

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

In the Matter of the Petition for Interim Suspension
Order Against:

HUGH QUOCHUY NGUYEN,
Pharmacist License No. RPH 62556,

Respondent.

Case No. 5405

OAH No. 2015031167

ORDER GRANTING INTERIM SUSPENSION

On April 17, 2015, the Petition (Petition) of Virginia K. Herold (Petitioner), for issuance of an Interim Order of Suspension pursuant to Business and Professions Code section 494 was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings. Kevin J. Rigley, Deputy Attorney General, represented Petitioner. Hugh Quochuy Nguyen (Respondent) was represented by Benjamin J. Fenton with Fenton Law Group.

The Administrative Law Judge considered all papers filed in support of and in opposition to the Petition, and heard oral argument made by the parties at the hearing. The matter was submitted on April 17, 2015.

FACTUAL FINDINGS

1. Petitioner filed the Petition while acting in her official capacity as the Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs (DCA).
2. On July 23, 2009, the Board issued Original Pharmacist License Number RPH62556 to Respondent. That Pharmacist License is scheduled to expire on June 30, 2015.
3. On August 28, 2014, Respondent telephoned MAXIMUS, a third party vendor working with the DCA to manage substance abuse recovery programs for healthcare professionals including the Pharmacist Recovery Program (PRP). Respondent requested entry into the PRP as directed by his employer.
4. On September 2, 2014, MAXIMUS received a notice that Respondent was eligible for enrollment, and an intake appointment was scheduled for September 4, 2014.

5. On September 4, 2014, Respondent called for his telephonic intake, which was completed by Clinical Case Manager Anita M. Mireles (CCM Mireles). During the telephonic intake, Respondent informed CCM Mireles that he had been placed on leave of absence by his employer after videotaped surveillance revealed him diverting prescription medications at his workplace. Respondent admitted to CCM Mireles that he had diverted prescription Adderall and hydrocodone for his personal use and that he had worked while under the influence of substances.

6. Adderall is the brand name for amphetamine and dextroamphetamine. Amphetamine is a Schedule II controlled substance, as set forth in Health and Safety Code section 11055, subdivision (d)(1), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

7. Hydrocodone is a Schedule II controlled substance, as set forth in Health and Safety Code section 11055, subdivision (b)(1)(I), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

8. Based on Respondent's admitted history of diverting controlled substances from his workplace for self-administration and his past history of depression, the Pharmacist Review Committee (PRC) recommended that Respondent seek immediate inpatient treatment for chemically-dependent health care professionals.

9. CCM Mireles informed Respondent of the PRC's concerns for his safety and the safety of the general public based on his substance abuse situation. She provided the names of several chemical dependency treatment facilities for addicted healthcare professionals. Respondent requested an opportunity to interview those facilities and ascertain his insurance coverage before selecting a facility.

10. Respondent determined that he had insurance coverage for treatment at Glendale Adventist Alcohol & Drug Services (Glendale Adventist). He requested to enter treatment at that facility, and the PRC agreed.

11. On September 11, 2014, Respondent entered inpatient treatment at Glendale Adventist.

12. On October 9, 2014, Respondent was discharged from the inpatient treatment at Glendale Adventist and continued in the aftercare outpatient portion of the Glendale Adventist program.

13. After he left the inpatient program, Respondent began to develop cravings related to his opioid dependency. He decided to take Methadone to help lessen his opioid cravings.

14. Methadone is a Schedule II controlled substance which is in the same classification as opiates, as set forth in Health and Safety Code section § 11055, subdivision

(c)(14), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

15. On October 10, 2014, Respondent submitted to his first post-discharge biological sample test for banned substances, also known as a Random Drug Test (RDT).

16. On October 13, 2014, the results of the RDT were reported to MAXIMUS. The reported results included positive results for methadone and for morphine.

17. Morphine is a Schedule II controlled substance, as set forth in Health and Safety Code section 11055, subdivision (b)(1) (L), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

18. After receiving and reviewing the results, CCM Mireles attempted to contact Respondent, but was unable to reach him.

19. CCM Mireles then contacted the support group facilitator to whom Respondent had been assigned to ask the facilitator to relay a message to Respondent to call CCM Mireles before starting his participation in the next support group meeting. However, Respondent failed to attend the scheduled support group meeting.

20. CCM Mireles was eventually able to speak to Respondent. When he was informed about the RDT positive results, he initially denied using any banned substances. However, he then admitted using methadone, while continuing to deny using morphine.

21(a). In his declaration opposing the Petition, Respondent continued his denial of using morphine after his inpatient discharge from Glendale Adventist. He claimed that the RDT results were inaccurate, and he pointed out that he was never presented with a copy of the RDT results.

21(b). No copy of the RDT results was included with the Petition to verify CCM Mireles' declaration under penalty of perjury wherein she stated that her review of the test results indicated a positive result for morphine. However, there was no hearsay objection to CCM Mireles's declaration generally or to her specific assertion that she received and reviewed the RDT results which indicated positive test results for both morphine and methadone. Additionally, given CCM Mireles' employment with MAXIMUS for eight years and her management of hundreds of similar cases over the course of her career, she would have experience reading and reviewing RDT results accurately, and Respondent submitted no evidence to defeat her credibility. Consequently, Petitioner established, by a preponderance of the evidence, that the RDT results were positive for morphine.

21(c). Regardless of whether Respondent used morphine following his inpatient treatment, Respondent admitted using methadone after discharge from Glendale Adventist. Given the foregoing, Petitioner established that Respondent used at least one controlled substance following his inpatient discharge from Glendale Adventist.

22(a). During their telephone conversation (as described in Factual Finding 20), CCM Mireles informed Respondent that the PRC had revised his treatment plan. Pursuant to the revised plan, Respondent was expected to re-enter inpatient treatment at a health care program designed to treat the chemically-addicted health care professional, and the length of his inpatient program would be determined by the treatment provider. At that point in the conversation, Respondent told CCM Mireles that entering treatment was against his cultural beliefs. She informed Respondent that, while the PRC respects all cultural beliefs, protecting the public is a priority, and in order for him to continue his voluntary substance abuse rehabilitation program through MAXIMUS, he must enter treatment in accordance with the PRC's mandated revised plan. CCM Mireles told Respondent that the revised plan required him to identify a treatment facility within 72 hours, to report this to MAXIMUS, and to enter treatment within seven days. Respondent agreed to these terms.

22(b). In his declaration in opposition to the Petition, Respondent asserted that in their phone conversation, CCM Mireles advised him that he needed to enroll in either the Betty Ford clinic or the Promises clinic, which were not covered by his insurance and which cost approximately \$30,000 per month, and that he was not allowed to return to the Glendale Adventist program covered by his insurance. He maintained that he called CCM Mireles on October 14, 2014, and explained that he could not afford either facility and that she said she would report him to the Board as a result of his inability to follow MAXIMUS's advice. This assertion was contrary to, and not as credible as, CCM Mireles' assertion that Respondent was given 72 hours to identify a treatment program and seven days to enter treatment.

23. Respondent failed to contact MAXIMUS to provide the name of the treatment program he would be entering and failed to respond to subsequent phone calls from CCM Mireles.

24. Thereafter, based on Respondent's admission to diverting prescription medications from his workplace, his history of relapse, and his failure to contact MAXIMUS with his selected treatment facility, the PRC determined that Respondent's case with MAXIMUS would be closed as a "public risk." The matter was referred to the Board for further action.

25. Respondent is unemployed and not currently practicing as a pharmacist.

26. In his declaration in Opposition to the Petition, Respondent asserted that he "did not realize that the random urine test included a testing for Methadone." (Exhibit A, Declaration of Hugh Quochuy Nguyen, para. 6.) This asserted lack of this knowledge is not exculpatory and instead reveals Respondent's intent to escape detection and responsibility.

27. Respondent now admits that it was a "foolish mistake" and a "poor decision" to use methadone in response to his opioid craving. (Exhibit A, Declaration of Hugh Quochuy Nguyen, para. 6.) He is concerned about the effect license suspension will have on

his career and his ability to obtain employment as a pharmacist, even if his license is later reinstated.

28. Although Respondent expressed regret for using methadone and contends that he is committed to remaining clean and sober, he submitted no evidence of continued rehabilitation efforts following his termination from MAXIMUS. There was no evidence that following the closure of his case by MAXIMUS, he has continued with biological sample testing to confirm his abstention from further use of controlled substances or that he has made any effort to continue substance abuse treatment. RDT's alone were insufficient to deter Respondent's substance abuse, and Respondent has not re-entered inpatient treatment which was deemed imperative for his successful rehabilitation. Given the foregoing, as well as his history of workplace diversion of controlled substances for self-administration, his admitted working while under the influence of substances, and his inability to abstain from use of controlled substances even while undergoing biological sample testing, there is little assurance that Respondent would abstain from the use of controlled substances if he were allowed continued licensure with restrictions (i.e. biological sample testing).

29. Respondent's counsel argued that continued licensure, with the restriction of biological sample testing, would be sufficient and that if Respondent relapsed, Complainant could seek recourse on an ex parte basis. This argument was not persuasive. The process of obtaining full license suspension, even on an expedited basis, could take a substantial amount of time such that Respondent's continued licensure (with the flouted restriction) could endanger the health, safety and welfare of Respondent or members of the public.

LEGAL CONCLUSIONS

1(a). Respondent has engaged in acts or omissions constituting violations of the Business and Professions Code.

1(b). Respondent admitted to workplace diversion and self-administration of prescription medications (Adderall and hydrocodone), which are controlled substances and dangerous drugs. He also admitted to working as a pharmacist while under the influence of substances. He later admitted to self-administration of another controlled substance, Methadone. These actions were violations of Business and Professions Code section 4301, subdivision (h) (self-administration of controlled substances and the use of a dangerous drug in a manner dangerous to the public and to the extent its use impairs the ability to conduct the practice of pharmacy safely).

2(a). Permitting Respondent to continue to engage in his licensed activity would endanger the public health, safety and welfare.

2(b). Respondent's license allows him direct access to controlled substances and dangerous drugs. Given his history of workplace diversion of controlled substances for self-administration, his prior working while under the influence of substances, and his relapse and

lack of further treatment, there is a significant risk of Respondent's continued diversion and self-administration of controlled substances should he be allowed to continue his licensed activity. The potential for recurrence of his working under the influence of drugs and committing medication errors places the public at direct risk of harm. The Board is not required to wait until actual patient harm occurs before taking steps to protect the public. (*In Re Kelley* (1990) 52 Cal.3d 487, 495.) It is unlikely that protection of the public could be sufficiently assured short of suspension of Respondent's license.

ORDERS

1. The Petition for Interim Order of Suspension is granted.
2. Subject to the provisions of Business and Professions Code section 494, Pharmacist License No. RPH 62556, issued to Respondent, Hugh Quochuy Nguyen, is hereby suspended pending a full administrative determination of Respondent's fitness to practice as a pharmacist.
3. During the time this Interim Suspension Order is in effect:
 - (a) Respondent is prohibited from practicing as a pharmacist in the State of California;
 - (b) Respondent shall not advertise himself or hold himself out as practicing as a pharmacist in this State;
 - (c) Respondent shall not be present in any location or office which is maintained for the purpose of practicing pharmacy, except as a patient or as visitor of family and friends.
 - (d) Respondent shall not possess, order, purchase, receive, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law, except that Respondent may possess medications which have been prescribed to him by his treating physicians.

IT IS SO ORDERED.

DATED: April 22, 2015



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings