

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Petition to Revoke
Probation Against:

GERARDO CASTILLO
904 Elm Avenue
Modesto, CA 95351

Original Pharmacist License No. RPH 68819

Respondent.

Case No. 6002

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 3, 2017, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 6002 against Gerardo Castillo (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

2. On or about June 25, 2013, the Board of Pharmacy (Board) issued Original Pharmacist License No. RPH 68819 to Respondent. The Original Pharmacist License will expire on February 28, 2017, unless renewed. On or about February 4, 2016, the Original Pharmacist License was suspended.

///

1 3. On or about January 10, 2017, Respondent was served by Certified and First Class
2 Mail copies of Petition to Revoke Probation No. 6002, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
5 Professions Code section 4100, is required to be reported and maintained with the Board.

6 Respondent's address of record was and is:

7 904 Elm Avenue
8 Modesto, CA 95351.

9 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
10 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
11 Code section 124.

12 5. On or about January 13, 2017, Respondent returned a signed Certified Mail receipt
13 for the aforementioned Certified Mail documents.

14 6. Government Code section 11506(c) states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense . . . and the notice shall be deemed a specific denial of all
17 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
18 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
19 discretion may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
22 Petition to Revoke Probation No. 6002.

23 8. California Government Code section 11520(a) states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense . . . or to appear at
25 the hearing, the agency may take action based upon the respondent's express
26 admissions or upon other evidence and affidavits may be used as evidence without
27 any notice to respondent

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits, and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.
2 6002, finds that the charges and allegations in Petition to Revoke Probation No. 6002, are
3 separately and severally, found to be true and correct by clear and convincing evidence.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Gerardo Castillo has subjected
6 his Original Pharmacist License No. RPH 68819 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Original Pharmacist
9 License based upon the following violations alleged in the Petition to Revoke Probation which
10 are supported by the evidence contained in the Default Decision Evidence Packet in this case:

11 a. Failure to comply with Probation Condition 2 of the Decision in First Amended
12 Accusation No. 4469, in that since being placed on probation on August 31, 2015, Respondent
13 failed to participate in and complete his contract with the Pharmacists Recovery Program as
14 follows:

15 b. Respondent submitted positive random drug tests as follows:

16 i. On September 20, 2015, positive for Codeine 257 pg/mg.

17 ii. On February 19, 2016, positive for Ethylglucuronide 3062 NG/ML (a
18 metabolite of ethyl alcohol usually from drinking alcoholic beverages) and Ethylsulfate 999
19 NG/ML.

20 iii. On August 21, 2016, positive for Tramadol 84.4 Ng/ML, Ethylglucuronide
21 7260 Ng/ML, and Ethylsulfate 3409 NG/ML.

22 c. Respondent failed to enter required post test data following a test on September 18,
23 2015.

24 d. Respondent failed to provide the Recovery Terms and Conditions Agreement, dated
25 September 14, 2015, to the Pharmacists Recovery Program by September 24, 2015.

26 e. Respondent submitted a monthly self report and October 2015 12-step card late.

27 f. Respondent failed to provide the Recovery Terms and Conditions Agreement, dated
28 May 12, 2016, to the Pharmacists Recovery Program.

1 g. Respondent failed to provide an Intensive Outpatient Treatment provider report to the
2 Pharmacists Recovery Program.

3 h. Respondent submitted the July 2016 Monthly Self Report late.

4 i. On or about September 30, 2016, the Pharmacists Recovery Program terminated
5 Respondent's enrollment, based upon the above-described conduct, as well as the fact that during
6 Respondent's most recent admission at Sacramento Recovery House, Respondent was discovered
7 to be in possession of a syringe and vial or vials of injectable steroids (testosterone). Sacramento
8 Recovery House discharged Respondent for violation of their rules. The testosterone was not
9 identified as a currently prescribed medication. Respondent did not contact the Pharmacists
10 Recovery Program and did not respond to any phone calls from the Program to discuss his
11 discharge from Sacramento Recovery House.

12 j. Failure to comply with Probation Condition 3 of the Decision in First Amended
13 Accusation No. 4469, in that since being placed on probation on August 31, 2015, in that
14 Respondent failed to abstain from the possession or use of alcohol, controlled substances,
15 dangerous drugs and their associated paraphernalia. The circumstances are described with more
16 particularity in paragraphs 3(b) and (i), above.

17 k. Failure to comply with Probation Condition 9 of the Decision in First Amended
18 Accusation No. 4465, in that since being placed on probation on August 31, 2015, Respondent
19 failed to cooperate with the Board's monitoring and investigation of Respondent's compliance
20 with the terms and conditions of his probation. The circumstances are described with more
21 particularity in paragraph 3(i), above.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

IT IS SO ORDERED that Original Pharmacist License No. RPH 68819, heretofore issued to Respondent Gerardo Castillo, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on April 19, 2017.

It is so ORDERED on March 20, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

12579595.DOC
SA2016104581

Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

(GERARDO CASTILLO)

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No: 6002

13 **GERARDO CASTILLO**
14 **904 Elm Avenue**
Modesto, CA 95351

PETITION TO REVOKE PROBATION

15 **Original Pharmacist License No. RPH 68819**

16 Respondent.
17

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about June 25, 2013, the Board of Pharmacy issued Original Pharmacist
25 License Number RPH 68819 to Gerardo Castillo (Respondent). The Original Pharmacist License
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 February 28, 2017, unless renewed. On or about February 4, 2016, the Original Pharmacist
28 License was suspended.

1 **PRIOR DISCIPLINE**

2 3. Effective August 31, 2015, in a disciplinary action titled, "*In the Matter of the First*
3 *Amended Accusation Against: Gerardo Castillo a.k.a. Gerardo Castillo Rico,*" the Board issued a
4 Decision and Order wherein Respondent's intern pharmacist license was canceled and
5 Respondent's original pharmacist license was revoked. However, the revocation of Respondent's
6 original pharmacist license was stayed and Respondent was placed on probation for a period of
7 five (5) years with certain terms and conditions.

8 4. At all times after the effective date of Respondent's probation, Condition 19 stated:

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

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

23 5. Respondent's probation is subject to revocation, in that he violated probation as set
24 forth below.

25 **FIRST CAUSE TO REVOKE PROBATION**

26 **(Failed to Participate in Pharmacists Recovery Program)**

27 6. At all times after the effective date of Respondent's probation, Condition 2 stated:

28 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 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
addend addendums with the PRP.

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

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

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

13 During suspension, respondent shall not enter any pharmacy area or any
14 portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer,
15 or any other distributor of drugs which is licensed by the Board, or any manufacturer,
16 or where dangerous drugs and devices or controlled substances are maintained.
17 Respondent shall not practice pharmacy nor do any act involving drug selection,
18 selection of stock, manufacturing, compounding, dispensing or patient consultation;
19 nor shall respondent manage, administer, or be a consultant to any licensee of the
20 Board, or have access to or control the ordering, manufacturing or dispensing of
21 dangerous drugs and controlled substances. Respondent shall not resume practice
22 until notified by the Board.

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

28 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 this 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.

Respondent shall work in a pharmacy setting with access to controlled
substances for six (6) consecutive months before successfully completing probation.
If respondent fails to do so, probation shall be automatically extended until this
condition has been met. Failure to satisfy this condition within six (6) months beyond
the original date of expiration of the term of probation shall be considered a violation
of probation.

7. Respondent's probation is subject to revocation for failing to comply with Condition
2, referenced above, in that Respondent failed to participate in and complete his contract with the
Pharmacists Recovery Program as follows:

- 1 a. Respondent submitted positive random drug tests as follows:
- 2 i. On September 20, 2015, positive for Codeine 257 pg/mg.
- 3 ii. On February 19, 2016, positive for Ethylglucuronide 3062 NG/ML (a
- 4 metabolite of ethyl alcohol usually from drinking alcoholic beverages) and Ethylsulfate 999
- 5 NG/ML.
- 6 iii. August 21, 2016, positive for Tramadol 84.4 Ng/ML, Ethylglucuronide 7260
- 7 Ng/ML, and Ethylsulfate 3409 NG/ML.
- 8 b. Respondent failed to enter required post test data following a test on September 18,
- 9 2015.
- 10 c. Respondent failed to provide the Recovery Terms and Conditions Agreement, dated
- 11 September 14, 2015, to the Pharmacists Recovery Program by September 24, 2015.
- 12 d. Respondent submitted a monthly self report and October 2015 12-step card late.
- 13 e. Respondent failed to provide the Recovery Terms and Conditions Agreement, dated
- 14 May 12, 2016, to the Pharmacists Recovery Program.
- 15 f. Respondent failed to provide an Intensive Outpatient Treatment provider report to the
- 16 Pharmacists Recovery Program.
- 17 g. Respondent submitted the July 2016 Monthly Self Report late.
- 18 h. On or about September 30, 2016, the Pharmacists Recovery Program terminated
- 19 Respondent's enrollment, based upon the above-described conduct, as well as the fact that during
- 20 Respondent's most recent admission at Sacramento Recovery House, Respondent was discovered
- 21 to be in possession of a syringe and vial or vials of injectable steroids (testosterone). Sacramento
- 22 Recovery House discharged Respondent for violation of their rules. The testosterone was not
- 23 identified as a currently prescribed medication. Respondent did not contact the Pharmacists
- 24 Recovery Program and did not respond to any phone calls from the Program to discuss his
- 25 discharge from Sacramento Recovery House.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

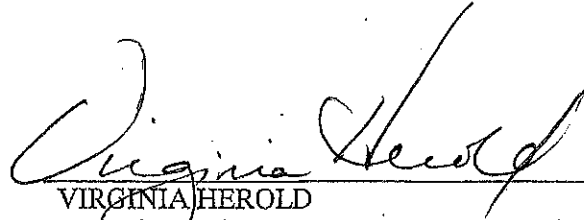
1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4469 and imposing the disciplinary order that was stayed thereby revoking Original Pharmacist License No. RPH 68819 issued to Gerardo Castillo;

2. Revoking or suspending Original Pharmacist License No. RPH 68819, issued to Gerardo Castillo; and,

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

DATED:

11/3/17



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

SA2016104581
12522217.doc