

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

In the Matter of the Accusation Against:

STEVE HONG KIM,

Pharmacy Technician Registration No. TCH
123135

Respondent.

Case No. 5475

OAH No. 2015120184

DECISION AND ORDER

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

This decision shall become effective at 5:00 p.m. on June 17, 2016.

It is so ORDERED on May 18, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on March 7, 2016, in Sacramento, California.

Stephanie Alamo-Latif, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Steve Hong Kim (respondent) was present and was represented by Adam J. Richards, Attorney at Law with the law firm of Rothschild Wishek and Sands, LLP.

Evidence was received, the record was closed, and the matter was submitted for decision on March 7, 2016.

FACTUAL FINDINGS

1. On May 29, 2012, the Board issued Pharmacy Technician Registration Number TCH 123135 (registration) to respondent. Respondent's registration was in full force and effect at all times relevant to the allegations set forth in the Accusation, and will expire on November 30, 2017, unless renewed or revoked. Complainant seeks to discipline respondent's registration based upon respondent's theft or diversion of controlled substances while employed as a pharmacy technician at Oakdale Pharmacy, as described below.

2. On February 29, 2016, respondent stipulated to the truth of all of the facts and allegations constituting causes for discipline of respondent's pharmacy technician license, as set forth in the Accusation, paragraphs 16 to 29, which state the following:

- a. At all times relevant to the charges brought herein, Christen Kim ("Kim") was the owner and Pharmacist-in-Charge of Oakdale Pharmacy located on West H. Street in Oakdale, California. Kim employed her husband, Respondent, as a technician at the pharmacy. (Accusation, Paragraph 16.)
- b. On or about December 29, 2014, the Board received a letter from Kim, reporting that Respondent had overdosed on drugs and had admitted stealing Adderall XR 30 mg and Adderall IR 30 mg from the pharmacy. Kim estimated that Respondent had taken 600 dosage units and 245 dosage units of each drug, respectively. Kim provided the Board with a copy of a *Report of Theft or Loss of Controlled Substances Form DEA-106*, which she had submitted to the Drug Enforcement Agency on December 26, 2014. (Accusation, Paragraph 17.)
- c. On or about January 6, 2015, the Board's representative sent a letter to Kim, requesting further documentation, including a detailed explanation of the circumstances surrounding the theft, a photocopy of the audit that was conducted to determine the amount of the theft, and a photocopy of the employee's (Respondent) admission to the theft, if available. (Accusation, Paragraph 18.)
- d. On or about February 2, 2015, the Board received various documents from Kim, including an audit summary and a typewritten note [*sic*] signed by Respondent. The audit summary indicated that 525 dosage units of amphetamine salts IR 30 mg and 700 dosage units of amphetamine salts ER 30 mg were unaccounted for. Respondent admitted in his note that he took the Adderall 30 mg ER and Adderall 30 mg IR without Kim's knowledge or consent for personal use and that he became addicted to the medication "very quickly[.]" (Accusation, Paragraph 19.)
- e. On or about March 11, 2015, Board Inspector H.N. conducted an inspection of the pharmacy. H.N. reviewed the audit summary with Kim and asked for the beginning and ending dates of the inventory. Kim showed H.N. an Excel spreadsheet on the computer, which documented the

pharmacy's receipt and dispensing of Schedule II controlled substances. Kim stated that based on the more frequent order pattern of the drugs during the last few weeks in 2014, she used the data from the spreadsheets in order to conduct the audit. The spreadsheets indicated that the amphetamine salts IR 30 mg and amphetamine salts XR 30 mgs [*sic*] were counted on December 26, 2014, and January 30, 2015, respectively. Kim showed H.N. a document, which indicated that an annual controlled substances inventory was conducted at close of business on December 1, 2012 and ~~November 30, 2013.~~ However, the inventory worksheets were empty; i.e., they did not include any data of the inventory. H.N. requested that Kim provide her with the inventory conducted on December 1, 2012, within three days. H.N. obtained the pharmacy's dispensing data for amphetamine salts IR and XR from December 2, 2012 to January 30, 2015. (Accusation, Paragraph 20.)

- f. H.N. interviewed Kim. Kim stated that during the evening of December 23, 2014, Respondent was behaving erratically at home, and was paranoid and hallucinating. Respondent turned all of the lights on in the house and woke up Kim and their two children. Kim was unable to calm Respondent down, so she and her children left the home. As Kim was driving away from the residence, she was contacted by the police. Kim's neighbors had reported to the police department that Respondent was running around in the street in his boxer shorts. Respondent was transported to the hospital by the police. (Accusation, Paragraph 21.)
- g. On or about March 17, 2015, H.N. received the controlled substances inventory from Kim. That same day, H.N. sent a letter to Valley Wholesale Drug Co., LLC ("Valley Wholesale"), requesting the sales record of all brand and generic amphetamine salts IR and XR 30 mg that had been purchased by the pharmacy from December 1, 2012 to January 30, 2015. H.N. received the sales record from Valley Wholesale on March 20, 2015. (Accusation, Paragraph 22.)
- h. On or about March 18, 2015, H.N. contacted Respondent. Respondent admitted that he started using cocaine in his 20's and last used the drug on January 10, 2015. Respondent also admitted that he had been using amphetamine salts since June 2014; and had stolen approximately six bottles of

amphetamine salts XR 30 mg and two to three bottles of amphetamine salts IR 30 mg from the pharmacy during business hours without Kim's knowledge. Respondent began taking one pill per day, then increased to two pills per day. As to the incident of December 23, 2014, Respondent admitted that he was informed by a nurse at the hospital that he tested positive for cocaine, THC (tetrahydrocannabinol, psychoactive compound in marijuana), and opiates. Respondent admitted further that he never had valid prescriptions for amphetamine salts, cocaine, or marijuana. (Accusation, Paragraph 23.)

- i. On or about March 26, 2015, H.N. sent a letter to Cardinal Health, requesting the sales record of all brand and generic amphetamine salts IR and XR 30 mg that had been purchased by the pharmacy from December 1, 2012 to January 30, 2015. H.H. [sic] received the sales record from Cardinal Health on March 30, 2015. (Accusation, Paragraph 24.)
- j. H.M. [sic] conducted an audit of the pharmacy's inventory of amphetamine salts 30 mg IR and XR for the period from December 1, 2012 to January 30, 2015, based on the documentation provided by the pharmacy, Valley Wholesale, and Cardinal Health. The audit revealed shortages of 600 dosage units of amphetamine salts XR 30 mg and 545 dosage units of amphetamine salts IR 30 mg. (Accusation, Paragraph 25.)

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

- k. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (f), for unprofessional conduct, in that while employed and on duty as a pharmacy technician at Oakdale Pharmacy, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows: Respondent stole or diverted approximately six bottles of amphetamine salts XR 30 mg (Adderall XR) and two to three bottles of amphetamine salts IR 30 mg (Adderall IR) from the pharmacy during business hours, for his own personal use, without Kim's knowledge or consent. Further, Board Inspector H.M.'s [sic] audit revealed shortages of 600 dosage units of amphetamine salts XR 30

mg and 545 dosage units of amphetamine salts IR 30 mg at the pharmacy for the time period of December 1, 2012 to January 30, 2015. The facts and circumstances are more fully set forth above in paragraphs 16 through 25. (Accusation, Paragraph 26.)

SECOND CAUSE FOR DISCIPLINE
(Self-Administration of Controlled Substances)

1. Respondent is subject to disciplinary action pursuant to ~~section 4301, subdivision (h), for unprofessional conduct,~~ in that Respondent self-administered the controlled substances Adderall IR, Adderall XR, cocaine, and marijuana, and used the medications to an extent or in a manner dangerous or injurious to himself, others and/or the public, as set forth above in paragraphs 16 through 25. (Accusation, Paragraph 27.)

THIRD CAUSE FOR DISCIPLINE
(Violations of State Laws Regulating Controlled Substances)

- m. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (j), for unprofessional conduct, in that Respondent obtained the controlled substances Adderall IR, Adderall XR, cocaine, and marijuana by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), possessed the controlled substances without valid or lawful prescriptions for the medications, in violation of section 4060, and self-administered the controlled substances, in violation of Health and Safety Code section 11170, as set forth above in paragraphs 16 through 25. (Accusation, Paragraph 28.)

FOURTH CAUSE FOR DISCIPLINE
(Violations of Pharmacy Laws)

- n. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (o), for unprofessional conduct, in that Respondent violated or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Bus. & Prof. Code § 4300, et seq. [*sic*], specifically, section 4060, as set forth above in paragraphs 16 through 25, and 28. (Accusation, Paragraph 29.)

After stipulating to the truth of all of the facts and allegations constituting the causes for discipline of his pharmacy technician license, respondent submitted only mitigation and rehabilitation evidence at hearing.

Evidence of Rehabilitation, Mitigation and Aggravation

3. Respondent owns and manages Oakdale Pharmacy with his wife, who is the Pharmacist-in-Charge (PIC). Respondent manages all of the financial aspects of the business, which consists of managing the accounts receivables and payables, cash flow, payroll and taxes. Respondent manages seven employees; six employees work full-time. He provides internship opportunities to college students interested in the field of pharmacy. He also works with Oakdale High School to provide opportunities for students to gain experience in the pharmaceutical industry.

4. Respondent is currently a full-time student at California State University, Stanislaus. He will be graduating in May 2016 with a Bachelor of Arts in Chemistry. He will be attending pharmacy school this fall at the University of the Pacific, and hopes to open a second pharmacy after becoming a pharmacist. In addition to his wife, respondent's mother and sister are also pharmacists.

5. Respondent began "using" marijuana in his 20's for recreation. He did not have a prescription, and he obtained the marijuana from his friends. Respondent used marijuana on a monthly basis in the first six months of use, "and after that, almost never." The last time he used marijuana was prior to being hospitalized. Respondent's cocaine use began in his late 20's. Respondent is now 42 years old. Respondent used cocaine once or twice a year. If respondent saw a friend using cocaine, he would use as well. On the night that he was hospitalized, respondent obtained the marijuana and cocaine from a friend. He asserted that he has now disconnected himself from anyone that uses any type of drug.

6. In the spring of 2014, respondent felt overwhelmed with his responsibilities as a full-time college student, a father of two children, and owner of a pharmacy, and he was "overextended to the extreme." Respondent felt "trapped and afraid that I would not be able to do the things I needed to do." Respondent was reluctant to discuss his problems with his wife. In his culture, respondent explained that the men are "stoic," they do not complain, and they do whatever is necessary to carry out their responsibilities. Respondent decided that he would take medications to give him energy and focus. As a pharmacy technician, respondent knew which drugs could help him. Respondent took his first Adderall when he had "a couple of big tests coming up." He stole the Adderall from Oakdale Pharmacy. On the day that respondent took the Adderall, he was able to study for 10 hours. He felt a focus and energy that he had not felt in a long time, and the drug gave him confidence to fulfill his responsibilities. Respondent knew at the time that he took the Adderall that he was stealing medications. He knew that he was violating the responsibilities of his license. He believed he would get caught.

7. Respondent continued to divert and take Adderall, with a plan to stop once the school semester was over. When the semester ended, respondent was unable to stop. "I knew I was in serious trouble and did not see a way out." He continued to take Adderall, "rationalizing it in whatever way I could." In the beginning, respondent took one pill per day for a month and a half. After the semester ended in approximately June 2014, his consumption slowly progressed to three pills per day, then four, and ultimately he was taking "toxic doses." Respondent took steps to conceal his theft of Adderall. He would take the Adderall when drug inventory took place at the pharmacy. While there, respondent would put the Adderall and the invoice aside. Respondent readily did so as the manager and pharmacy technician at Oakdale Pharmacy.

8. On or about December 29, 2014, respondent overdosed on Adderall. He suffered from a paranoid delusion, during which the police were called and respondent was hospitalized. Cocaine and marijuana were also found in respondent's system. Respondent was hospitalized for six days. He had enlarged kidneys and elevated liver enzymes due to his drug use. Respondent subsequently told his wife "what was going on." Respondent's wife was devastated. Respondent had broken her trust and put her pharmacist's license "in a bad situation." Respondent's wife reported respondent's thefts of Adderall to the Board.

9. After his hospitalization, respondent realized and acknowledged that he was a drug addict. He found a Board-approved drug treatment center, and enrolled himself at New Hope Recovery House (New Hope) on February 5, 2015. Respondent testified that he was "clean" for a month by the time he went to New Hope. Respondent later admitted that he drank alcohol before he went to the treatment center. Respondent acknowledged that alcohol is a drug. Respondent completed a 30-day intensive outpatient treatment program at New Hope on April 6, 2015. Respondent's sobriety date is February 5, 2015.

10. Respondent was required to attend Narcotics Anonymous (NA) meetings five times a week while in treatment at New Hope. He found an NA sponsor in March 2015. Respondent's sponsor is also a pharmacist. Respondent meets with his sponsor six times per week. His sponsor helps him with the 12-step program. Respondent recently completed the first step. Respondent's regular attendance at NA has given him insight into his addiction. His NA support group consists of four men. He calls them on a regular basis if he needs to talk. He considers the men in his support group as his friends.

11. Respondent also began individual counseling on April 7, 2015. His counseling sessions are ongoing. He attends sessions once or twice a month. He met with therapist Martha Cusan, LCSW, for his first eight sessions, then began seeing another therapist, Ron Gilbert, LMFT, a drug counselor. Respondent has been meeting with Dr. Gilbert since June 2015. Respondent's major focus in therapy is his communication with others.

12. Currently, respondent's daily role at Oakdale Pharmacy is completely administrative in nature. He handles the pharmacy's paperwork and payroll. He spoke with his employees and told them that he diverted drugs, so that his employees will make him accountable for his actions, and will provide him with support. Oakdale Pharmacy has procedures in place to monitor the medications and to prevent unauthorized access. In the past, the pharmacy housed the controlled substances with the other medications. The procedure has changed such that the controlled substances are stored and locked separately from the other medications. The access code was changed so that respondent does not know what it is. Respondent no longer has access to the pharmacy during locked hours. Respondent no longer has any duties that involve receiving or taking inventory of medications. Respondent believes he is now fit to work in a pharmacy setting.

13. Respondent will be attending pharmacy school in the fall. The program consists of a three-year, full-time academic schedule. Respondent admits that the classes will be difficult, and that he is still married, cares for his two children, and still manages Oakdale Pharmacy. Respondent will be in the same difficult situation that led to his downward spiral into drug addiction. He asserted that now, he has learned to ask for help. He and his wife hired a nanny to help him with the responsibilities of caring for his children. Respondent will communicate and talk to his sponsor to assist him in making good decisions. Respondent will communicate with his wife. He has a support structure that he did not have previously.

JOSEPH AVILA, PHARMACIST AND RESPONDENT'S NA SPONSOR

14. Joseph Avila, a pharmacist at Memorial Medical Center in Modesto, testified on respondent's behalf. Mr. Avila is respondent's NA sponsor. Mr. Avila testified that he was under investigation by the Board for diversion in 1992. At that time, Mr. Avila diverted narcotics for personal use. Someone at work saw him, and he was reported to the Board. Mr. Avila successfully completed the Board's diversion program, and did not suffer disciplinary consequences to his license. Mr. Avila has been sober for 24 years. He has attended NA meetings since June 1992, twice a week.

15. Mr. Avila testified that he met respondent at an NA meeting one year ago. He was introduced to respondent due to his pharmacy background. Mr. Avila meets with respondent once or twice a week, when they have lunch and discuss respondent's week and his formal step work. Mr. Avila asserted that the first step is one of the most important steps in NA. Mr. Avila testified that respondent has gone through his first step, and that respondent "is right where he should be." Mr. Avila also stated that respondent is doing very well in recovery. He asserted that there are no signs that respondent has relapsed. Respondent's attendance at NA is excellent. Respondent possessed the character that will allow him to stay dedicated to the NA program. From what Mr. Avila has observed so far, respondent's recovery mirrors Mr. Avila's "very closely."

WERNER FELDHAUSE, NA MEMBER

16. Werner Feldhause testified on respondent's behalf. Mr. Feldhause is a heavy duty truck mechanic who met respondent at NA one year ago. Mr. Feldhause has been sober for approximately 12 years. He attends NA three to five days a week. He currently serves as chair of the men's retreat committee for the NA group. Outside of NA, Mr. Feldhause and respondent ride bicycles together. They rode every other week until respondent began school. They ride for approximately 35 miles. Mr. Feldhause observed respondent to be a quiet and subdued person when they first met. At NA meetings, members learn to interact with one another. Mr. Feldhause noticed a positive change in respondent as he began to reach out. ~~While on a bike ride, respondent told Mr. Feldhause that he diverted drugs.~~ Mr. Feldhause asserted that the recovery process is the same "whether you divert drugs versus doing street drugs." Mr. Feldhause has observed respondent to be "clean," and that respondent is a good man.

STEPHEN F. GRINSTEAD, DR. AD, LMFT, CADC-II, ACRPS

17. Dr. Grinstead has a Doctorate in Addictive Disorders (Dr. AD), and is a Licensed Marriage and Family Therapist (LMFT), a California-certified Alcohol and Drug Counselor (CADC-II), and an Advanced Relapse Prevention Specialist (ACRPS). Dr. Grinstead testified persuasively at hearing, and his assessment report was admitted into the record.

18. On February 4, 2016, Dr. Grinstead conducted an assessment of respondent. The session covered a mental health screening assessment and psychological evaluation for conditions including Substance Use Disorder, Post-Traumatic Stress Disorder (PTSD), Anxiety, Depression, Bi-Polar Disorder, as well as assessment and treatment planning recommendations for any problematic identified conditions.

19. Dr. Grinstead noted that respondent exhibited mild symptoms of anxiety rated at a Level 2 to 3 on a scale from 0 to 10, related to respondent's concern over the accusation in this matter. Respondent showed minimal signs of depression symptoms also rated on a Level 2 to 3 out of 10. Respondent's score of nine out of 63 on the *Beck Depression Inventory* indicated that respondent did not meet the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) criteria for a depressive disorder.

20. Dr. Grinstead administered a *Gorski-CENAPS® AWARE* test on respondent to determine his risk for relapse. Dr. Grinstead wrote, "According to the *Journal of Alcohol Studies* it concluded that the Gorski's warning signs scale is a reliable and valid predictor of alcohol relapses (J. Stud. Alcohol 61: 759-765, 2000)." A score of 28/196 indicates no risk for relapse. Respondent's score was 36/196, indicating a very low risk of relapse, according to Dr. Grinstead.

21. Dr. Grinstead's Quality of Life Assessment of respondent indicated that respondent's current problems in his life were rated at 5/10, depression 6/10, concentration 0/10, relationship problems 3/10, tasks of daily living 0/10, level of hopelessness 2/10, problems with physical health 2/10, ability to manage emotions 3/10, and anxiety/tension problems 8/10 related to respondent's concerns about the Board's accusation against him.

22. Dr. Grinstead noted that respondent's low score on the PTSD Checklist indicated very minimal unresolved trauma symptoms. Respondent's *Gorski-CENAPS® Post Acute Withdrawal Assessment* indicated "**no symptoms** currently." (Bold and underlining in original.) Dr. Grinstead's summary of the test results stated:

In assessing Mr. Kim, I assumed his responses were honest and accurate and noted that he does not present as someone with a current and active substance use disorder. Nor did I note any significant protracted withdrawal symptoms (no substance induced mental disorder criteria were present) that would have been present in someone who did use recently. Mr. Kim admits to a history of long-term Adderall, Cocaine and Marijuana use that started in 2014 that he mistakenly believed was helping him cope with life stressors.

23. Dr. Grinstead provided the DSM-5 Diagnostic Impressions for respondent as follows:

- A: 304.20 – Stimulant Use Disorder (Adderall & Cocaine); Severe; Full Stable remission since 2/03/15
304.30 – Cannabis Use Disorder; Moderate; Full Stable Remission since 2/03/15
309.28 – Adjustment Disorder; with mixed anxiety and depressed mood; Mild
- B: 799.9 – Deferred; no problematic traits noted
- C: Medical Condition: Deferred to Primary Physician; but no medical conditions noted
- D: V62.29 – Occupational Problems; currently at risk for not becoming a Licensed Pharmacist
V61.10 – Relationship Distress with Spouse
V61.20 – Parent-Child Relational Problems due to substance use disorder
- E: Psychosocial Functioning: Current 65-70/100; My Goal is 80-85/100

Dr. Grinstead believes that respondent is safe to be working with the public as a Licensed Pharmacist after finishing his degree “as evidenced by my assessments regarding his substance use disorder being in full remission since February 3, 2015, no problematic mental health disorders were noted during our assessment, as well as validation from the support documentation” from respondent’s therapists, NA sponsor and professors which Dr. Grinstead cited in his report (and were admitted into the record). Dr. Grinstead believes that respondent should be in a probation monitoring program from one to three years with random drug testing, and that he abstain from using any psychoactive drugs including marijuana, Adderall, cocaine, or any other “drugs of abuse” to fully move into a recovery lifestyle. Dr. Grinstead suggested that respondent should be required to attend at least three 12-Step NA or other appropriate social support meetings per week with proof of attendance.

Dr. Grinstead also recommended that respondent enroll in a Health Professionals Support Group if granted probation, and given permission to test as a pharmacist after completing his degree program.

“Due to the recovery process having risk for relapse ... ,” Dr. Grinstead recommended that respondent complete the *AWARE Questionnaire* on a daily basis (for the following week after his assessment).

Dr. Grinstead also recommended that it would be in respondent’s best interest to remain engaged in psychotherapy with Ron Gilbert, LMFT, for psychosocial support and relapse prevention.

Lastly, Dr. Grinstead sees respondent’s prognosis as good to very good, as long as respondent follows his treatment and relapse prevention suggestions.

LETTERS OF SUPPORT

24. Respondent submitted the following letters in support of his rehabilitation, which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d)¹:

a. Anna Castro, CCAPP, is the Intensive Outpatient Case Manger of New Hope Recovery House/Recovery Systems. She submitted letters dated October 19 and 20, 2016, which confirmed that respondent completed 30 days of intensive outpatient treatment on April 6, 2015, and that respondent completed all of his core assignments on the disease of addiction, denial, powerlessness, grief, self-esteem, and the value of intimacy through sponsorship. Ms. Castro also confirmed that respondent obtained a 12-step sponsor and attends 12-step meetings regularly. Ms.

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”

Castro indicated that respondent has worked on his communications and dealings with life problems and that he tested negatively for drugs during his treatment. Ms. Castro also stated that respondent has worked "tirelessly" in meeting all treatment requirements, has dedicated himself to the 12-step community, and has exerted effort to achieve self-awareness that is motivating him to increase healthy lifestyle changes. Ms. Castro is aware of respondent's actions which led to the Board's accusation, and it is a source of regret and embarrassment for respondent.

b. Respondent's siblings, Kevin and Ellen Kim, wrote about their personal observations of respondent from childhood to the present. Kevin Kim was surprised to learn of the disciplinary action, because he has always observed respondent's commitment to his family, school and work. Ellen Kim, a pharmacist, described respondent as "very honest and ethical." She also described respondent as "dependable and trustworthy and has gained much respect from his family and peers. As a man of integrity, he is true to his words."

c. Harold S. Draper, LCSW, wrote that he met respondent at an NA meeting. Dr. Draper was impressed with respondent's motivation and commitment to live a drug-free life. Respondent also took on a consuming and challenging commitment to be the Group Service Representative for the "Just for Today Men's Meeting." Mr. Draper also confirmed that respondent has an NA sponsor to help him work the 12-steps, and that respondent obtains counseling with an LMFT. Mr. Draper's opinion is that respondent has a good prognosis for ongoing recovery as long as he continues to live by the spiritual principles he is learning in recovery.

d. Two of respondent's professors from California State University, Stanislaus, wrote on respondent's behalf. Elvin A. Alemán, Ph.D., is an Assistant Professor in the Chemistry Department. Respondent was a student in Professor Alemán's Physical Chemistry class where respondent placed in the top five percent. Professor Alemán described respondent as a diligent and motivated student, and that respondent's performance as a student has been excellent. Scott C. Russell, Ph.D., is an Associate Professor in the Chemistry Department. Respondent was an undergraduate student in Professor Russell's Quantitative Analysis class in the fall of 2013. Professor Russell described respondent as having a high level of intellect, determination and focus. He was impressed with respondent's academic achievements while running a full-time business. With regard to respondent's character, Professor Russell described respondent as a person with focus, drive, and adherence to hard work.

e. Martha L. Cuan, LCSW, provided psychological counseling services to respondent from April 7, 2015, to July 27, 2015. Respondent tried to make sense of the events that contributed to his addiction and lack of coping skills. "Respondent disclosed a significant history to physical abuse in a dysfunctional family of origin that culminated in abandonment after the death of respondent's mother." Ms. Cuan described respondent as motivated in making positive changes in his home life by

becoming more involved with his wife and children. Respondent used their sessions to process his feelings, identify his moods and triggers, and identify/practice healthy coping skills. Respondent terminated their sessions when he began treatment with another provider.

f. Ron Gilbert, LMFT, is respondent's current therapist. Mr. Gilbert has operated his own practice for 15 years. Respondent began therapy with Mr. Gilbert on July 6, 2015. The focus of the therapy was to "examine the skill sets necessary for continuing to maintain his recovery which was initiated when he entered an Intensive Outpatient Program at New Hope on 2/5/15, successfully completing his treatment on 4/6/15." Mr. Gilbert has worked with respondent on relapse prevention, managing psychological and environmental triggers, and exploring concerns and desires to improve family relationships and to contribute to a healthy worksite. Mr. Gilbert found respondent "highly invested" in his recovery program, participating in the "recovering community, utilizing sponsorship and attending AA/NA meetings." Respondent recognizes abstinence in recovery is a high priority, and he "continues to make progress with his willingness, insight, and applying skills that he is learning that contributes to his emotional and mental wellbeing." Mr. Gilbert stated that respondent "continues his journey of recovery, and has plans for a drug-free life moving forward."

25. Respondent submitted his NA sign-in sheets in support of his rehabilitation. The sign-in sheets indicate that respondent attended NA from approximately February 2, 2015 to July 1, 2015, October 4, 2015 to October 30, 2015, and January 31, 2016 to February 10, 2016. Respondent did not testify about the gaps in his attendance or missing sign-in sheets, if any.

Discussion

26. In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth criteria for evaluating the rehabilitation of a licensee who has been convicted of a crime. These criteria include:

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

27. The Board did not allege that respondent was convicted of a crime for stealing or diverting controlled substances from Oakdale Pharmacy, however, the Board's rehabilitation criteria may still be applicable here. In addition, the Board's Disciplinary Guidelines (Rev. 10/2007) provide "examples of appropriate evidence a respondent may submit to demonstrate his rehabilitative efforts and competency:"

a. Recent, dated written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of pharmacy including the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by board staff.

b. Recent, dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation. Such letters and reports will be subject to verification by board staff.

c. Recent, dated letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.). Such letters and reports will be subject to verification by board staff.

d. Recent, dated laboratory analyses or drug screen reports, confirming abstention from drugs and alcohol. Such analyses and reports will be subject to verification by board staff.

e. Recent, dated physical examination or assessment report by a licensed physician, confirming the absence of any physical impairment that would prohibit the respondent from practicing safely. Such assessments and reports will be subject to verification by board staff.

[¶] ... [¶]

28. In 2014, respondent diverted or stole Adderall, a controlled substance, from Oakdale Pharmacy, a pharmacy that he owned with his wife. He did so for a period of approximately nine months or more. It was only when respondent overdosed and was hospitalized in December 2014 that his actions were discovered. The seriousness and recency of respondent's conduct raise concerns about whether respondent is able to work as a pharmacy technician without risk to the public health, safety and welfare.

29. But at hearing, respondent submitted strong evidence of rehabilitation. He testified in a very direct and candid fashion. He took responsibility for his unprofessional and deceitful conduct and demonstrated insight into the factors that lead to his wrongful behavior. He recognized that he put Oakdale Pharmacy, his wife's pharmacist license, his marriage and family, his pharmacy technician license, and his future as a pharmacist at risk because of his drug addiction. He is committed to his recovery, and never letting his past actions happen again. From therapy, he has learned to manage his psychological and environmental triggers, and has gained insight into his addiction. He has continually attended therapy since his overdose in December 2014.

30. Although respondent's sobriety is in its infancy, respondent is committed to his recovery as shown by his substantial involvement in NA and in working the 12-steps, and has worked with his sponsor for one year. He has remained sober since February 2015. He submitted compelling letters from Hope Recovery House, his therapists, professors, and family. Dr. Grinstead persuasively testified that respondent's prognosis is good to very good, as long as respondent follows his treatment and relapse prevention therapy.

31. It is concerning that respondent's life stressors will remain and will likely increase as he begins pharmacy school. However, the difference between then and now is the amount of resources and support that respondent now has. In addition, he has insight into the very acts which led to his diversion and theft. He continues to seek therapy. He has a sponsor who is also a recovering pharmacist. He is motivated to stay sober. His access to Oakdale Pharmacy will be severely limited. Oakdale Pharmacy has changed its procedures in safeguarding medications and access. Respondent is not allowed access to Oakdale Pharmacy when it is closed. He will not have access to controlled substances, which are locked separately from other medications. He will not be given the access code. He no longer has duties involving receipt of medications or inventory. In essence, respondent does not, and will not, handle medications, and his employees will make him accountable for this.

32. From the evidence respondent presented it was apparent that he has made a serious commitment to maintaining his sobriety to ensure that he will not divert or steal Adderall, or any other controlled substances or dangerous drugs again. When all the evidence is considered, the public health, safety and welfare would be adequately protected if respondent is placed on probation for five years under the terms and conditions set forth below.

Costs

33. Complainant has requested that respondent be ordered to pay the Board's costs for investigation in the amount of \$2,910, and prosecution in the amount of \$6,077.50, for a total of \$8,987.50. The prosecution costs are for the services provided by the Attorney General's office in prosecuting this matter. They are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. Respondent did not object to the costs requested by complainant. Complainant established that the requested costs are reasonable in light of the allegations and issues in this matter. Complainant's request for costs are more fully addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides that the Board "shall take action against any holder of a license who is guilty of unprofessional conduct."² Subdivision (f) of that section defines "unprofessional conduct" as "[t]he commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise"
2. Business and Professions Code section 4301, subdivision (h), defines "unprofessional conduct" as "[t]he administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or 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."
3. Business and Professions Code section 4301, subdivision (j), defines "unprofessional conduct" as "[t]he violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs."
4. Business and Professions Code section 4301, subdivision (o), defines "unprofessional conduct" as "[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

² Business and Professions Code section 4032 defines "license" to include "any license, permit, registration, certificate, or exemption" issued by the Board.

5. Business and Professions Code section 4022, states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals, and includes the following:

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

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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

6. Business and Professions Code section 4060 provides, in part, that a person shall not possess any controlled substance, except as prescribed by a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to various enumerated code sections.

7. Health and Safety Code section 11170 states that “[n]o person shall prescribe, administer, or furnish a controlled substance for himself.”

8. Health and Safety Code section 11173 provides, in part, that: “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge ...”

Causes for Discipline

9. As set forth in Finding 2, cause exists to discipline respondent’s registration under Business and Professions Code section 4301, subdivision (f).

10. As set forth in Finding 2, cause exists to discipline respondent’s registration under Business and Professions Code section 4301, subdivision (h).

11. As set forth in Finding 2, cause exists to discipline respondent’s registration under Business and Professions Code section 4301, subdivision (h).

12. As set forth in Finding 2, cause exists to discipline respondent's registration under Business and Professions Code section 4301, subdivision (j).

13. As set forth in Finding 2, cause exists to discipline respondent's registration under Business and Professions Code section 4301, subdivision (o).

Rehabilitation

14. As set forth in Findings 28 to 32, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow him to retain his registration on a probationary basis subject to the terms and conditions set forth below.

15. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

16. As set forth in Finding 17, complainant seeks \$8,987.50 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable.

ORDER

Pharmacy technician registration number TCH 123135 issued to respondent Steve Hong Kim is revoked. The revocation is stayed and respondent is placed on probation for five (5) 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 registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

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

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 her probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case 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 this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

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

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) 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 acknowledgements to the Board shall be considered a violation of probation.

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

6. 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 \$8,987.50. Respondent shall pay this amount over the term of his probation in accordance with a reasonable payment schedule established by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

7. 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.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician 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 pharmacy technician 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.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician 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 pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. 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 and mailing address, or phone number.

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

11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 60 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 60 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 60 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 60 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Violation of Probation

If 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.

13. Completion of Probation

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

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof 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 screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

16. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

17. 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.

DATED: April 8, 2016.

DocuSigned by:

Danette C. Brown

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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 5475

12 **STEVE HONG KIM**
13 **1390 West H Street, Suite F**
Oakdale, CA 95361

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **123135**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 29, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 123135 to Steve Hong Kim ("Respondent"). The pharmacy technician registration
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

1 STATUTORY PROVISIONS

2 4. Section 4300 states, in pertinent part:

3 (a) Every license issued may be suspended or revoked.

4 (b) The board shall discipline the holder of any license issued by the
5 board, whose default has been entered or whose case has been heard by the board and
6 found guilty, by any of the following methods:

6 (1) Suspending judgment.

7 (2) ~~Placing him or her upon probation.~~

8 (3) Suspending his or her right to practice for a period not exceeding one
9 year.

10 (4) Revoking his or her license.

11 (5) Taking any other action in relation to disciplining him or her as the
12 board in its discretion may deem proper . . .

12 5. Section 4300.1 states:

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

17 6. Section 4301 states, in pertinent part:

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

21
22 (f) The commission of any act involving moral turpitude, dishonesty,
23 fraud, deceit, or corruption, whether the act is committed in the course of relations as
24 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

24
25 (h) The administering to oneself, of any controlled substance, or the use
26 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
27 dangerous or injurious to oneself, to a person holding a license under this chapter, or
28 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.
28

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

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

8 7. Section 4022 states:

9 "Dangerous drug" or "dangerous device" means any drug or device
10 unsafe for self-use in humans or animals, and includes the following:

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

13 (b) Any device that bears the statement: "Caution: federal law restricts
14 this device to sale by or on the order of a -----," "Rx only," or words of similar
15 import, the blank to be filled in with the designation of the practitioner licensed to use
16 or order use of the device.

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

19 8. Section 4060 states, in pertinent part:

20 No person shall possess any controlled substance, except that furnished to
21 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
22 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
23 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
24 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
25 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
26 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

28 9. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
administer, or furnish a controlled substance for himself."

10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
"[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
misrepresentation, or subterfuge . . ."

COST RECOVERY

11. Section 125.3 provides, in pertinent part, that a Board may request the administrative
law judge to direct a licentiate found to have committed a violation or violations of the licensing

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

4 12. "Adderall IR (immediate release)" and "Adderall XR (extended release)" are
5 amphetamines-dextroamphetamines (amphetamine salts) used in the treatment of Attention
6 Deficit Hyperactivity Disorder. Adderall IR and Adderall XR are Schedule II controlled
7 substances as designated by Health and Safety Code section 11055, subdivision (d)(1).

8 13. "Cocaine" is a Schedule II controlled substance as designated by Health and Safety
9 Code section 11055, subdivision (b)(6).

10 14. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety
11 Code section 11054, subdivision (d)(13).

12 15. Adderall IR, Adderall XR, cocaine, and marijuana are all dangerous drugs within the
13 meaning of Code section 4022 in that they require a prescription under federal law.

14 **BACKGROUND**

15 16. At all times relevant to the charges brought herein, Christen Kim ("Kim") was the
16 owner and Pharmacist-in-Charge of Oakdale Pharmacy located on West H. Street in Oakdale,
17 California. Kim employed her husband, Respondent, as a technician at the pharmacy.

18 17. On or about December 29, 2014, the Board received a letter from Kim, reporting that
19 Respondent had overdosed on drugs and had admitted stealing Adderall XR 30 mg and Adderall
20 IR 30 mg from the pharmacy. Kim estimated that Respondent had taken 600 dosage units and
21 245 dosage units of each drug, respectively. Kim provided the Board with a copy of a *Report of*
22 *Theft or Loss of Controlled Substances Form DEA-106*, which she had submitted to the Drug
23 Enforcement Agency on December 26, 2014.

24 18. On or about January 6, 2015, the Board's representative sent a letter to Kim,
25 requesting further documentation, including a detailed explanation of the circumstances
26 surrounding the theft, a photocopy of the audit that was conducted to determine the amount of the
27 theft, and a photocopy of the employee's (Respondent) admission to the theft, if available.

28 ///

1 19. On or about February 2, 2015, the Board received various documents from Kim,
2 including an audit summary and a typewritten note signed by Respondent. The audit summary
3 indicated that 525 dosage units of amphetamine salts IR 30 mg and 700 dosage units of
4 amphetamine salts ER 30 mg were unaccounted for. Respondent admitted in his note that he took
5 the Adderall 30 mg ER and Adderall 30 mg IR without Kim's knowledge or consent for personal
6 use and that he became addicted to the medication "very quickly".

7 20. On or about March 11, 2015, Board Inspector H. N. conducted an inspection of the
8 pharmacy. H. N. reviewed the audit summary with Kim and asked for the beginning and ending
9 dates of the inventory. Kim showed H. N. an Excel spreadsheet on the computer, which
10 documented the pharmacy's receipt and dispensing of Schedule II controlled substances. Kim
11 stated that based on the more frequent ordering pattern of the drugs during the last few weeks in
12 2014, she used the data from the spreadsheets in order to conduct the audit. The spreadsheets
13 indicated that the amphetamine salts IR 30 mg and amphetamine salts XR 30 mgs were counted
14 on December 26, 2014, and January 30, 2015, respectively. Kim showed H. N. a document,
15 which indicated that an annual controlled substances inventory was conducted at close of business
16 on December 1, 2012 and November 30, 2013. However, the inventory worksheets were empty;
17 i.e., they did not include any data of the inventory. H. N. requested that Kim provide her with the
18 inventory conducted on December 1, 2012, within three days. H. N. obtained the pharmacy's
19 dispensing data for amphetamine salts IR and XR from December 2, 2012 to January 30, 2015.

20 21. H. N. interviewed Kim. Kim stated that during the evening of December 23, 2014,
21 Respondent was behaving erratically at home, and was paranoid and hallucinating. Respondent
22 turned all of the lights on in the house and woke up Kim and their two children. Kim was unable
23 to calm Respondent down, so she and her children left the home. As Kim was driving away from
24 the residence, she was contacted by the police. Kim's neighbors had reported to the police
25 department that Respondent was running around the street in his boxer shorts. Respondent was
26 transported to the hospital by the police.

27 22. On or about March 17, 2015, H. N. received the controlled substances inventory from
28 Kim. That same day, H. N. sent a letter to Valley Wholesale Drug Co., LLC ("Valley

1 Wholesale”), requesting the sales record of all brand and generic amphetamine salts IR and XR
2 30 mg that had been purchased by the pharmacy from December 1, 2012 to January 30, 2015.
3 H. N. received the sales record from Valley Wholesale on March 20, 2015.

4 23. On or about March 18, 2015, H. N. contacted Respondent. Respondent admitted that
5 he started using cocaine in his 20’s and last used the drug on January 10, 2015. Respondent also
6 admitted that he had been using amphetamine salts since June 2014; and had stolen
7 approximately six bottles of amphetamine salts XR 30 mg and two to three bottles of
8 amphetamine salts IR 30 mg from the pharmacy during business hours without Kim’s knowledge.
9 Respondent began taking one pill per day, then increased to two pills per day. As to the incident
10 of December 23, 2014, Respondent admitted that he was informed by a nurse at the hospital that
11 he tested positive for cocaine, THC (tetrahydrocannabinol, psychoactive compound in marijuana),
12 and opiates. Respondent admitted further that he never had valid prescriptions for amphetamine
13 salts, cocaine, or marijuana.

14 24. On or about March 26, 2015, H. N. sent a letter to Cardinal Health, requesting the
15 sales record of all brand and generic amphetamine salts IR and XR 30 mg that had been
16 purchased by the pharmacy from December 1, 2012 to January 30, 2015. H. H. received the sales
17 record from Cardinal Health on March 30, 2015.

18 25. H. M. conducted an audit of the pharmacy’s inventory of amphetamine salts 30 mg IR
19 and XR for the period from December 1, 2012 to January 30, 2015, based on the documentation
20 provided by the pharmacy, Valley Wholesale, and Cardinal Health. The audit revealed shortages
21 of 600 dosage units of amphetamine salts XR 30 mg and 545 dosage units of amphetamine salts
22 IR 30 mg.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

25 26. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (f),
26 for unprofessional conduct, in that while employed and on duty as a pharmacy technician at
27 Oakdale Pharmacy, Respondent committed acts involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, as follows: Respondent stole or diverted approximately six bottles of

1 amphetamine salts XR 30 mg (Adderall XR) and two to three bottles of amphetamine salts IR 30
2 mg (Adderall IR) from the pharmacy during business hours, for his own personal use, without
3 Kim's knowledge or consent. Further, Board Inspector H. M.'s audit revealed shortages of 600
4 dosage units of amphetamine salts XR 30 mg and 545 dosage units of amphetamine salts IR 30
5 mg at the pharmacy for the time period of December 1, 2012 to January 30, 2015. The facts and
6 circumstances are more fully set forth above in paragraphs 16 through 25.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Self-Administration of Controlled Substances)**

9 27. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (h),
10 for unprofessional conduct, in that Respondent self-administered the controlled substances
11 Adderall IR, Adderall XR, cocaine, and marijuana, and used the medications to an extent or in a
12 manner dangerous or injurious to himself, others and/or the public, as set forth above in
13 paragraphs 16 through 25.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Violations of State Laws Regulating Controlled Substances)**

16 28. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (j),
17 for unprofessional conduct, in that Respondent obtained the controlled substances Adderall IR,
18 Adderall XR, cocaine, and marijuana by fraud, deceit, misrepresentation, or subterfuge, in
19 violation of Health and Safety Code section 11173, subdivision (a), possessed the controlled
20 substances without valid or lawful prescriptions for the medications, in violation of section 4060,
21 and self-administered the controlled substances, in violation of Health and Safety Code section
22 11170, as set forth above in paragraphs 16 through 25.

23 **FOURTH CAUSE FOR DENIAL**

24 **(Violations of the Pharmacy Law)**

25 29. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (o),
26 for unprofessional conduct, in that Respondent violated or attempted to violate, directly or
27 indirectly, a provision or term of the Pharmacy Law (Bus. & Prof. Code § 4300, et seq.),
28 specifically, section 4060, as set forth above in paragraphs 16 through 25, and 28.

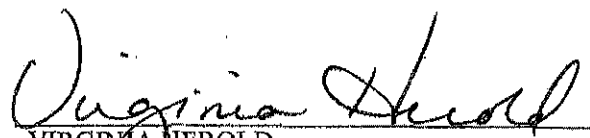
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 123135, issued to Steve Hong Kim;
2. Ordering Steve Hong Kim to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/4/15


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

SA2015103646