

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

In the Matter of the Accusation Against:

Case No. 4196

RICHARD LEE YEP
Portland, Oregon 97236

OAH No. 2012100053

Pharmacist License No. RPH 41007

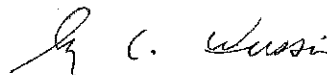
Respondent.

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective October 4, 2013. NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Board of Pharmacy's Decision and Order effective October 4, 2013, is the Board of Pharmacy's final decision in this matter.

Date: October 1, 2013

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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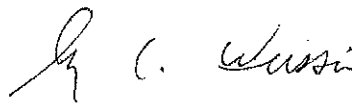
DECISION AND ORDER

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

This decision shall become effective on October 4, 2013.

It is so ORDERED on September 4, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



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DEPARTMENT OF CONSUMER AFFAIRS
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Portland, Oregon 97236

Pharmacy License No. RHP 41007

Respondent.

Case No. 4196

OAH No. 2012100053

PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 3, 2013, in Sacramento, California.

Lorrie M. Yost, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Ronald S. Marks, Attorney at Law,¹ represented Richard Yep (respondent), who was present.

Evidence was received and the matter was submitted on June 3, 2013.

FACTUAL FINDINGS

1. Complainant made and filed the Accusation in her official capacity.
2. On August 14, 1987, the Board issued Original Pharmacist License Number RPH 41007 to respondent to practice pharmacy in California. The original pharmacy license was in effect at all times relevant to this matter. Respondent's license was suspended from January 10, 2012, to September 29, 2012, pursuant to Business and Professions Code section

¹ Ronald S. Marks, Attorney at Law, 21900 Burbank Boulevard, Suite 300, Woodland Hills, California 91367.

4311, subdivision (a).² His license will expire on August 31, 2013, unless renewed or earlier revoked.

3. On September 9, 2011, respondent was convicted in the United States District Court, Western District of Washington, Seattle, in Case Number 2:11-cr-00062-RSL-1, Title 18, United States Code, Section 2314 (Interstate Transportation of Stolen Goods), a felony. The court entered judgment against respondent on the basis of his guilty plea and sentenced him to one year and one day in federal prison and three years' supervised release upon completion of term of confinement. Along with other standard conditions of supervision, respondent was also ordered to pay restitution to Kaiser Permanente in the amount of \$480,000.

4. As stated in the plea agreement signed by respondent on February 25, 2011, respondent admitted the following facts:

a. Donald Alan Pepin owned and operated First Medical Resources, Inc., a Florida corporation, with offices located in Jupiter, Florida. First Medical Resources, Inc. was engaged in, among other things, the acquisition and distribution of human insulin and diabetic test strips for further sale.

b. Donald Pepin created a scheme to purchase human insulin and diabetic test strips from individuals who stole these items from hospitals, pharmacies, and other companies. For example, Donald Pepin contacted defendant Richard Yep via e-mail regarding the purchase of glucose test strips.

c. [Respondent] admits that he stole glucose test strips from his employer. [Respondent] would then ship these items in interstate commerce to Donald Pepin and/or First Medical, Inc. as well as McDistributors in Boca Raton, Florida. From on or about September 6, 2008, to September 31, 2008, [Respondent] sent three shipments of glucose test strips to Donald Pepin and, in turn, received \$7,676.00 received [sic] in payment. Ultimately, Donald Pepin paid [respondent] \$360,103.75 for glucose test strips products.

5. Respondent testified at hearing. He stated that his wife developed gestational diabetes while pregnant with their daughter who was born in November 2001. Glucose test strips are used to test blood glucose levels of diabetic patients. They are sold both over the counter (on the retail floor) without a prescription and with a prescription from behind the

² Any license issued by the board, or the holder thereof, shall be suspended automatically during any time that the person is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. (Bus. & Prof. Code, § 4311, subd. (a).)

secure pharmacy desk. When obtained through a prescription, the cost is less because the client's health insurance can be billed. The strips have an expiration date on the box after which they are presumably unreliable. In 2001 respondent began selling his wife's extra glucose strips on the internet. He evolved to stealing glucose strips from behind the secure pharmacy desk and selling them on the internet. After several months, he was contacted on "eBay" by Mr. Pepin, who represented himself to be from a medical supply company in South Florida. Respondent subsequently conspired to mail stolen glucose strips to Mr. Pepin and related medical supply companies in Florida, who in turn deposited money into respondent's PayPal account. Respondent transacted business with Mr. Pepin from approximately 2001/2002 to 2009.

6. According to a Kaiser audit, respondent stole over one million test strips from them. Respondent recalled earning "approximately \$250,000" while engaged in this scheme. PayPal records reflect that from 2001-2009, respondent received a total of \$566,916.35 from Mr. Pepin. Respondent when confronted stated that he did not realize the amount was that much. Further, respondent began selling stolen test strips several months prior to his affiliation with Mr. Pepin. Hence, his gross receipts were actually higher. Respondent stated that he followed the advice of his criminal attorney and reported his gains to the Internal Revenue Service (IRS) as income. Respondent did not present documentary evidence of the amount he reported to the IRS.

7. Respondent testified he stole and sold the strips to help his in-laws with medical expenses. In 2002, his father-in-law, wife's paternal grandmother, and wife's aunt were all diagnosed with kidney failure. His 71-year-old father-in-law was on dialysis and qualified for a kidney but was way down on the list. Respondent attempted to coordinate a kidney transplant from China. He submitted email correspondence between himself and Toney Lee, Senior Medical Care advisor, that discussed the process and cost for the procedure. The kidney transplant charge of \$60,000 USD included: "Pre-treatment (dialysis, medical cost, examination cost), Donor Kidney, One time kidney transplant, Post transplant medical care and drug [up to 40 days stay in transplant center], Bilingual service assistant, All the medical record will be translated to English format on return."

Respondent's in-laws lived in Oregon and their home was in disrepair. Respondent stated that he also helped them fix their roof. All three relatives are now deceased. Respondent stated, "I knew it was wrong but I was motivated to help." Respondent admitted that he was not legally obligated to pay his relative's medical bills. Respondent stated that he did not consider taking out a loan or paying for medical bills out of his assets. He added, "I ask myself [why] every single day."

8. Respondent deposited the money he received from Mr. Pepin into a savings account. When asked specifically what he used the money for, respondent disclosed that he spent approximately \$50,000 to \$75,000 on repairs to his in-laws' home, and \$10,000 to \$12,000 on their medical bills. He conceded that "There may have been some money left

over ... We were looking to save the rest for the kidney transplant.” A difference of approximately \$480,000 is noted.³

9. In April 2012, respondent satisfied his \$480,000 restitution debt to Kaiser. He submitted proof of “Satisfaction of Criminal Monetary Judgment” filed in the District Court. He stated that he obtained the money to pay the judgment by selling his home of 18 years. It is not clear why he did not use the profits from his trafficking enterprise to pay restitution. According to the Presentence Report filed in the District Court, at the time of respondent’s plea he had cash on hand of \$621,400 (\$615,000 in a Vanguard Individual Retirement Account, \$1,400 in a Kaiser IRA, and \$5,000 in checking).

10. At the time respondent learned that he was being criminally investigated, he was living in California with his wife who is also a pharmacist and their three children. He recalled receiving a second call from a Food and Drug Administration (FDA) agent in August 2009. They informed him they were investigating Mr. Pepin and that respondent’s name had come up in the context of supplying test strips. Respondent resigned from Kaiser that same month. His family moved to Oregon a year later in August 2010. Respondent was convicted in September 2011 in the federal court for the Western District of Washington at Seattle. Respondent stated that they moved because his wife had a job opportunity with a retail grocery store chain. Another factor was the shame to him and his children associated with his pending prosecution.

11. After leaving Kaiser, respondent worked in California as a relief pharmacist for approximately six weeks in 2010. On advice of counsel, he left pharmacy, obtained a guard card from the State of California, and got a job as a security guard at Amgen in Fremont. After moving to Oregon, he resumed working as a pharmacist. Through “RX Relief” he worked at Costco, Albertsons, two County pharmacies, and Vibra Hospital (a transitional care tertiary hospital) for seven months, 40 hours a week. He also worked at a private pharmacy in Sheridan, Oregon. Respondent stated that his employers were aware of his pending criminal matter. In fact, he was offered a pharmacy director position but had to decline due to his pending prosecution.

Rehabilitation / Mitigation

12. Respondent is 51 years of age. He is married with three children ages 11, 15, and 17 years. He obtained his Bachelor of Science degree in biochemistry in 1983 from the University of California (UC) Riverside. He received his doctorate degree in pharmacy in 1987 from UC San Francisco. He became licensed in California in 1987. He began working at Kaiser Permanente as a student intern in 1983, and as a licensed pharmacist from 1987 to 2009.

³ PayPal records established \$566,916 in receipts by respondent from Mr. Pepin. Adjusting for respondent’s stated expenditures on his in-laws of \$75,000 for home repairs and \$12,000 for medical expenses, the balance is \$479,916.

13. It is uncontroverted that before and after respondent began pilfering and trafficking insulin strips he was an accomplished and respected member of the pharmacy profession. He received accolades and promotions based on his industry knowledge and managerial skills. He was a respected leader at Kaiser Permanente. He submitted certificates of appreciation, plaques, and awards recognizing his exemplary managerial skills from 2000 through 2008.

14. Respondent submitted letters of recommendation from Chris Travis and Charles Jensen, his security guard supervisors in 2010. Mr. Travis described respondent in positive terms relative to his intelligence, ability to work with others, communication skills, knowledge and experience. Mr. Jensen recounted respondent's ability to learn, remain calm and courteous under stress, and treat others with respect. Respondent also attached his first quarter 2010 performance evaluation in which he met and exceeded expectations, certificates of completion of security training courses, and his Red Cross CPR and First Aid cards dated February 2010.

15. Respondent submitted several character letters in support of his abilities as a pharmacist. Most of the letters indicate some awareness of the discipline/punishment he suffered, but the extent is unclear. His former clients describe him generally as a knowledgeable and caring pharmacist. His volunteer activities include participation in Boy Scouts and at his children's schools. Divya Talajia is a sales manager for RX Relief, a Fresno based pharmacy staffing company. Ms. Talajia wrote a letter on September 21, 2011, in which she stated that having known respondent for two years, she found him to be responsible, resourceful, and able to build trust with his patients, customers, and co-workers.

16. While in federal custody, respondent served as a GED test prep tutor and taught English as a second language to other inmates. After his release, he worked for two months as a GED tutor at Southeast Works (SE Works), a job placement center in Oregon. SE Works also helped him to handle finding work as a convicted felon. Ton-Ja Todd is an employment services specialist at SE Works. He wrote a letter dated March 7, 2013, on respondent's behalf. Mr. Todd has known respondent for over a year and has provided job seeking advice. He described respondent as responsible, caring, and honest. He confirmed that respondent volunteered as a GED tutor and has sought opportunities to be of help at local non-profit organizations. He stated that respondent is "working hard to regain the confidence of others" and feels that respondent should be given the opportunity to re-engage as a pharmacist in the community.

17. Respondent was released early from custody for good behavior. He went first to a halfway house and then to his home with a detention anklet monitor for one month. He began seeing a counselor, Ariel Malia, MFT, to help him reintegrate with his family. He initially saw her bi-monthly but now sees her once a month and has made progress dealing with depression and guilt. Ms. Malia wrote a letter dated March 13, 2013, on respondent's behalf. At the time, she had been working with respondent for seven months. She described respondent as dedicated to the process of healing his strained relationships with his wife and children while experiencing financial stress, family role transition, reintegrating back into the

community, and concern for future job opportunities. She sees him as willing to build a stable environment for his family and accept positive change out of adversity.

18. Jill Yep is a pharmacist and respondent's wife. She did not testify but wrote a letter dated June 2, 2013, in which she described respondent's devotion to his family and the practice of pharmacy. Mrs. Yep believes respondent's expertise in pharmacy is far superior to others and that he should be able to continue to serve as a licensed professional. She reiterated respondent's stated position, that he was motivated to help his in-laws with their medical expenses. She stated that he experienced pain and scars relative to his mistake and "error in his choice." She wrote, "[Respondent's] drive to extend my father's life consumed him. Every effort was made and every dollar was spent to make this a reality." The evidence does not support this statement. (Factual Findings 7, 8 & 9.)

Costs

19. Complainant has requested costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the total amount of \$2,805. This amount is comprised of 15.50 hours of attorney case work at \$170.00 per hour as of May 30, 2013, and an additional hour anticipated through hearing. The time spent is reasonable and the activities conducted appear to be necessary and appropriate to the development and presentation of the case. Respondent did not present evidence on his ability to pay costs.

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 4301, states that the Board shall take action against any holder of a license who is guilty of unprofessional conduct. In relevant part, unprofessional conduct shall include, but is not limited to, any of the following:

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

2. An administrative agency may not bar an individual from practicing a lawful profession unless the conduct at issue is substantially related to his or her fitness or competence to practice that profession. (*Cartwright v. Board of Chiropractic Examiners* (1976) 16 Cal.3d 762, 767.) The main purpose of license discipline is protection of the public and hence, does not require a showing of actual harm to patients. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

3. For the purpose of denial, suspension, or revocation of a personal or facility license under the Business and Professions Code, "a crime or act shall be considered substantially related to the qualifications, functions, or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to

perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.” (Bus. & Prof. Code, § 475.)

4. It is uncontested that respondent’s act of stealing insulin strips from behind the pharmacy counter, which were only available by prescription, was substantially related to the pharmacy profession. Under common usage, the words “pharmacy” and “drugstore” connote a place where drugs are sold to the general public pursuant to a physician's prescription as well as a place where other items are sold to the general public. (*Park Medical Pharmacy v. San Diego Orthopedic Associates Medical Group, Inc.* (2002) 99 Cal.App.4th 247, 254.) As part of the ordinary business of a pharmacy, medical supplies and drugs are “in stock” for the pharmacy's legal business. (See *People v. Doss* (1992) 4 Cal.App.4th 1585, 1592.) As an employee of the pharmacy, a pharmacist is granted access to medical supplies and controlled substances with the intention of distributing them to persons holding valid prescriptions. A pharmacist must be trusted to assist clients in legitimate sales of medical products and pharmaceuticals and to not divert inventory for illegal distribution of stolen goods. Here, respondent violated that trust.

Cause for Discipline

5. Cause for discipline of respondent’s pharmacy license exists in that in September 2011, he was convicted in federal court of interstate transportation of stolen goods, a felony. He managed the theft of insulin test strips from his employer under color of his office as a staff pharmacist. As such, his offense constitutes unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (1).

Rehabilitation

6. The Board has developed guidelines for use in evaluating the rehabilitation of a pharmacy licensee who has been convicted of a crime, which are set forth in California Code of Regulations, title 16, section 1769, subdivision (b). Factors to consider include the nature and severity of the act or offense, total criminal record, the time that has elapsed since commission of the act/offense, compliance with the terms of probation, and evidence of rehabilitation.

7. In consideration of these guidelines, from 2001 through 2009, respondent participated in a financial arrangement whereby he stole over a million glucose test strips and forwarded them to a man in Florida for substantial personal profit. After pleading guilty to interstate transport of stolen goods, respondent was convicted and sentenced to one year in federal prison. He was incarcerated from September 2011 to approximately May 2012, and is currently on three years’ supervised release. Beyond the financial injury to Kaiser, there is no evidence of physical injury to any patient. He has complied with criminal probation and has paid court ordered restitution in the amount of \$480,000. However, compliance with the law when one is on court ordered release “does not necessarily prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.) When a person is on criminal probation or parole, rehabilitation efforts are accorded

less weight, “[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion...” (In re Gossage (2000) 23 Cal.4th 1080, 1099.)

8. Respondent initiated counseling upon release from custody in July 2012 and continues to attend. He volunteers at his children’s schools and clubs and with community organizations. He presented many letters in support of his pharmacy skills and client care. Unfortunately, only one year has passed since his release from federal prison and he has two more years of supervised release. Further, it continues to be unclear why he unlawfully hustled funds to help his in-laws when he had savings and equity that would have allowed him to help them in a legitimate way. He actually spent a relatively small proportion of the gains on his in-laws’ behalf. (Factual Finding 8.)

9. The issue in this case is whether respondent can be trusted to work in a pharmacy setting given his readiness to violate the trust of his employer and the public. Respondent was the only person to testify. Though he submitted awards and certificates earned from 2000-2008, it is noted that he received these accolades while concurrently defrauding his employer. (Factual Finding 13.) He did not adequately explain his motivation to steal and traffic stolen goods for eight years when he had access to legitimate financial resources. It is not enough for him to say that he asks himself this every day. (Factual Finding 7.) He must be able to provide an answer to the Board.

Conclusion

10. All of the evidence presented in this matter has been considered. Grounds for discipline exist pursuant to Legal Conclusion 5. Clear and convincing evidence establishes that respondent is presently unfit to practice as a pharmacist in a manner consistent with the public health, safety, or welfare. (Bus. & Prof. Code, §4301, subd. (1).) There is insufficient evidence of rehabilitation and it would be against the public interest to allow respondent to maintain his license or licensing rights as a pharmacist.

Cost Recovery Analysis

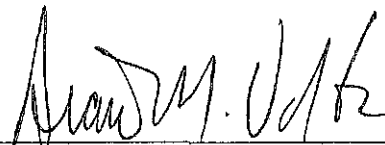
11. Business and Professions Code section 125.3, subdivision (a), authorizes the Board to recoup the reasonable cost of investigation and enforcement from “a licensee found to have violated the licensing act.” The purpose of cost reimbursement is to discourage meritless administrative proceedings and prevent groundless challenges to disciplinary proceedings. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 40.) *Zuckerman* sets forth factors to be considered in determining a reasonable cost assessment for disciplined licensees. Factors to be considered include whether the licensee had a “subjective good faith belief” in the merits of his or her position, whether the licensee raised a “colorable challenge” to the proposed discipline, and the extent of the licensee’s financial ability to make later payments. Further, full costs may not be assessed when a “disproportionately large investigation” was conducted given the circumstances of the case. Finally, the Board should consider the public interest in regulating the targeted conduct.

Respondent did not raise a colorable defense to the charges in this matter. He did not claim an inability to pay costs. The costs sought by the board in the amount of \$2,805, are reasonable. (Factual Finding 19.) The Board has a strong interest on behalf of the public in regulating criminal activity under color of license.

ORDER

The license issued to Richard Lee Yep (Original Pharmacy License No. 41007), is REVOKED.

DATED: July 9, 2013



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 4196

12 **RICHARD LEE YEP**
2930 SE 141st Avenue
13 Portland, OR 97236

ACCUSATION

14 Pharmacist License No. RPH 41007
15 Respondent.

16
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, Department of Consumer Affairs.
- 21 2. On or about August 14, 1987, the Board of Pharmacy issued Pharmacist License
22 Number RPH 41007 to Richard Lee Yep (Respondent). The Pharmacist License was in full force
23 and effect at all times relevant to the charges brought herein and will expire on August 31, 2013,
24 unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

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FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related)

8. Respondent is subject to disciplinary action under section 4301 subdivision (l) in that Respondent has been convicted of crimes substantially related to the qualifications, functions and duties of a licensed pharmacist as follows:

- a. On or about September 9, 2011, in the United States District Court Western District of Washington at Seattle, Respondent was convicted on a plea of guilty of violating Title 18, United States Code sections 2314 (interstate transportation of stolen goods). The circumstances are that from September 1, 2008 to September 30, 2008, Respondent was knowingly involved in the transportation of stolen glucose strips from California to Florida.

PRAYER

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

- 1. Revoking or suspending Pharmacist License Number RPH 41007, issued to Richard Lee Yep.;
- 2. Ordering Richard Lee Yep 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: 5/25/12

Virginia Herold

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

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