

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

In the Matter of the Petition for Early
Termination of Probation of:

OLUSOJI AKANWO,

Petitioner.

Case No. 5459
OAH No. 2019060922

**DECISION GRANTING THE
PETITION**

This matter was heard by a quorum of the Board of Pharmacy (Board) on June 21, 2019, in Claremont, California. Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Herb L. Weinberg, Fenton Law Group LLP, represented Olusoji Akanwo (petitioner), who was present.

Desiree Tulleners, Deputy Attorney General, represented the Attorney General pursuant to Business and Professions Code section 4309 and Government Code section 11522.

The hearing was electronically recorded in accordance with Government Code section 11440.30.

The petition and other relevant documents were presented. Petitioner, through counsel, and the Deputy Attorney General made oral presentations to the Board. Petitioner responded to questions of Board members and the Deputy Attorney General. The record was closed, and the matter was submitted for decision on June 21, 2019, following which the Board met in executive session and decided the matter on the day of hearing.

FACTUAL FINDINGS

1. On March 7, 1994, the Board issued pharmacist license number RPH 46882 to petitioner. The license is scheduled to expire on October 31, 2019.
2. The Board, in a Decision After Rejection in the Matter of the Accusation Against Olusoji Olateunde Akanwo, effective July 3, 2017, in Case No. 5459 (OAH No. 2015110722), revoked petitioner's license, stayed the revocation, and placed petitioner's license on five years' probation under certain terms and conditions.

3. The Board's Decision After Rejection was based on findings that petitioner used alcoholic beverages to an extent or in a manner dangerous or injurious to himself or others. On August 16, 2014, a police officer conducted a traffic stop of a vehicle driven by petitioner, after observing the vehicle swerving in and out of traffic lanes. During her contact with petitioner, the officer smelled the odor of an alcoholic beverage on petitioner's breath, and observed that his eyes were red and watery and his speech was slurred. Petitioner initially denied consuming any alcoholic beverages before driving, but later admitted to consuming one alcoholic drink. The officer administered field sobriety tests, which petitioner failed to complete satisfactorily. A subsequent blood test measured petitioner's blood-alcohol level at 0.16 percent. There was no evidence in the record of a criminal case or conviction concerning the August 16, 2014 incident.

4. On March 5, 2019, the Board received a Petition for Early Termination of Probation (Petition) filed by petitioner. Petitioner has completed two years of his five-year probation term.

5. Petitioner has been complying with his probation conditions, including Conditions 8, 15, and 17. Condition 8 required petitioner to pay the Board \$12,155 for the costs of investigation and prosecution. Petitioner has paid the full cost recovery amount of \$12,155. Condition 15 required petitioner to participate in random drug and alcohol testing at his own expense. Petitioner is currently in good standing with no test results indicating the presence of drugs or alcohol. Condition 17 required petitioner to contact the Pharmacist Recovery Program (PRP) for evaluation and treatment. Petitioner completed the PRP in October 2018.

6. Petitioner submitted a continuing education certificate totaling 38 hours taken in March 2018.

7. Petitioner submitted four letters of recommendation. All four letters were verified by the Board. Eugene Lopatynsky is a licensed pharmacist who has known petitioner for eight years. Chukwuemeka Chinaka is a licensed pharmacist who has known petitioner for 17 years. Monies Nasry is a licensed pharmacist who has known petitioner for over 20 years. Wale Cole is a family friend who has known petitioner for over 20 years. Each of the letters commend petitioner for his good character and his dedication to the pharmacy profession. Mr. Lopatynsky's letter commends petitioner for operating a pharmacy in the rural community of Anza, where the next closest pharmacy is nearly an hour's drive away. Mr. Lopatynsky's letter states that petitioner's pharmacy in Anza "fulfills a very serious need in the area," and that he has found petitioner "to be a responsible and accurate pharmacist and an asset to [the] Anza community." All four letters attest to petitioner not engaging in any abuse of alcohol or controlled substances.

8. Petitioner testified it has been three years since he last consumed alcohol. Petitioner appeared sincere in apologizing and accepting full responsibility for his misconduct.

9. The Board has considered all evidence petitioner presented in support of the Petition. Petitioner established, by clear and convincing evidence, rehabilitation sufficient to

warrant early termination of probation. He has been sober for the past three years and appears seriously committed to maintaining sobriety. He poses no clear risk to public safety.

LEGAL CONCLUSIONS

1. A petitioner must prove rehabilitation and that probation should be terminated early by clear and convincing evidence. (See, e.g., *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092.) The showing of rehabilitation must be sufficient to overcome the Board's former adverse determination. (See, e.g., *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.) In deciding whether to grant a petition for early termination of probation, the Board may consider, among other factors, petitioner's activities since discipline was imposed, petitioner's offense, and petitioner's documented rehabilitative efforts. (Bus. & Prof. Code, § 4309, subd. (d).)

2. Based on Factual Findings 1-9, above, the Board concludes that cause exists to grant the Petition for Early Termination of Probation under Government Code section 11522 and Business and Professions Code section 4309.

ORDER

The Petition for Early Termination of Probation of pharmacist license number RPH 46882, issued to petitioner Olusoji Akanwo, is granted.

This Decision shall be effective August 19, 2019.

DATED: August 12, 2019



Greg Lippe, Vice President (Acting President)
Board of Pharmacy
State of California

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

In the Matter of the Accusation Against:

**OLUSOJI OLATEUNDE AKANWO,
AKA OLUSOJI OLATUNDE AKANWO**

Pharmacist License No. RPH 46882,

Respondent.

Case No. 5459

OAH No. 2015110722

ORDER DENYING RECONSIDERATION

On June 2, 2017, the Board of Pharmacy issued a Decision After Rejection in this matter, set to become effective at 5:00 p.m. on July 3, 2017.

Respondent filed a timely petition for reconsideration of the board's decision. Having now read and considered respondent's petition for reconsideration, the board denies the petition.

The Board of Pharmacy's June 2, 2017, Decision After Rejection is the final decision in this matter, which will become effective as originally ordered, at 5:00 p.m. on July 3, 2017.

IT IS SO ORDERED this 30th day of June, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

**OLUSOJI OLATEUNDE AKANWO,
AKA OLUSOJI OLATUNDE AKANWO**

Pharmacist License No. RPH 46882,

Respondent.

Case No. 5459

OAH No. 2015110722

DECISION AFTER REJECTION

Administrative Law Judge (ALJ) Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on September 13 and 14, 2016. Vinodhini R. Keller, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, California State Board of Pharmacy (Board), Department of Consumer Affairs. Herbert L. Weinberg, Esq., Fenton Law Group LLP, represented respondent Olusoji Olateunde Akanwo, who was present.

During the hearing, complainant amended the Accusation to strike the allegations on page 2, line 22 through page 3, line 11; page 5, lines 1-11 and 22-24 (except for the words "blood alcohol content (BAC) of 0.16%" on line 22); and the Second Cause for Discipline (page 5, line 23 through page 6, line 4). The matter was submitted on September 14, 2016.

On December 28, 2016, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision of the ALJ. On February 10, 2017, the Board issued an order reflecting that the transcript had been received and the deadline for submission of written argument was set for March 13, 2017. Complainant and respondent timely submitted written argument. On April 4, 2017, the Board issued an order extending time within which to issue this decision.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument, now issues this decision.

SUMMARY

Complainant requests that the Board discipline respondent's pharmacist license, alleging he committed unprofessional conduct by drinking and driving in 2014. Respondent denies he drove while intoxicated, and challenges the validity of the field sobriety and blood tests administered to him. By clear and convincing evidence, complainant proved respondent committed unprofessional conduct, warranting a stayed license revocation and probation.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On March 7, 1994, the Board issued respondent Pharmacist License Number RPH 46882. The license is in full force and effect until October 31, 2017.
2. On September 22, 2015, complainant served an accusation on respondent, alleging two causes for discipline. During the hearing, complainant struck the Second Cause for Discipline, as stated above.
3. Respondent filed a Notice of Defense, dated September 26, 2015.

Factual Background

4. On August 16, 2014, at about 1:27 a.m., Rialto Police Officer Donna Crow was traveling northbound on Riverside Avenue in Rialto, California, when she saw a black Honda in front of her drift from one northbound lane into another, and then swerve abruptly back into the original lane. She initiated a traffic stop, and the Honda pulled over, stopping and then continuing forward several times before stopping completely. When she approached the driver, later identified as respondent, she smelled a strong odor of an alcoholic beverage on his breath. His eyes were bloodshot and watery, and his speech was slurred. She asked for his driver license, proof of insurance, and vehicle registration, and he fumbled through paperwork looking for them, bypassing his license several times, and requiring several more requests before he complied.

5. Respondent initially denied drinking alcohol before driving, but later said he drank a 12-ounce mixed drink containing an unknown type of alcohol at about 11:30 p.m. at a nearby bar. Another police officer arrived to assist, and Officer Crow had respondent perform various field sobriety tests. He displayed horizontal and vertical gaze nystagmus,¹ and displayed a “[l]ack of [s]mooth [p]ursuit” in his eyes. On the “walk-and-turn test,” in which he was asked to walk heel to toe for nine steps, turn counterclockwise, and then walk back heel-to-toe, he started too soon, used his arms for balance, and made an unbalanced turn. On the “one-leg stand” test, he swayed, used his arms to balance, hopped, and put his raised foot down.

6. Respondent performed better on the “finger to nose” test, touching his nose as instructed. On the Romberg test,² he swayed slightly and estimated 30 seconds at 18 actual

¹ “ ‘Nystagmus is an involuntary rapid movement of the eyeball, which may be horizontal, vertical, or rotary. [Citation.] An inability of the eyes to maintain visual fixation as they are turned from side to side (in other words, jerking or bouncing) is known as horizontal gaze nystagmus, or HGN. [Citation.] Some investigators believe alcohol intoxication increases the frequency and amplitude of HGN and causes HGN to occur at a smaller angle of deviation from the forward direction.’ ” [Citation.]” (*Coffey v. Shiimoto* (2015) 60 Cal.4th 1198, 1203, fn. 2.)

seconds. He also said he would submit to a Preliminary Alcohol Screening Test (PAS),³ but kept stopping the test to ask questions, eventually causing the officers to stop trying to administer it.

7. Based on Officer Crow's observations of respondent and his poor performance on the field sobriety tests, she placed him under arrest for suspicion of driving under the influence of alcohol, and gave him the choice of either a breath or blood test to determine his Blood Alcohol Concentration (BAC). Every driver in California is deemed to have consented to a breath or blood test if lawfully arrested for allegedly driving under the influence of alcohol. (Veh. Code, § 23612, subd. (a)(1)(A).) Respondent chose a blood test, and a nurse at the Rialto Police Station drew a blood sample at about 2:39 a.m., added a preservative, and gave the sample to Officer Crow, who placed it into refrigerated evidence at the Rialto Police Property Room. On August 25, 2014, Sylors Chem, a criminalist and microbiologist with the San Bernardino County Sheriff's Department, Scientific Investigations Division, tested the sample and determined it had a BAC of 0.16 percent.

8. There is no evidence in the record of a criminal case or conviction concerning the incident. Officer Crow recommended her report be forwarded to the San Bernardino County District Attorney's Office for filing, but what happened after that was not established.

Testing Methods

9. Respondent denied being intoxicated, and asserts his field sobriety tests and blood test do not prove otherwise. Okorie Okorochoa, a forensic toxicologist, testified for respondent that standard field sobriety tests are poor indicators of intoxication, and that the nine-day delay in testing respondent's blood was too long, because increased holding time can increase the BAC due to alcohol production by microorganisms in a sample. He also testified the BAC result for respondent's blood sample was invalid, because the sheriff's department used a single-column gas chromatograph, and a dual-column device is required for reliable results. In 2014, he published a law journal article about the inherent inadequacy of a single-column device, and asserts that a recent appellate decision (*Najera v. Shiimoto* (2015) 241 Cal.App.4th 173) supports his opinion. In addition, he testified the preservative added to respondent's sample was not mixed thoroughly, and can actually increase fermentation even when mixed thoroughly, thereby increasing the measured BAC.

10. In response, Sylors Chem testified for complainant that the sheriff department's method of analysis, including use of a single-column gas chromatograph, has

² "In the Romberg test, the driver is 'asked to stand at attention, close his eyes, tilt his head back, and estimate the passage of 30 seconds.' [Citation.]" (*Coffey v. Shiimoto, supra*, 60 Cal.4th at p. 1204, fn. 5.)

³ "Pursuant to [Vehicle Code] section 23612, subdivision (h), a PAS is an investigative tool used to determine whether there is reasonable cause for arrest. '[A] preliminary test is "distinguished from the chemical testing of a driver's blood, breath or urine contemplated by the implied consent law [citation] which is administered after the driver is arrested, [and is] sometimes referred to as 'evidentiary' [or evidential] testing.'" [Citation.]" (*Coffey v. Shiimoto, supra*, 60 Cal.4th at p. 1205, fn. 6.)

been approved by the California Department of Health Services.⁴ He is aware some scientific articles stating a dual-column device is preferable, but is unaware of any stating that a single-column gas chromatograph is ineffective or unreliable. The testing protocols he used do not prohibit a nine-day holding time for a sample, and he disputes Mr. Okorochoa's assertion that the BAC in a sample can increase appreciably over that period in a refrigerated, well-preserved blood sample. Mr. Chem noted no coagulation in respondent's sample, which indicates it was well-preserved.

Other Evidence

11. Respondent denied he has an alcohol problem, drank more than one drink the night of incident, or felt intoxicated while driving. He was tired and nervous when Officer Crow pulled him over, and testified he sometimes gets red and watery eyes without drinking alcohol. Adewale Cole, respondent's friend, was with him at the bar, bought him the one drink, and saw no indication respondent was intoxicated or drank other alcohol. Mr. Cole has been his friend for over 15 years, and has never seen him under the influence of a controlled substance. Mary Hanna, a pharmacy technician, has worked closely with respondent for 15 years, and has never seen any signs he was intoxicated on the job. Two other pharmacists, Moneis Nasry and Emeka Chinaka, also wrote letters denying ever seeing respondent intoxicated, and attesting to his good character.

12. Respondent owns two pharmacies. It was not established if he is the pharmacist-in-charge for them. His license history with the Board includes two citations and a letter of admonishment:

a. On October 17, 2012, the Board issued respondent Citation Number CI 2012 54124 for \$500, for having prescription containers that lacked physical descriptions of the dispensed medications (Bus. & Prof. Code, § 4076, subd. (a)(11)(A)), and dispensing medication for prescriptions that lacked the prescriber's signature and date in ink (Cal. Code Regs., tit. 16, § 1761, subd. (a); Health & Saf. Code, § 11164, subd. (a)(I)).

b. On July 31, 2013, the Board issued respondent Citation Number CI 2012 53167 for \$400, for unprofessional conduct involving the dangerous or injurious use of alcohol (Bus. & Prof. Code, § 4301, subd. (h)). The citation arose from him being charged in September 2012 with driving under the influence of alcohol and with a BAC of 0.08 percent or greater (Veh. Code, § 23152, subds. (a), (b)). In September 2014, he pleaded *nolo contendere* to one misdemeanor count of reckless driving in lieu of those charges (Veh. Code, § 23103, subd. (a)), making it a "wet reckless" conviction. (See *People v. Claire* (1991) 229 Cal.App.3d 647, 650 [describing "wet reckless" conviction]; Veh. Code, § 23103.5.) The court placed him on 36 months' summary probation, under terms including he serve two days in jail, complete a "wet reckless" alcohol awareness program, and refrain from driving with a measurable amount of alcohol in his system. As of the date of the hearing, he was still on criminal probation for this conviction.

⁴ The Department of Public Health oversees forensic and breath alcohol analysis, but the regulations still refer to the former Department of Health Services. (See Cal. Code Regs., tit. 17, div. 1, ch. 2.)

c. On August 14, 2013, the Board sent a Letter of Admonishment to respondent under Business and Professions Code section 4315 for verifying a prescription for 180 tablets of a medication on May 23, 2012, but dispensing just 126 tablets.

Costs

13. Complainant's counsel submitted a certified statement of costs indicating that the Department of Justice has billed the Board \$12,155 to prepare for the hearing of this case.

LEGAL CONCLUSIONS

Legal Standards

1. "Every license issued [by the Board] may be suspended or revoked," and "[the] board shall take action against any holder of a license who is guilty of unprofessional conduct" (Bus. & Prof. Code, §§ 4300, subd. (a), 4301.) "Unprofessional conduct" includes, among other things, "the use ... of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." (Bus. & Prof. Code, § 4301, subd. (h).) The dangerous use of alcohol need not occur as part of the licensee's practice of pharmacy. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771-772.)

2. Complainant bears the burden of proving the alleged ground for discipline by clear and convincing evidence to a reasonable certainty. (See *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence "requires a finding of high probability," and has been described as "requiring that the evidence be 'so clear as to leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" [Citation.] (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Cause for Discipline

3. Complainant presented clear and convincing evidence respondent used alcohol in a manner dangerous to himself and others. The evidence demonstrates a high probability he drove under the influence of alcohol on August 16, 2014. He drank at least one 12-ounce mixed drink before driving, drifted and swerved between lanes, stopped and started his car several times after being pulled over, and displayed physical symptoms of being intoxicated, including slurred speech, difficulty following directions, and bloodshot and watery eyes. He performed poorly on field sobriety tests, and displayed impaired balance, coordination, and time perception, suggesting he was unable "to drive a vehicle with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances." (CALJIC 16.831 [defining "Under the Influence" for alcohol or drug influenced driving]; see Factual Findings 4-6.) He also stalled and impeded a PAS test, and his BAC was measured at 0.16

percent, twice the level at which a person is presumed to be under the influence of alcohol for purposes of criminal law. (Factual Findings 6-7; see Veh. Code, § 23610, subd. (a)(3).)

4. Respondent's various challenges to the evidence he used alcohol in a dangerous manner are unpersuasive. Poor performance on field sobriety tests has a tendency to prove intoxication, despite Mr. Okorochoa's suggestion otherwise. (See *Coffee v. Shiimoto*, supra, 60 Cal.4th at pp. 1212-1218.) Mr. Chem also persuasively rebutted Mr. Okorochoa's testimony that a nine-day holding period was too long, and that the sample was poorly preserved. According to Mr. Chem, the nine-day holding period did not violate testing protocols, and the refrigerated sample showed no signs of coagulation. (Factual Finding 10.)

5. Mr. Okorochoa's opinion that a single-column gas chromatograph is never sufficient to produce a reliable BAC result is also unpersuasive. The appellate decision Mr. Okorochoa referenced in his testimony is distinguishable, because it involved a dual-column device, where data from only one of the two columns was reported. (*Najera v. Shiimoto*, supra, 241 Cal.App.4th at pp. 182-184.) In that case, the court held the Department of Motor Vehicles could not rely on data from just one column of a two-column device to justify the administrative suspension of a license for driving with a BAC of 0.08 or more. (*Ibid.*) Here, in contrast, Mr. Chem used a single-column device, and the test results do not ignore data from a second column. (See Factual Finding 10.)

6. A more recent appellate decision reversed another administrative suspension of a driver license for driving with a BAC of 0.08 or more, based on unrebutted expert evidence "that single-column gas chromatography is not capable of determining either the presence or the concentration of blood alcohol." (*Freitas v. Shiimoto* (2016) 3 Cal.App.5th 294, 302.) But like *Najera v. Shiimoto*, *Freitas v. Shiimoto* also involved data from just one column of a two-column device. (*Id.* at pp. 298-299.) Furthermore, the expert evidence in that case was uncontroverted (*id.* at pp. 299, 302), while in this case, Mr. Chem persuasively disputed Mr. Okorochoa's opinion that a single-column device is never sufficient. (See Factual Finding 10.) Mr. Okorochoa's opinion also conflicts with the state agency approval of the testing protocols used. (See *id.*)

7. "Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy." (*Griffiths v. Superior Court*, supra, 96 Cal.App.4th at p. 770.) Therefore, the evidence respondent drove while under the influence proves he used alcohol in a dangerous manner. Accordingly, the Board may suspend or revoke his license for unprofessional conduct. (Bus. & Prof. Code, § 4301, subd. (h).)

Level of Discipline

8. In reaching a disciplinary decision, the Board must consider Disciplinary Guidelines it has adopted. (Cal. Code Regs., tit. 16, § 1760.) The Disciplinary Guidelines classify a violation of Business and Professions Code section 4301, subdivision (h), as a "Category II" violation, for which the recommended discipline ranges from a maximum of revocation to a minimum of revocation, stayed, with three years' probation. (Disciplinary Guidelines (rev. 10/2007), p. 13.) The Disciplinary Guidelines also list 15 factors to consider in determining the level of discipline:

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. compliance with terms of any criminal sentence, parole, or probation;
11. overall criminal record;
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code;
13. time passed since the act(s) or offense(s);
14. 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; and
15. financial benefit to the respondent from the misconduct. (Disciplinary Guidelines at p. 3.)

9. Respondent's dangerous use of alcohol is recent, and had the potential to harm the public. His previous warnings from the Board, especially the citation for a different dangerous use of alcohol, are aggravating factors. (See Factual Finding 12.) He presented no evidence of rehabilitation, and is still on criminal probation for similar misconduct - the "wet reckless" conviction that followed his other dangerous use of alcohol in 2012. (*Ibid.*) "[P]ersons under the direct supervision of correctional authorities are required to behave in exemplary fashion," so his current misconduct warrants additional concern. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) At the same time, his unprofessional conduct occurred in his personal life, and there is no evidence of actual harm to the public or any consumer. Weighing these factors, neither the minimum nor maximum recommended discipline is appropriate. Instead, an appropriate intermediate discipline is revocation, stayed, with a five-year period of probation.

10. The Disciplinary Guidelines list 15 standard conditions "that shall appear in all probation cases." (Disciplinary Guidelines at p. 5.) Condition eight requires payment of complainant's investigation and prosecution costs, and complainant presented prima facie evidence her reasonable costs were \$12,155. (Factual Finding 13; see Bus. & Prof. Code, § 125.3, subs. (a), (c) [certified copy of actual costs is prima facie evidence the costs are reasonable].) Respondent presented no evidence rebutting this prima facie showing, and he will therefore be ordered to pay that amount. The last sentence of condition eight is modified so it does not prejudge how bankruptcy would affect the payment order.

11. The Disciplinary Guidelines also list optional conditions for use as appropriate in particular cases. Condition 37 is appropriate to use, because respondent is a pharmacy owner, and may be a pharmacist-in-charge. (See Factual Finding 12.) It is renumbered as condition 14 below.

12. The Disciplinary Guidelines also contain optional conditions for use in cases involving chemical dependency or abuse, whether related to drugs or alcohol. Respondent denies he is addicted to alcohol, but he also denies abusing alcohol in this action, so that assertion is given less weight. Several of respondent's colleagues and friends denied seeing signs of addiction, but addiction is not required to merit the imposition of abuse-related terms. Respondent's two instances of drinking and driving, separated by only two years, particularly while he was on criminal probation, weigh against the mitigating evidence and warrant caution for a licensee with unfettered access to dangerous drugs, including controlled substances, where the impact of abuse, even after any inebriation subsides, could impact a pharmacist's ability to perform professional duties including, but not limited to, providing the correct drug, in the correct dosage, to the correct patient.

13. The Board's principles and statutes mandate that, whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public must be paramount. (Bus. & Prof. Code, §§ 4001.1 and 4313.) Statutory requirements associated with all substance abusing health care licensees promote similar principles. (Bus. & Prof. Code, § 315 et seq.) Under these circumstances, additional conditions requiring respondent to abstain from alcohol and drugs, to test for the same, and to participate in a monitoring program will allow the Board to protect the public.

ORDER

Pharmacist License Number RPH 46882, issued to respondent Olusoji Olateunde Akanwo, is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within 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; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, 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.

4. Cooperate with Board Staff

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

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5459 and the terms, conditions and restrictions imposed on respondent by the 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, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5459, and 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.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in charge, and owner at

every entity licensed by the Board of the terms and conditions of the decision in case number 5459 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 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 he or she has read the decision in case number 5459 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.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments 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, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving 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 nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. 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 \$12,155. Respondent owner shall make monthly payments according to a schedule approved by the Board.

There shall be no deviation from the approved schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

Whether the filing of bankruptcy by respondent relieves his responsibility to reimburse the Board its costs of investigation and prosecution is a matter to be decided by a court of competent jurisdiction.

9. Probation Monitoring Costs

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

10. Status of License

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

If respondent's license expires or is 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.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his 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 pocket and wall 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 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, including any outstanding costs.

12. Notification of a 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, mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

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

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. 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 practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 80 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 80 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Consultant for Owner or Pharmacist-In-Charge

During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent may be a pharmacist-in-charge. However, if during the period of probation respondent serves as a pharmacist-in-charge, respondent shall retain an independent consultant at his own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and whose name shall be submitted to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

15. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug or alcohol screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing

will be determined by the Board or its designee. At all times, respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

During any 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 which is 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 and controlled substances. Respondent shall not resume practice until notified by the Board. 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 pharmacy technician or a designated representative for any entity licensed by the Board. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with any suspension shall be considered a violation of probation.

16. Abstain from Drugs and Alcohol Use

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

17. Pharmacists Recovery Program (PRP)

Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP.

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

During any 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 which is 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 and controlled substances. Respondent shall not resume practice until notified by the Board. 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 pharmacy technician or a designated representative for any entity licensed by the Board. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with any suspension shall be considered a violation of probation.

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

18. 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.

19. Completion of Probation

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

This Decision shall become effective at 5:00 p.m. on July 3, 2017.

It is so ORDERED on June 2, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

Case Nos. 5459

OLUSOJI OLATEUNDE AKANWO,

OAH Nos. 2015110722

Respondent.

**ORDER EXTENDING TIME FOR
ISSUANCE OF A DECISION AFTER REJECTION**

Pursuant to section 11517 of the Government Code, the California State Board of Pharmacy (hereinafter "board") rejected the Proposed Decision of the administrative law judge in the above matter by Order dated December 28, 2016.

YOU ARE HEREBY NOTIFIED that, pursuant to Government Code section 11517(c)(2)(E)(iv), the time for issuance of a decision in this matter must be extended for 30 days to give the board adequate time to prepare and approve its decision after rejection.

For the above-state reasons, the board's decision after rejection shall be issued no later than June 3, 2017.

IT IS SO ORDERED this 4th day of April, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D., Board President

BEFORE THE

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

In the Matter of the Accusation Against:

OLUSOJI OLATEUNDE AKANWO,

Respondent.

Case No. 5459

OAH No. 2015110722

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated December 28, 2016.

Written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd., Suite N-219, Sacramento, California, 95834 on or before 3:00 p.m., March 13, 2017. **No new evidence may be submitted.**

IT IS SO ORDERED February 10, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

OLUSOJI OLATEUNDE AKANWO,

Respondent.

Case No. 5459

OAH No. 2015110722

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

Although the right to argue is not limited, the board is particularly interested in arguments directed to the question whether the penalty is appropriate to protect the public in light of the board's Disciplinary Guidelines. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on December 28, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

OLUSOJI OLATEUNDE AKANWO,

Respondent.

Case No. 5459

OAH No. 2015110722

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on September 13 and 14, 2016.

Vinodhini R. Keller, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Herbert L. Weinberg, Esq., Fenton Law Group LLP, represented respondent Olusoji Olateunde Akanwo, who was present.

During the hearing, complainant amended the Accusation to strike the allegations on page 2, line 22 through page 3, line 11; page 5, lines 1-11 and 22-24 (except for the words "blood alcohol content (BAC) of 0.16%" on line 22); and the Second Cause for Discipline (page 5, line 23 through page 6, line 4).

The matter was submitted on September 14, 2016.

SUMMARY

Complainant requests that the Board discipline respondent's pharmacist license, alleging he committed unprofessional conduct by drinking and driving in 2014. Respondent denies he drove while intoxicated, and challenges the validity of the field sobriety and blood tests administered to him. By clear and convincing evidence, complainant proved respondent committed unprofessional conduct, warranting a stayed license revocation and probation.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On March 7, 1994, the Board issued respondent Pharmacist License No. RPH 46882. The license is in full force and effect until October 31, 2017.
2. On September 22, 2015, complainant served an Accusation on respondent, alleging two causes for discipline. During the hearing, complainant struck the Second Cause for Discipline, as stated above.
3. Respondent filed a Notice of Defense, dated September 26, 2015.

Factual Background

4. On August 16, 2014, at about 1:27 a.m., Rialto Police Officer Donna Crow was traveling northbound on Riverside Avenue in Rialto, California, when she saw a black Honda in front of her drift from one northbound lane into another, and then swerve abruptly back into the original lane. She initiated a traffic stop, and the Honda pulled over, stopping and then continuing forward several times before stopping completely. When she approached the driver, later identified as respondent, she smelled a strong odor of an alcoholic beverage on his breath. His eyes were bloodshot and watery, and his speech was slurred. She asked for his driver license, proof of insurance, and vehicle registration, and he fumbled through paperwork looking for them, bypassing his license several times, and requiring several more requests before he complied.

5. Respondent initially denied drinking alcohol before driving, but later said he drank a 12-ounce mixed drink containing an unknown type of alcohol at about 11:30 p.m. at a nearby bar. Another police officer arrived to assist, and Officer Crow had respondent perform various field sobriety tests. He displayed horizontal and vertical gaze nystagmus,¹ and displayed a “[I]ack of [s]mooth [p]ursuit” in his eyes. On the “walk-and-turn test,” in which he was asked to walk heel to toe for nine steps, turn counterclockwise, and then walk back heel-to-toe, he started too soon, used his arms for balance, and made an unbalanced turn. On the “one-leg stand” test, he swayed, used his arms to balance, hopped, and put his raised foot down.

¹ “Nystagmus is an involuntary rapid movement of the eyeball, which may be horizontal, vertical, or rotary. [Citation.] An inability of the eyes to maintain visual fixation as they are turned from side to side (in other words, jerking or bouncing) is known as horizontal gaze nystagmus, or HGN. [Citation.] Some investigators believe alcohol intoxication increases the frequency and amplitude of HGN and causes HGN to occur at a smaller angle of deviation from the forward direction.” [Citation.] (*Coffey v. Shiimoto* (2015) 60 Cal.4th 1198, 1203, fn. 2.)

6. Respondent performed better on the “finger to nose” test, touching his nose as instructed. On the Romberg test,² he swayed slightly and estimated 30 seconds at 18 actual seconds. He also said he would submit to a Preliminary Alcohol Screening Test (PAS),³ but kept stopping the test to ask questions, eventually causing the officers to stop trying to administer it.

7. Based on Officer Crow’s observations of respondent and his poor performance on the field sobriety tests, she placed him under arrest for suspicion of driving under the influence of alcohol, and gave him the choice of either a breath or blood test to determine his Blood Alcohol Concentration (BAC). Every driver in California is deemed to have consented to a breath or blood test if lawfully arrested for allegedly driving under the influence of alcohol. (Veh. Code, § 23612, subd. (a)(1)(A).) Respondent chose a blood test, and a nurse at the Rialto Police Station drew a blood sample at about 2:39 a.m., added a preservative, and gave the sample to Officer Crow, who placed it into refrigerated evidence at the Rialto Police Property Room. On August 25, 2014, Sylors Chem, a criminalist and microbiologist with the San Bernardino County Sheriff’s Department, Scientific Investigations Division, tested the sample and determined it had a BAC of 0.16 percent.

8. There is no evidence in the record of a criminal case or conviction concerning the incident. Officer Crow recommended her report be forwarded to the San Bernardino County District Attorney’s Office for filing, but what happened after that was not established.

Testing Methods

9. Respondent denied being intoxicated, and asserts his field sobriety tests and blood test do not prove otherwise. Okorie Okorochoa, a forensic toxicologist, testified for respondent that standard field sobriety tests are poor indicators of intoxication, and that the nine-day delay in testing respondent’s blood was too long, because increased holding time can increase the BAC due to alcohol production by microorganisms in a sample. He also testified the BAC result for respondent’s blood sample was invalid, because the sheriff’s

² “In the Romberg test, the driver is ‘asked to stand at attention, close his eyes, tilt his head back, and estimate the passage of 30 seconds.’ [Citation.]” (*Coffey v. Shiimoto, supra*, 60 Cal.4th at p. 1204, fn. 5.)

³ “Pursuant to [Vehicle Code] section 23612, subdivision (h), a PAS is an investigative tool used to determine whether there is reasonable cause for arrest. ‘[A] preliminary test is “distinguished from the chemical testing of a driver’s blood, breath or urine contemplated by the implied consent law [citation] which is administered after the driver is arrested, [and is] sometimes referred to as ‘evidentiary’ [or evidential] testing.’” [Citation.]” (*Coffey v. Shiimoto, supra*, 60 Cal.4th at p. 1205, fn. 6.)

department used a single-column gas chromatograph, and a dual-column device is required for reliable results. In 2014, he published a law journal article about the inherent inadequacy of a single-column device, and asserts that a recent appellate decision (*Najera v. Shiimoto* (2015) 241 Cal.App.4th 173) supports his opinion. In addition, he testified the preservative added to respondent's sample was not mixed thoroughly, and can actually increase fermentation even when mixed thoroughly, thereby increasing the measured BAC.

10. In response, Sylors Chem testified for complainant that the sheriff department's method of analysis, including use of a single-column gas chromatograph, has been approved by the California Department of Health Services.⁴ He is aware some scientific articles stating a dual-column device is preferable, but is unaware of any stating that a single-column gas chromatograph is ineffective or unreliable. The testing protocols he used do not prohibit a nine-day holding time for a sample, and he disputes Mr. Okorochoa's assertion that the BAC in a sample can increase appreciably over that period in a refrigerated, well-preserved blood sample. Mr. Chem noted no coagulation in respondent's sample, which indicates it was well-preserved.

Other Evidence

11. Respondent denied he has an alcohol problem, drank more than one drink the night of incident, or felt intoxicated while driving. He was tired and nervous when Officer Crow pulled him over, and testified he sometimes gets red and watery eyes without drinking alcohol. Adewale Cole, respondent's friend, was with him at the bar, bought him the one drink, and saw no indication respondent was intoxicated or drank other alcohol. Mr. Cole has been his friend for over 15 years, and has never seen him under the influence of a controlled substance. Mary Hanna, a pharmacy technician, has worked closely with respondent for 15 years, and has never seen any signs he was intoxicated on the job. Two other pharmacists, Moneis Nasry and Emeka Chinaka, also wrote letters denying ever seeing respondent intoxicated, and attesting to his good character.

12. Respondent owns two pharmacies. It was not established if he is the pharmacist-in-charge for them. His license history with the Board includes two citations and a letter of admonishment:

a. On October 17, 2012, the Board issued respondent Citation Number CI 2012 54124 for \$500, for having prescription containers that lacked physical descriptions of the dispensed medications (Bus. & Prof. Code, § 4076, subd. (a)(11)(A)), and dispensing medication for prescriptions that lacked the prescriber's signature and date in ink (Cal. Code Regs., tit. 16, § 1761, subd. (a); Health & Saf. Code, § 11164, subd. (a)(1)).

⁴ The Department of Public Health oversees forensic and breath alcohol analysis, but the regulations still refer to the former Department of Health Services. (See Cal. Code Regs., tit. 17, div. 1, ch. 2.)

b. On July 31, 2013, the Board issued respondent Citation No. CI 2012 53167 for \$400, for unprofessional conduct involving the dangerous or injurious use of alcohol (Bus. & Prof. Code, § 4301, subd. (h)). The citation arose from him being charged in September 2012 with driving under the influence of alcohol and with a BAC of 0.08 percent or greater (Veh. Code, § 23152, subds. (a), (b)). In September 2014, he pleaded nolo contendere to one misdemeanor count of reckless driving in lieu of those charges (Veh. Code, § 23103, subd. (a)), making it a “wet reckless” conviction. (See *People v. Claire* (1991) 229 Cal.App.3d 647, 650 [describing “wet reckless” conviction]; Veh. Code, § 23103.5.) The court placed him on 36 months’ summary probation, under terms including he serve two days in jail, complete a “wet reckless” alcohol awareness program, and refrain from driving with a measurable amount of alcohol in his system.

c. On August 14, 2013, the Board sent a Letter of Admonishment to respondent under Business and Professions Code section 4315 for verifying a prescription for 180 tablets of a medication on May 23, 2012, but dispensing just 126 tablets.

Costs

13. Complainant’s counsel submitted a certified statement of costs indicating that the Department of Justice has billed the Board \$12,155 to prepare for the hearing of this case.

LEGAL CONCLUSIONS

Legal Standards

1. “Every license issued [by the Board] may be suspended or revoked,” and “[t]he board shall take action against any holder of a license who is guilty of unprofessional conduct . . .” (Bus. & Prof. Code, §§ 4300, subd. (a), 4301.) “Unprofessional conduct” includes, among other things, “the use . . . of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.” (Bus. & Prof. Code, § 4301, subd. (h).) The dangerous use of alcohol need not occur as part of the licensee’s practice of pharmacy. (See *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771-772.)

2. Complainant bears the burden of proving the alleged ground for discipline by clear and convincing evidence to a reasonable certainty. (See *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence “requires a finding of high probability,” and has been described as “requiring that the evidence be ‘so clear as to leave no substantial doubt’; ‘sufficiently strong to command the unhesitating assent of every reasonable mind.’” [Citation.]” (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Cause for Discipline

3. Complainant presented clear and convincing evidence respondent used alcohol in a manner dangerous to himself and others. The evidence demonstrates a high probability he drove under the influence of alcohol on August 16, 2014. He drank at least one 12-ounce mixed drink before driving, drifted and swerved between lanes, stopped and started his car several times after being pulled over, and displayed physical symptoms of being intoxicated, including slurred speech, difficulty following directions, and bloodshot and watery eyes. He performed poorly on field sobriety tests, and displayed impaired balance, coordination, and time perception, suggesting he was unable “to drive a vehicle with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances.” (CALJIC 16.831 [defining “Under the Influence” for alcohol or drug influenced driving]; see Factual Findings 4-6.) He also stalled and impeded a PAS test, and his BAC was measured at 0.16 percent, twice the level at which a person is presumed to be under the influence of alcohol for purposes of criminal law. (Factual Findings 6-7; see Veh. Code, § 23610, subd. (a)(3).)

4. Respondent’s various challenges to the evidence he used alcohol in a dangerous manner are unpersuasive. Poor performance on field sobriety tests has a tendency to prove intoxication, despite Mr. Okorochoa’s suggestion otherwise. (See *Coffee v. Shiimoto*, *supra*, 50 Cal.4th at pp. 1212-1218.) Mr. Chem also persuasively rebutted Mr. Okorochoa’s testimony that a nine-day holding period was too long, and that the sample was poorly preserved. According to Mr. Chem, the nine-day holding period did not violate testing protocols, and the refrigerated sample showed no signs of coagulation. (Factual Finding 10.)

5. Mr. Okorochoa’s opinion that a single-column gas chromatograph is never sufficient to produce a reliable BAC result is also unpersuasive. The appellate decision Mr. Okorochoa referenced in his testimony is distinguishable, because it involved a dual-column device, where data from only one of the two columns was reported. (*Najera v. Shiimoto*, *supra*, 241 Cal.App.4th at pp. 182-184.) In that case, the court held the Department of Motor Vehicles could not rely on data from just one column of a two-column device to justify the administrative suspension of a license for driving with a BAC of 0.08 or more. (*Ibid.*) Here, in contrast, Mr. Chem used a single-column device, and the test results do not ignore data from a second column. (See Factual Finding 10.)

6. A more recent appellate decision reversed another administrative suspension of a driver license for driving with a BAC of 0.08 or more, based on unrebutted expert evidence “that single-column gas chromatography is not capable of determining either the presence or the concentration of blood alcohol.” (*Freitas v. Shiimoto* (Aug. 24, 2016, F071533) 3 Cal.App.5th 294 [2016 WL 4920072, at p.*5].) But like *Najera v. Shiimoto*, *Freitas v. Shiimoto* also involved data from just one column of a two-column device. (*Id.* at pp.*2, 6.) Furthermore, the expert evidence in that case was uncontroverted (*id.* at p.*5), while in this case, Mr. Chem persuasively disputed Mr. Okorochoa’s opinion that a single-column device is never sufficient. (See Factual Finding 10.) Mr. Okorochoa’s opinion also conflicts with the state agency approval of the testing protocols used. (See *id.*)

7. "Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy." (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at p. 770.) Therefore, the evidence respondent drove while under the influence proves he used alcohol in a dangerous manner. Accordingly, the Board may suspend or revoke his license for unprofessional conduct. (Bus. & Prof. Code, § 4301, subd. (h).)

Level of Discipline

8. In reaching a disciplinary decision, the Board must consider Disciplinary Guidelines it has adopted. (Cal. Code Regs., tit. 16, § 1760.) The Disciplinary Guidelines classify a violation of Business and Professions Code section 4301, subdivision (h), as a "Category II" violation, for which the recommended discipline ranges from a maximum of revocation to a minimum of revocation, stayed, with three years' probation. (Disciplinary Guidelines p. 13 (rev. 10/2007).) The Disciplinary Guidelines also list 15 factors to consider in determining the level of discipline:

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. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. 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
15. financial benefit to the respondent from the misconduct. (Disciplinary Guidelines at p. 3.)

9. Respondent's dangerous use of alcohol is recent, and had the potential to harm the public. His previous warnings from the Board, especially the citation for a different dangerous use of alcohol, are aggravating factors. (See Factual Finding 12.) He presented no evidence of rehabilitation, and is still on criminal probation for the "wet reckless"

conviction that followed his other dangerous use of alcohol in 2012. (*Ibid.*) At the same time, his unprofessional conduct occurred in his personal life, and caused no actual harm to the public or any consumer. Weighing these factors, neither the minimum nor maximum recommended discipline is appropriate. Instead, an appropriate intermediate discipline is revocation, stayed, with a five-year period of probation.

10. The Disciplinary Guidelines list 15 standard conditions “that shall appear in all probation cases.” (Guidelines at p. 5.) Condition eight requires payment of complainant’s investigation and prosecution costs, and complainant presented prima facie evidence her reasonable costs were \$12,155. (Factual Finding 13; see Bus. & Prof. Code, § 125.3, subs. (a), (c) [certified copy of actual costs is prima facie evidence the costs are reasonable].) Respondent presented no evidence rebutting this prima facie showing, and he will therefore be ordered to pay that amount. The last sentence of condition eight is modified so it does not prejudge how bankruptcy would affect the payment order.

11. The Disciplinary Guidelines also list optional conditions for use as appropriate in particular cases. Condition 37 is appropriate to use, because respondent is a pharmacy owner, and may be a pharmacist-in-charge. (See Factual Finding 12.) It is renumbered as condition 16 below. There are also optional conditions for use in cases involving chemical dependency, including addiction to alcohol. In this case, respondent denies he is addicted to alcohol, and several colleagues and friends also denied seeing signs of addiction. (Factual Finding 11.) His two instances of drinking and driving weigh against this evidence, but not enough to rebut it. About two years separate the incidents, and complainant presented no evidence respondent abused alcohol in any other personal or professional setting. Therefore, the Board’s standard conditions of probation are sufficient to protect the public, without incorporating conditions specific to chemical dependency.

ORDER

License number RPH 46882, issued to respondent Olusoji Olateunde Akanwo is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within 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
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, 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.

4. Cooperate with Board Staff

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

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5459 and the terms, conditions and restrictions imposed on respondent by the 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, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5459, and 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.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5459 in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within 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 he or she has read the decision in case number 5459 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.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments 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, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving 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 nor serve as a consultant unless otherwise specified in this order. Assumption of

any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. 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 \$12,155. Respondent owner shall make monthly payments according to a schedule approved by the Board.

There shall be no deviation from the approved schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

Whether the filing of bankruptcy by respondent relieves his responsibility to reimburse the Board its costs of investigation and prosecution is a matter to be decided by a court of competent jurisdiction.

9. Probation Monitoring Costs

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

10. Status of License

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

If respondent's license expires or is 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.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his 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 pocket and wall 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 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, including any outstanding costs.

12. Notification of a 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, mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

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

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. 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 practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 80 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 80 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation

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

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay 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.

15. Completion of Probation

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

16. Consultant for Owner or Pharmacist-In-Charge

During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent may be a pharmacist-in-charge. However, if during the period of probation respondent serves as a pharmacist-in-charge, respondent shall retain an independent consultant at his own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and whose name shall be submitted to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he is

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not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

DATED: October 14, 2016

DocuSigned by:
Thomas Heller
CFDEA01421714A4...

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 5459

12 **OLUSOJI OLATEUNDE AKANWO**
13 **aka OLUSOJI OLATUNDE AKANWO**
6039 Linda Vista Ct.
14 Rancho Cucamonga, CA 91739

ACCUSATION

15 Pharmacist License No. RPH 46882

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 7, 1994, the Board issued Pharmacist License No. RPH 46882 to
23 Olusoji Olateunde Akanwo aka Olusoji Olatunde Akanwo (Respondent). The Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2015, unless renewed.

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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 4011 of the Code provides that "[t]he board shall administer and enforce this
6 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
7 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
8 Safety Code)."

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

11 6. Section 4300.1 of the Code states, in pertinent part:

12 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
13 of law or by order or decision of the board or a court of law, the placement of a license on a
14 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
15 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
16 against, the licensee or to render a decision suspending or revoking the license."

17 STATUTORY PROVISIONS

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

22 8. Section 4059 of the Code states, in pertinent part:

23 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
24 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
25 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
26 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
27 3640.7. . . ."

28 9. Section 4060 of the Code states, in pertinent:

1 "No person shall possess any controlled substance, except that furnished to a person upon
2 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
3 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
4 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
5 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
6 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
7 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply
8 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
9 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
10 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
11 labeled with the name and address of the supplier or producer. . . ."

12 10. Section 4301 of the Code states, in pertinent part:

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

16

17 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
18 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
19 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
20 to the extent that the use impairs the ability of the person to conduct with safety to the public the
21 practice authorized by the license.

22

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

25

26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by the

1 board or by any other state or federal regulatory agency.

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

3 11. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

4 "(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section
5 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business
6 and Professions Code, every person who possesses any controlled substance which is (1) classified
7 in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of
8 Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in
9 paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
10 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,
11 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice
12 in this state, shall be punished by imprisonment in a county jail for a period of not more than one
13 year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

14 **REGULATORY PROVISION**

15 12. California Code of Regulations, title 16, section 1770, states:

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

22 **COST RECOVERY**

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

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1 4060, in conjunction of Healthy and Safety Code section 11377, in that on or about August 16,
2 2014, Respondent possessed pills containing 5 mg of Hydrocodone and 325 mg of
3 Acetaminophen without a valid prescription. Complainant refers to an by this reference
4 incorporates the allegations set for above in paragraph 17, as though set forth fully.

5 **DISCIPLINE CONSIDERATIONS**

6 19. To determine the degree of discipline, if any, to be imposed on Respondent,
7 Complainant alleges that:

8 a. On or about July 31, 2013, in a prior administrative action, the Board of Pharmacy
9 issued Citation No. CI 2012 53167 for violating section 4301, subdivision (h) [use of dangerous
10 drug or alcohol to the extent or in a manner as to be dangerous or injurious to one self or others]
11 and ordered Respondent to pay a fine. That Citation is now final and is incorporated by reference
12 as if fully set forth. The circumstances underlying the citation are that on or about September 26,
13 2012, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of
14 violating Vehicle Code section 23103, subdivision (a) [wet reckless driving], in the criminal
15 proceeding entitled *The People of the State of California v. Olusoji Olatunde Akanwo* (Super. Ct.
16 San Bernardino County, 2012, No. TWV1201997). The Court sentenced Respondent to two days
17 in jail, placed him on 36 months summary probation and ordered him to attend a Wet Reckless
18 Program.

19 b. On or about October 17, 2012, in a prior administrative action, the Board of
20 Pharmacy issued Citation Number CI 2012 54124 for violating section 4076, subdivision
21 (a)(11)(A) [prescription container to have the physical description of the dispensed medication,
22 including its color, shape, and any identification code that appears on the tablets or capsules],
23 section 1761, subdivision (a) [no pharmacist shall compound or dispense any prescription which
24 contains any significant error, omissions, irregularity, uncertainty, ambiguity or alteration], and
25 Health and Safety Code section 11164, subdivision (a)(1)(a) [each prescription for a controlled
26 substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be
27 made on a controlled substance prescription form as specified in section 11162.1 and shall meet
28 the following requirements: (1) the prescription shall be signed and dated by the prescriber in

1 ink]. That Citation is now final and is incorporated by reference as if fully set forth.

2 c. On or about August 14, 2013, in a prior administrative action, the Board sent a Letter
3 of Admonishment to Respondent pursuant to section 4315 for failure to comply with the laws and
4 regulations that govern the practice of pharmacy in California. Specifically, on or about May 23,
5 2012, Respondent verified a prescription for 180 tablets of a medication, but dispensed the
6 prescription with 126 tablets.

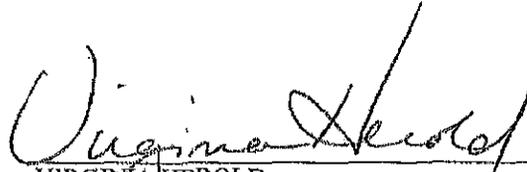
7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacist License No. RPH 46882, issued to Olusoji
11 Olateunde Akanwo aka Olusoji Olatunde Akanwo;
- 12 2. Ordering Olusoji Olateunde Akanwo to pay the Board the reasonable costs of the
13 investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: _____

9/9/15



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

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