCR section
5 1793.7, subdivision (e) (\$250.00 fine); Code section 4104, subdivision (b) (\$250.00 fine); Code
6 section 4115, subdivision (f)(1) (\$500.00 fine); Code section 4076, subdivision (a)(5) (cited
7 without a fine); Code section 4059, subdivision (a) (\$250.00 fine); Code sections 4081,
8 subdivision (a), and 4105 (\$1,000.00 fine); and, Code section 4060 and HSC section 11158,
9 subdivision (a) (\$1,000.00 fine); and, Code section 4301, subdivision (g) ("500.00 fine).
10 Respondent appealed the Citation.

11 On or about November 3, 2010, the Board issued Modified Citation and Fine Citation
12 Number CI-2010-45568 as follows: HSC section 11165, subdivision (d) (cited without a fine);
13 Code section 4125 and CCR section 1711 (cited without a fine); Code section 4104, subdivision
14 (b), (\$250.00 fine); Code section 4115, subdivision (f)(1) (\$250.00 fine); Code section 4060 and
15 Health and Safety Code section 11158, subdivision (a) (\$250.00 fine); and Code section 4301,
16 subdivision (g) (citation without a fine). The Board notified Respondent that the total amount of
17 the modified fines was \$750.00 and payment was due by December 1, 2010. Respondent timely
18 paid the fines.

19 **PRAYER**

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

- 22 1. Revoking or suspending Pharmacist License Number RPH 48263 issued to Michael
23 Todd Peters;
- 24 2. Ordering Michael Todd Peters to pay the Board of Pharmacy the reasonable costs of
25 the investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3; and

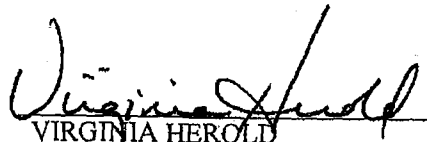
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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/25/12


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

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