

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

In the Matter of the Accusation Against:

JAMES DOUGLAS BLAIR
P.O. Box 7092
Laguna Niguel, CA 92607

Pharmacist License No. RPH 30343

Respondent.

Case No. 4647

OAH No. 2013110556

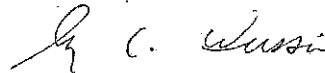
DECISION AND ORDER

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 February 2, 2015.

It is so ORDERED on January 2, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 6, 2014, in San Diego, California.

Antoinette B. Cincotta, Deputy Attorney General, Department of Justice, represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Edward R. Munoz and Jorge Ledezma, Attorneys at Law, represented respondent, James Douglas Blair, who was present throughout the disciplinary proceeding.

On November 6, 2014, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 29, 2013, complainant signed Accusation (Case No. 4647) in her official capacity. The accusation alleged that respondent, a registered pharmacist, was convicted on November 29, 2012, of violating Penal Code section 647, subdivision (j)(1) (disorderly conduct – unlawful viewing), a substantially related crime (first cause for discipline) and that the conviction involved unprofessional conduct consisting of moral turpitude (second cause for discipline).

Respondent filed a notice of defense.

The matter was set for hearing.

On November 6, 2014, the record in the administrative proceeding was opened; jurisdictional documents were presented; sworn testimony and documentary evidence were received; official notice was taken of the Board's disciplinary guidelines; closing arguments were given; the record was closed; and the matter was submitted.

License History

2. On July 6, 1976, the Board issued Original Pharmacist License No. RPH 30343 to James Douglas Blair. No disciplinary action previously has been sought against Original Pharmacist License No. RPH 30343.

The November 29, 2012, Conviction

3. On November 29, 2012, Mr. Blair was convicted, on his plea of guilty, of three counts of violating Penal Code section 647, subdivision (j)(1) (disorderly conduct – unlawful viewing), each count a misdemeanor, in the Superior Court of California, County of Orange, Harbor Judicial Center, Newport Beach Facility, in Case No. 12HM10153.

The Superior Court suspended imposition of sentence and placed Mr. Blair on three years' informal probation. Conditions of probation required Mr. Blair to obey all laws, submit to search and seizure, use his true name and date of birth at all times, disclose the terms of his probation upon request by probation or law enforcement officers, pay fines and fees of approximately \$330, and provide 30 days of community service.

Mr. Blair complied with all terms and conditions of probation.

On July 4, 2014, the Superior Court granted Mr. Blair's petition for early termination of probation.

On August 12, 2014, the Superior Court permitted Mr. Blair to withdraw his guilty plea and granted his motion to dismiss the conviction based on that plea, pursuant to Penal Code section 1203.4.

Circumstances of the Offense

4. On the morning of February 20, 2012, Mr. Blair, who was then employed as a pharmacist at Hoag Hospital in Newport Beach, installed a very small camera inside a ladies' restroom located at the hospital. A female employee who used the restroom later that morning discovered the camera, which was taped to plumbing under the sink and was aimed directly at the toilet she was using. The female employee immediately notified hospital security. A security officer investigated and called the Newport Beach Police Department. Photographs of three female employees using the toilet were discovered on the camera that Mr. Blair had concealed in the ladies' restroom.

Later that day, after he learned that the camera had been discovered, Mr. Blair contacted the hospital's security department and confessed that he was responsible for hiding the camera in the restroom. Mr. Blair remained at the hospital and repeated his confession to a police detective. He told the detective, "I did something really stupid." He told the detective that he was trying to get back at co-workers who were lazy, that he intended to take photograph of co-workers on the toilet, and that he planned to put photographs in the respective co-workers' mail boxes with captions that stated "Get off your lazy ass."

After he confessed, Mr. Blair consented to a search of his home. All computers in his home were inspected. The hard drive from his personal home computer was seized and carefully examined at the Newport Beach Police Department. No improper material or pornography was found on any computer.

Substantial Relationship

5. Christine Acosta, a Supervising Inspector, has been employed by the Board for three years. Ms. Acosta has been a licensed pharmacist since 2006. Before her employment with the Board, Ms. Acosta worked as a staffing pharmacist and as pharmacist in charge for two years, after which she worked as a hospital pharmacist for three years.

6. Ms. Acosta testified that pharmacists must be responsible and trustworthy and that pharmacists often supervise and manage others in retail and hospital pharmacy settings. Privacy is important in both retail and hospital pharmacy settings. Patient privacy includes such matters as medical history, current medical conditions, social security numbers, and other personal information. The need for a pharmacist to maintain patient privacy and to respect the privacy rights of all others is repeatedly stressed in training, and it is a critical aspect of the practice of pharmacy. It is important for the staff and others in a pharmacy to have confidence in the pharmacist.

Ms. Acosta was familiar with the facts and circumstances underlying Mr. Blair's conviction. She testified that the conviction was substantially related to the qualifications, functions and duties of a licensed pharmacist because it demonstrated Mr. Blair's poor judgment and his violation of the privacy rights of others. Ms. Acosta testified that the Board was concerned with evidence that disclosed a pharmacist's lack of sound judgment because of the risk of harm that character defect posed to the public.

7. Ms. Acosta was not aware of Mr. Blair having exercised poor judgment other than in the incident that gave rise to his conviction.

Respondent's Testimony Concerning the Offense

8. Mr. Blair testified that when he arrived at Hoag Hospital the morning of February 20, 2012, he was wearing a windbreaker that he had worn that weekend when he was mountain biking. A very small digital video camera that he used when biking was in the windbreaker's pocket.

After arriving at work, Mr. Blair observed a female co-worker "surfing the Internet" for a couple of hours. He said the female co-worker routinely surfed the Internet and that she often did not complete her assignments. Mr. Blair said her laziness made him frustrated and angry because he and others were required to finish the work she had not finished at the end of their shifts. He said he decided to confront the co-worker by taking a picture of her sitting on the toilet, putting a deprecatory caption on the picture, and anonymously putting the picture in her employee mailbox.

Mr. Blair claimed it took no more than two or three minutes from the moment he conceived of the plan to his implementation of it. He entered the ladies' restroom, found tape in the restroom, used the tape to mount the camera to a pipe underneath the sink, and positioned the camera so it directly faced the toilet. He did not believe his conduct was sexually motivated at the time.

Mr. Blair went on rounds after leaving the camera in the ladies' restroom. While he was on rounds, he realized that he had committed a gross violation of rights of privacy, so he decided to remove the camera. When he returned to the area of the ladies' restroom, he determined from activity in the area that the camera had been found. He did not know what to do, so he told his supervisor he was sick and asked permission to go home. After Mr. Blair received permission, he drove around for a while, thought about what he had done, realized that he had to disclose his wrongdoing, called hospital security, and confessed. He returned to the hospital, spoke with security, waited for the police to arrive, and spoke with the detective assigned to investigate the matter. He consented to a search of his home and to the seizure and examination of all computers located in his home.

Hoag Hospital terminated Mr. Blair's employment shortly thereafter.

9. Since February 20, 2012, and as a result of his involvement in the criminal justice system and his contact with mental health care providers, Mr. Blair has gained an appreciation of some of the reasons he placed a camera in the ladies' restroom. He testified that his misconduct involved more than simple frustration with a co-employee; he acknowledged, "I do believe now that I am a flawed character."

Respondent's Background, Education, Training, and Experience

10. Mr. Blair is 65 years old. He has been a licensed pharmacist for 35 years. He has no other disciplinary history. Other than the conviction at issue in this matter, he has no other criminal history.

Mr. Blair is married to Laura Blair, a licensed pharmacist who works at Orange Coast Memorial Medical Center. Mr. Blair and his wife have two children, a thirteen-year-old daughter and an 11-year-old son. The Blair family lives in southern Orange County. Mr. Blair has three adult children from an earlier marriage.

11. The credible testimony of Mr. Blair's professional colleagues established that until February 20, 2012, Mr. Blair maintained continuous, successful employment as a hospital pharmacist. He enjoyed an excellent professional reputation, and he served as a mentor to many newly licensed pharmacists.

12. Following the termination of his employment at Hoag Hospital, Mr. Blair obtained employment at Cardinal Health where he worked the night shift. He began employment with Cardinal Health before his conviction. After his conviction, and when Mr. Blair's conviction became known to Cardinal Health, his employment was terminated.

Mr. Blair was thereafter employed at Orange Coast Memorial Hospital on a per diem basis. His employment at Orange Coast was terminated as a result of his conviction.

Mr. Blair has applied for numerous positions as a pharmacist since working at Orange Coast. He discloses the fact of his conviction in his applications for employment. He testified that in response to his applications, he always receives an, "I am sorry, we are not hiring now" reply.

13. Mr. Blair testified that his conviction has resulted in a "professional backlash" within the community, that he lost his hard-earned professional and personal reputations, that the conviction damaged his relationship with his wife, that new employment has been next to impossible to obtain, and that his misconduct has resulted in a tremendous financial hardship to his family. He blamed no one but himself for these problems. His expression of remorse for his personal situation and for the disgrace he brought upon his family and profession was profound and sincere.

The Expert Testimony

14. On October 31, 2013, Veronica Thomas, Ph.D., a clinical and forensic psychologist with offices in Orange County, evaluated Mr. Blair. Dr. Thomas specializes in sexual misconduct and related matters. Her assignment was to assess Mr. Blair and gain an understanding of his motivation in placing a camera in the ladies' restroom at Hoag Hospital on February 20, 2012. Ms. Thomas reviewed available police and law enforcement reports, interviewed Mr. Blair for five hours, and obtained psychological testing.

Mr. Blair was cooperative and straightforward during the interview and testing. He completed a standardized personality test, the Able Assessment for Sexual Interest, a sex inventory, and a mental status examination.

Based on her interview with Mr. Blair and the results of psychological testing, Dr. Thomas concluded that Mr. Blair's primary diagnoses included paraphilia (voyeurism) and major depression; he did not have a personality disorder, but he had passive-aggressive personality features; he had no medical issues that impacted him psychologically; he was very stressed by his current professional situation; and he was currently functioning in a manner consistent with existing psychosocial stressors. Dr. Thomas defined "paraphilia" as

a diagnosable psychological condition characterized by compulsive thoughts. She explained that voyeurism involved an individual's sexual interest in or practice of spying on others engaged in intimate behaviors, such as undressing, sexual activity, or other private activities. Secretly taking pictures of others engaged in private behavior was a form of voyeurism.

Dr. Thomas believed that on February 20, 2012, Mr. Blair was depressed, had problems at home, and was frustrated about what was happening at work. He had an underlying paraphilia that involved voyeurism, which he did not appreciate. Mr. Blair's passive aggressive personality led him to believe that it might be a good idea to place a camera in the ladies' restroom to get back at his co-employee, and his depression prevented him from realizing how inappropriate this thought was. It was, according to Dr. Thomas, "a perfect storm." She characterized Mr. Blair's misconduct as a "situational and opportunistic incident." Nevertheless, Dr. Thomas believed that Mr. Blair knew, at some level, that what he was doing was wrong. She testified that she did not know whether the incident on February 20, 2012, was the "one and only time" that Mr. Blair had engaged in voyeurism, and that it would surprise her if it was the only time he did so "because most people usually don't get caught the first time." Voyeurism can be treated, and Dr. Thomas believed that Mr. Blair's likelihood of a successful recovery from his paraphilia was encouraging.

Mr. Blair's lack of any history of substance abuse was an important factor in Dr. Thomas reaching the conclusion that Mr. Blair likely will not reoffend. Mr. Blair reported his misconduct to hospital security and the police after he learned that the camera had been discovered, rather than denying any involvement until proof was obtained, which was an important factor in Dr. Thomas reaching the conclusion that Mr. Blair's chances of recovery are favorable. Finally, the absence of any pornography or other offensive material stored in Mr. Blair's home computers was encouraging and demonstrated the absence of comorbid conditions. While Dr. Thomas could not guarantee that Mr. Blair would not reoffend, she believed it was more likely than not that he would not reoffend if he underwent appropriate treatment.

Dr. Thomas spoke with Mr. Blair following her evaluation. He was surprised to learn that he was clinically depressed. He acknowledged having passive-aggressive tendencies, and he was very disturbed to learn about the sexual component related to his voyeurism.

Dr. Thomas believed that Mr. Blair would do well with cognitive behavioral therapy (CBT), a psychotherapeutic approach that deals with maladaptive behaviors and cognitive processes through goal-oriented, explicit systematic procedures. CBT acknowledges that there may be behaviors that cannot be controlled through rational thought. CBT is a problem-focused and action-oriented therapy. In addition to psychotherapy utilizing CBT, Dr. Thomas recommended that Mr. Blair undergo a polygraph examination twice a year to expose subtle denial or outright misrepresentations, and she mentioned that her office regularly arranges for polygraph examinations. Dr. Thomas recommended that Mr. Blair have a monitor at work with whom he could discuss his current situation and functioning for the next few years.

15. Dr. Thomas referred Mr. Blair to a colleague, Paul Larsen, a licensed psychotherapist, for psychotherapy related to Mr. Blair's voyeurism and depression. She also recommended that Mr. Blair discuss his major depression with his family physician and seek medical treatment for it if indicated.

Current Psychotherapy

16. Mr. Blair began seeing Mr. Larsen on October 31, 2013. Mr. Blair attended weekly psychotherapy sessions with Mr. Larsen for the first five months of psychotherapy (through March 2014), and then attended psychotherapy twice a month. According to Mr. Blair, psychotherapy has been very valuable in helping him recognize his "problems" and deal with them more directly.

17. Mr. Larsen wrote a letter dated October 28, 2014, that supplemented and explained Mr. Blair's testimony about his psychotherapy. According to the letter, Mr. Larsen provided Mr. Blair with sex specific treatment after consulting with Dr. Thomas. Mr. Blair has sought help since he started psychotherapy. Mr. Blair does not use street or dangerous drugs, and he does not use alcohol to excess. He does not use pornography. As a result of psychotherapy, Mr. Blair has become increasingly involved in physical and recreational activities with his son. He has developed more effective communication techniques. He has structure in his life that promotes healthful living. His marriage is improving. The risk of Mr. Blair engaging in inappropriate forms of instant gratification has lessened, and Mr. Blair has become aware of the former and problematic ways he dealt with life's difficulties. The letter did not set forth a definitive prognosis.

18. Mr. Blair currently does not attend any kind of self-help meetings. He has not discussed with his family physician the possibility of taking anti-depressant medications. At the hearing, he expressed an interest in pursuing these matters. Dr. Blair testified he would accept any term or condition of probation that might be necessary to maintain his professional license.

Character Evidence

19. Richard Wong has been a licensed pharmacist since 1978. He started working "shoulder to shoulder" with Mr. Blair in 1979. Mr. Blair essentially trained and mentored Mr. Wong as a hospital pharmacist. They worked together at an intensive care unit from 1995 through 2004. Mr. Blair was highly competent and pleasant to work with. He was a calming influence and a team player. He was always composed, even in the midst of chaos, and he cared deeply about patients. According to Mr. Wong, Mr. Blair was one of the best pharmacists with whom he had worked.

Mr. Blair told Mr. Wong that he "made an error in judgment, a stupid mistake," and disclosed the details of his misconduct. Mr. Blair told Mr. Wong that he "was not even sure why he put the camera there." Mr. Blair's misconduct came as a great surprise to Mr. Wong, who had never seen Mr. Blair violate the trust of any co-employee or patient. Mr. Wong was

of the opinion that Mr. Blair respected the privacy of others. Mr. Blair was one of the most trustworthy, honest persons Mr. Wong had ever met.

Mr. Wong and Mr. Blair do not socialize with each other. Mr. Blair provided six units of blood for Mr. Wong's daughter during her surgery.

20. Joy Bonde has worked as a pharmacist at Saddleback Memorial Hospital since 1990. She has known Mr. Blair for 26 years and worked with him for 18 years. Ms. Bonde and Mr. Blair socialize with each other on occasion.

Within the past couple of years, Mr. Blair told Ms. Bonde that he was having difficulties because one day, while he was working at Hoag Hospital, he impulsively put a camera in the ladies' restroom to take pictures of a lazy co-worker. According to Ms. Bonde, this statement was shocking because it was "nothing like I would ever expect from Jim He is not a predator." Ms. Bonde had worked with Mr. Blair for many years, and she had never seen him engage in any kind of unethical conduct or violate anyone's right of privacy.

Ms. Bonde said Mr. Blair was a loving and patient father, as well as a highly competent hospital pharmacist. She said she "would hire Jim back in a heartbeat," even if he held a probationary license and that she would be happy to serve as his worksite mentor if that were required.

21. Russell Waki has been licensed as a pharmacist since 1983. He is currently the pharmacist in charge of Long Beach Memorial Hospital's intensive care unit. He has known Mr. Blair since 1982, when Mr. Waki was interned at Long Beach Memorial Hospital before he received his license.

Mr. Waki and Mr. Blair worked together for more than 20 years. Mr. Blair was always very professional. Mr. Blair was a highly competent hospital pharmacist who served as Mr. Waki's mentor in the early years of Mr. Waki's career. Later, Mr. Waki became Mr. Blair's supervisor. According to Mr. Waki, Mr. Blair was never abusive to others, even when he was under pressure. Mr. Waki never saw Mr. Blair act in an unethical manner or violate anyone's privacy. Mr. Blair always received excellent performance evaluations. Mr. Blair left Long Beach Memorial Hospital to obtain other employment closer to home.

Since then, Mr. Waki and Mr. Blair have continued a social relationship. Mr. Blair is an exceptional father who spends time with all his children.

Mr. Waki would recommend Mr. Blair be hired as a pharmacist in the intensive care unit if a position opened up at Long Beach Memorial Hospital. He would serve as Mr. Blair's worksite monitor if that were required.

22. Donald Kato has been licensed as a pharmacist since 1971. He is currently the Director of Pharmacy at the Orange Coast Memorial Medical Center. He has known Mr.

Blair since 1976, when they were employed together at Long Beach Memorial Hospital. Mr. Kato was familiar with the details of the misconduct underlying Mr. Blair's conviction.

Mr. Kato testified that Mr. Blair possessed a great work ethic, was highly competent, and was very ethical. Mr. Blair was an extremely honest individual. Mr. Kato would hire Mr. Blair if a position opened up.

23. Sigrid Boubbov, RN, Mr. Blair's former wife, testified. She and Mr. Blair were married from 1982 to 2000. She and Mr. Blair have three children, now ages 30, 28, and 21. Within the past couple of years, Mr. Blair told Ms. Boubbov that he put a camera in the ladies' restroom at Hoag Hospital. This statement shocked Ms. Boubbov "because it was totally out of character." Ms. Boubbov testified that Mr. Blair was an excellent father, that he was caring and very involved with their children, that he was a good provider, and that he was a truthful person. Mr. Blair was very proud of being a pharmacist, was extremely hard working, and was well-liked by others in his profession. Ms. Boubbov trusts Mr. Blair.

24. Laura Blair, Mr. Blair's current wife, was unable to attend the hearing. She provided a letter in support of Mr. Blair that supplemented and explained other non-hearsay evidence. The letter stated that she met her husband in 1987, when she was a pharmacy intern and he was a pharmacist in the intensive care unit at Long Beach Memorial Medical Center. After she became licensed, she and Mr. Blair worked together for many years. Mr. Blair was always professional, was a leader by example, and was respected by those who worked with him. Mr. Blair served as a mentor to many pharmacy interns, residents and licensed pharmacists. Mr. and Ms. Blair married.

Since their marriage, Mr. Blair has been gentle and kind to Ms. Blair, has treated her and their children with respect and understanding; and has made the family's needs his highest priority. Mr. Blair is religious, and he serves God through his profession. Before he lost employment, he was a good provider, according to Ms. Blair.

The legal actions have been emotionally and financially devastating. Mr. Blair is currently unable to find any employment. While Ms. Blair cannot explain her husband's misconduct, she knows he deserves a second chance.

Disciplinary Guidelines

25. The Board enacted comprehensive disciplinary guidelines. The Board recognizes that individual cases may necessitate a departure from the guidelines; in such cases, the mitigating circumstances should be detailed, especially where a Category III violation is involved.

This matter at issue is a Category II violation because it involves a criminal conviction that does not include the use of dangerous drugs or controlled substances; it is an ethical violation; and it has the potential to cause serious harm. For Category II violations, the guidelines recommend a minimum discipline of revocation stayed, three years' probation;

standard terms and conditions, and optional terms and conditions as appropriate. For Category II violations the guidelines recommend a maximum discipline of outright revocation.

In determining whether minimum, maximum, or intermediate discipline should be imposed in a given case, factors such as the following should be considered: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record, including level of compliance with disciplinary orders or prior warnings, including but not limited to citations and fines, any letters of admonishment, and/or correction notices; number and/or variety of current violations; nature and severity of the acts, offenses or crimes under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; compliance with terms of any criminal sentence, parole, or probation; overall criminal record; if applicable, evidence of proceedings of the criminal case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code; time passed since the acts or offenses; whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, whether the respondent had knowledge of, or knowingly participated in, such conduct; and financial benefit to the respondent from the misconduct. No single factor or combination of factors is required to justify the minimum, intermediate, or maximum penalty in a given case.

The Appropriate Measure of Discipline

26. Mr. Blair is a 65-year-old pharmacist. He has been licensed since June 1976. He has no other disciplinary history; his criminal history is limited to the November 2012 conviction for disorderly conduct (unlawful viewing). Until his arrest in February 2012, Mr. Blair maintained continuous employment as a hospital pharmacist, enjoyed an excellent professional reputation, and served as a mentor to many newly licensed pharmacists.

Mr. Blair's conviction involved gross violations of the privacy rights of others; however, the underlying misconduct did not involve the actual or potential harm to any consumer. Mr. Blair's wrongdoing was certainly unsettling to the pharmacy staff and others employed at Hoag Hospital, and it brought disrespect to Mr. Blair and the profession. Mr. Blair's employment at Hoag Hospital was terminated as a result of his unlawful activity, and since then Mr. Blair's employment opportunities have been challenging.

A forensic psychologist opined that on February 20, 2012, Mr. Blair was depressed, having problems at home, and was frustrated about what was going on at work. His passive-aggressive personality led him to believe that it might be a good idea to place a camera in the ladies' restroom to photograph a lazy co-employee, and his depression prevented him from realizing how inappropriate that thought was. The psychologist believed that the likelihood of Mr. Blair's rehabilitation was promising with appropriate psychotherapy, and that practice restrictions should be imposed during any period of rehabilitation. Mr. Blair is currently in treatment with a psychotherapist, and he is willing to have his practice restricted in any manner the Board believes necessary to protect the public.

27. Mr. Blair's license should be revoked, the revocation should be stayed, his license should be suspended until he is found fit to practice by a Board-approved evaluator following a mental health examination, and, if he is found fit to practice, probation should be imposed for a period of five years. In addition to standard terms and conditions, probation should include terms of probation that require Mr. Blair to complete an ethics course, continue with psychotherapy until no longer deemed necessary, undergo a polygraph examination every six months if recommended by the Board-approved evaluator until no longer deemed necessary, and have a worksite monitor.

The disciplinary order set forth herein is consistent with the recommendations outlined in the Board's disciplinary guidelines. The order will protect the public.

Costs of Investigation and Enforcement

28. A declaration of the deputy attorney general who prosecuted this matter was submitted to support prosecution costs. An activity log was attached to the declaration that set forth the time spent in the prosecution of the matter, including the names of the persons providing services, the services provided, the dates services were provided, and the fees charged for those services. No objection was made to the cost declaration or attachment. The deputy attorney general who prosecuted the matter was, as always, well prepared and very professional.

Under all the circumstances, it would not be unjust to award the Board \$3,375.50 for its reasonable costs of enforcement.

29. No argument was made to reduce the costs of enforcement.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional licensee are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

Burden and Standard of Proof

2. The standard of proof required to revoke a professional license is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Applicable Disciplinary Statutes and Regulations

3. Business and Professions Code section 490 provides in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued

4. Business and Professions Code section 4301 provides in 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:

[¶] . . . [¶]

(f) the commission of any act involving moral turpitude whether the act is committed in the course of relations as a licensee or otherwise

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

5. California Code of Regulations, title 16, section 1769, provides in part:

For the purpose of . . . suspension, or revocation of a personal . . . license . . . a crime or act shall be considered substantially related to the qualifications, functions or duties of a 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.

Substantial Relationship

6. Mr. Blair's November 29, 2012, conviction for disorderly conduct (unlawful viewing) is substantially related to the qualifications, functions, or duties of a licensed pharmacist because the conviction evidences his potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

Moral Turpitude

7. A conviction that reflects upon a professional's fitness to practice an occupation is a far cry from whether such conviction has some relevance on the issue of a witness's credibility. For that reason, a moral turpitude finding in one context is not determinative on the issue of moral turpitude in the other. (*In re Grant* (2014) 58 Cal.4th 469, 476.) Within the context of professional disciplinary cases, moral turpitude should be defined with the aim of protecting the public, promoting confidence in the profession, and maintaining high professional standards. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

8. Mr. Blair surreptitiously placed a camera in a ladies' restroom, conduct that involved a gross violation of the privacy of persons using that restroom. The conduct was vile, outrageous, and involved moral turpitude.

Rehabilitation

9. California Code of Regulations, title 16, section 1769, subdivision (c), provides in part:

(c) When considering the suspension or revocation of . . . a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

10. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an individual demonstrates by sustained conduct over an

extended period of time that he is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

Cause Exists to Impose Administrative Discipline

11. First Cause for Discipline: Cause exists to revoke Mr. Blair's license under Business and Professions Code sections 490 and 4301, subdivision (l). Clear and convincing evidence established that on November 29, 2012, Mr. Blair was convicted, on his plea of guilty, of violating Penal Code section 647, subdivision (j) (disorderly conduct – unlawful viewing), a conviction that is substantially related to the qualifications, functions or duties of a pharmacist.

12. Second Cause for Discipline: Cause exists to revoke Ms. Blair's license as a pharmacist under Business and Professions Code section 4301, subdivision (f). Clear and convincing evidence established that on February 20, 2012, Mr. Blair surreptitiously placed a camera in a ladies' restroom at Hoag Hospital with the intent of photographing persons using the restroom, conduct involving deceit and moral turpitude.

The Appropriate Measure of Discipline

13. Cause exists to impose Category II discipline that includes a revocation, stayed, a suspension pending a mental health examination that results in a finding that Mr. Blair is fit to practice as a pharmacist, and, if so, five years' probation under appropriate terms and conditions of probation. This measure of discipline is consistent with the Board's disciplinary guidelines and will protect the public.

Recovery of Costs of Enforcement

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

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

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

15. Cause exists under Business and Professions Code section 125.3 to issue an order directing Mr. Blair to pay \$3,375.50 to the Board for its costs of enforcement.

ORDER

Pharmacist License No. RPH 30343, issued to respondent, James Douglas Blair, is revoked; however, the revocation is stayed, and respondent is placed on five years' probation on the following terms and conditions.

1. **Suspension:** Commencing on the effective date of this Decision, respondent shall not engage in the practice of pharmacy until notified in writing by the Board or its designee that he has been deemed by a Board-approved evaluator to be fit to practice pharmacy safely and that the Board or its designee has approved that finding.

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 manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs or controlled substances. Respondent shall not resume practice as a pharmacist until notified by the Board or its designee.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacist for any entity licensed by the Board.

The period of suspension shall remain in effect until the Board or its designee notifies respondent that he has been found fit to practice as a pharmacist and that he may return to practice as a pharmacist under the terms and conditions of probation set forth hereafter. Respondent's failure to comply with this condition of suspension shall be considered a violation of probation.

2. **Mental Health Examination:** Within thirty (30) days of the effective date of this decision or prior thereto, and on a periodic basis as may be required by the Board or its designee, respondent shall undergo, at his own expense, a mental health evaluation(s) that shall be performed by a Board-approved licensed mental health practitioner. The Board-approved evaluator shall be provided with a copy of the Board's accusation and decision, relevant police and investigation reports, and any other documents the Board or its designee believes appropriate. Respondent shall sign a release that authorizes the Board-approved evaluator to obtain all records and reports from any psychiatrist, psychologist, or psychotherapist who has evaluated or treated respondent for any reason within the past five

years. Respondent shall sign a release authorizing the Board-approved evaluator to furnish the Board with a report setting forth respondent's current diagnosis and prognosis, and with a written report regarding respondent's judgment and ability to function independently as a pharmacist, with the safety of the public being paramount. Respondent shall comply with all the recommendations of the evaluator as directed by the Board or its designee.

Upon a finding by the Board-approved evaluator that respondent is fit to practice safely as a pharmacist, and that his practice of pharmacy will not result in an unreasonable risk of harm to consumers, fellow employees, or members of the public, and with Board or its designee's approval, respondent shall be permitted to resume practice as a licensed pharmacist under the terms and conditions of probation set forth herein.

3. **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 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 in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime, whether state or federal;
- the filing of any action for discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's registration 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.

Respondent's failure to timely report any such occurrence constitutes a violation of probation.

4. **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 he has complied with all the terms and conditions of probation. Respondent's failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period of delinquency in the 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 or its designee.

5. **Interview with the Board:** Upon receipt of reasonable prior notice, respondent 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 respondent's failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

6. **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.

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

8. **Notice to Employers:** During the period of probation, respondent shall notify all present and prospective employers of this Decision and all of the terms, conditions and restrictions imposed on respondent by this Decision as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, the pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment), or the director of the pharmacy at the health care facility where he is employed to report to the Board in writing acknowledging that the listed individual(s) has read the Board's Decision in Case Number 4647 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for, or is employed by or through, a pharmacy employment service, he must notify his direct supervisor, pharmacist-in-charge and owner, or director of the pharmacy of the health care facility where he is employed of the terms and conditions of the Board's Decision in Case Number 4647 in advance of his commencing work at each pharmacy. 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 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 the supervisor has read the Board's Decision in Case Number 4647 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Respondent's failure to timely notify present or prospective employer(s) of the Decision herein and the terms and conditions of probation imposed in that Decision, or his

failure to cause 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 pharmacist or in any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

9. **No Supervision of Interns, Serving as Pharmacist-In-Charge, or as a Consultant:** During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board, or serve as a consultant unless otherwise specified in this order of until written approval for a specific assignment has been provided by the Board or its designee. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

10. **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 \$3,375.50 within the first year of probation. 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 shall be considered a violation of probation.

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

11. **Probation Monitoring Costs:** Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Probation monitoring 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.

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

If respondent’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 respondent’s license shall be subject to all terms and conditions of this probation not previously satisfied.

13. **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 pharmacist 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 pharmacist license to the Board within ten (10) 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 (3) 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.

14. Notification of Change in Name, Residence Address, Mailing Address or Employment: Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule, if known. Respondent shall further notify the Board in writing within ten (10) 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.

15. Tolling of Probation: Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 20 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 pharmacist for a minimum of 20 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the 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 thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 20 hours per month as a pharmacist. "Resumption of work" means any calendar month during which respondent is working as a pharmacist for at least 20 hours as a pharmacist.

16. **No Ownership of Licensed Premises:** Respondent shall not own, have any legal or beneficial interest in, or 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. Respondent 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.

17. **Psychotherapy:** If the Board-approved evaluator recommends, and when the Board or its designee directs, respondent shall undergo psychotherapy, at respondent's own expense. Within thirty (30) days of notification by the Board that a recommendation for psychotherapy has been accepted, respondent shall submit to the Board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice who will provide respondent with psychotherapy. Within thirty (30) days of approval thereof by the Board, respondent shall submit documentation to the Board demonstrating the commencement or continuation of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the Board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the Board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

18. **Submission to Polygraph Examination:** As a part of psychotherapy, respondent shall be required to submit to a polygraph examination every six months he is on probation at respondent's own expense. Respondent's psychotherapist shall be responsible for arranging for the polygraph examination. The results of the polygraph examination shall be used by the psychotherapist to determine if respondent has been truthful and to assist the psychotherapist in the provision of psychotherapy. The results of the polygraph examination shall remain confidential unless the results inform respondent's psychotherapist that respondent is a danger to himself others; if that occurs, respondent's psychotherapist shall immediately notify the Board of the results of the polygraph examination. Respondent's psychotherapist shall contact the Board and seek approval to terminate this requirement of probation when respondent's psychotherapist concludes the administration of a polygraph examination is no longer reasonable or helpful to psychotherapy.

19. **Completion of an Ethics Class:** Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Board or its designee, and respondent shall complete the approved ethics course within one year of the effective date of this Decision.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but before the effective date of the Decision, may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit to the Board or its designee proof of his enrollment in the approved ethics course within 60 days of the effective date of this Decision and he shall submit proof of his successful completion of that course to the Board or its designee not later than one year after the effective date of the Decision herein. Respondent's failure to provide proof of his enrollment in an approved ethics course within 60 days of the order or his failure to provide proof of completion of that ethics course within one year of the effective date of the Decision shall constitute unprofessional conduct and shall be grounds for discipline.

20. Work Site Monitor

Within ten (10) days of obtaining of any employment, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not respected the privacy rights of others, he shall notify the Board immediately, either orally or in writing as directed.

Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

21. Violation of Probation

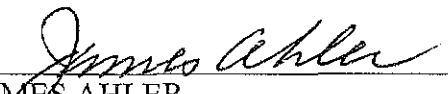
If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat 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 and/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.

22. **Completion of Probation**

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

DATED: December 8, 2014



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 4647

13 **JAMES DOUGLAS BLAIR**
14 **P.O. Box 7092**
Laguna Niguel, CA 92607

A C C U S A T I O N

15 **Pharmacist License No. RPH 30343**

16 Respondent.
17

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On July 6, 1976, the Board of Pharmacy issued Pharmacist License Number RPH
24 30343 to James Douglas Blair (Respondent). The Pharmacist License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on January 31, 2014,
26 unless renewed.

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1 pertaining to an arrest. This section shall not be construed to apply to any drug
2 diversion program operated by any agency established under Division 2
3 (commencing with Section 500) of this code, or any initiative act referred to in
4 that division.

4 9. Section 4301 of the Code states:

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

8

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

11

12 (l) The conviction of a crime substantially related to the qualifications,
13 functions, and duties of a licensee under this chapter. The record of conviction of
14 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
15 United States Code regulating controlled substances or of a violation of the
16 statutes of this state regulating controlled substances or dangerous drugs shall be
17 conclusive evidence of unprofessional conduct. In all other cases, the record of
18 conviction shall be conclusive evidence only of the fact that the conviction
19 occurred. The board may inquire into the circumstances surrounding the
20 commission of the crime, in order to fix the degree of discipline or, in the case of
21 a conviction not involving controlled substances or dangerous drugs, to determine
22 if the conviction is of an offense substantially related to the qualifications,
23 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
24 a conviction following a plea of nolo contendere is deemed to be a conviction
25 within the meaning of this provision. The board may take action when the time
26 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
27 or when an order granting probation is made suspending the imposition of
28 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
Code allowing the person to withdraw his or her plea of guilty and to enter a plea
of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
information, or indictment.

23

24 REGULATORY PROVISIONS

25 10. California Code of Regulations, title 16, section 1769, states:

26

27 (b) When considering the suspension or revocation of a facility or a
28 personal license on the ground that the licensee or the registrant has been

///

1 convicted of a crime, the board, in evaluating the rehabilitation of such person and
2 his present eligibility for a license will consider the following criteria:

- 3 (1) Nature and severity of the act(s) or offense(s).
4 (2) Total criminal record.
5 (3) The time that has elapsed since commission of the act(s) or
6 offense(s).
7 (4) Whether the licensee has complied with all terms of parole,
8 probation, restitution or any other sanctions lawfully imposed against the licensee.
9 (5) Evidence, if any, of rehabilitation submitted by the licensee.

10 11. California Code of Regulations, title 16, section 1770, states:

11 For the purpose of denial, suspension, or revocation of a personal or
12 facility license pursuant to Division 1.5 (commencing with Section 475) of the
13 Business and Professions Code, a crime or act shall be considered substantially
14 related to the qualifications, functions or duties of a licensee or registrant if to a
15 substantial degree it evidences present or potential unfitness of a licensee or
16 registrant to perform the functions authorized by his license or registration in a
17 manner consistent with the public health, safety, or welfare.

18 **COST RECOVERY**

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
20 the administrative law judge to direct a licentiate found to have committed a violation or
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
22 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
23 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
24 may be included in a stipulated settlement.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(November 29, 2012 Criminal Conviction for Unlawful Viewing on February 20, 2012)**

27 13. Respondent subjected his license to discipline under Code sections 490 and 4301,
28 subdivision (I) in that he was convicted of a crime that is substantially related to the
29 qualifications, functions, and duties of a licensed pharmacist. The circumstances are as follows:

30 a. On November 29, 2012, in a criminal proceeding entitled *The People of the*
31 *State of California vs. James Douglas Blair*, in Orange County Superior Court, Harbor Justice
32 Center, Newport Beach Facility, Case Number 12HM10153, Respondent was convicted on his

1 plea of guilty to three counts of violation of Penal Code (PC) section 647, subdivision (j)(1),
2 disorderly conduct (unlawful viewing), a misdemeanor.

3 b. As a result of the conviction, on November 29, 2012, Respondent was
4 sentenced to three years informal probation. Respondent was also ordered to render 30 days of
5 community service and to pay fines and fees.

6 c. The facts that led to the conviction are that on February 20, 2012,
7 Respondent installed a camera inside a female restroom in Hoag Hospital in Newport Beach,
8 California. A female hospital staff member used the restroom where the camera was installed.
9 While seated on the toilet, she noticed a strange object taped to the plumbing pipe under the sink.
10 The staff member took a closer look and realized that the object was a camera. A female security
11 officer responded to the female staff's report and made an inspection of the restroom. The
12 security officer noticed that when she got close to the object for inspection, the camera made
13 some clicking sound as if it was taking pictures. Later that day, Respondent called the hospital's
14 security office and confessed to installing a nanny camera in the female restroom. A video
15 footage of the hallways showed Respondent leaving his office, going into the female restroom
16 hallway, and exiting the restroom hallway a few minutes later and returning to his office.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,
19 Fraud, Deceit, or Corruption)**

20 14. Respondent has subjected his license to discipline under Code section 4301,
21 subdivision (f), in that he committed acts involving moral turpitude and corruption when he
22 installed a nanny camera in a female restroom to take pictures of female staff members while
23 seated on the toilet, as described in paragraph 13, above.

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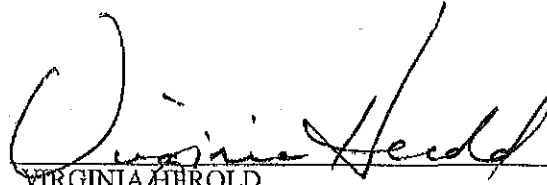
PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 30343, issued to James Douglas Blair;
2. Ordering James Douglas Blair 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: _____

9/27/13



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

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