

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for the
Reinstatement of the License to Practice
Pharmacy of:

WILLIAM CHARLES PACKER,

Pharmacist License No. RPH 31171,

Petitioner.

Case No. 3108

OAH No. 2011100281

DECISION

On October 18, 2011, in San Diego, California, a quorum of the Board of Pharmacy, Department of Consumer Affairs, State of California, heard and decided the Petition for the Reinstatement of the License to Practice Pharmacy filed by William Charles Packer.

Present at the hearing were Board President Stanley Weisser and Board Members Tappan Zee, Anil (Neil) Hiro Badlani, Gregory Lippe, Randy Kajioka, Rosalyn Hackworth, and Deborah Veale. Administrative Law Judge James Ahler, Office of Administrative Hearings, State of California, conducted the administrative proceeding.

Deputy Attorney General Joshua A. Room appeared on behalf of the Office of the Attorney General, Department of Justice, State of California.

Philip A. Rafferty, Attorney at Law, appeared on behalf of Petitioner, William Charles Packer, who was present throughout the hearing on the petition.

The matter was submitted and the Board of Pharmacy decided the petition in executive session on October 18, 2011.

FACTUAL FINDINGS

License History

1. On August 1, 1977, the Board of Pharmacy, Department of Consumer Affairs, State of California (the Board), issued Pharmacy License No. RPH 31171 to Petitioner, William Charles Packer (Petitioner or Mr. Packer).

Disciplinary History

2. On July 3, 2003, the Board of Pharmacy adopted a Stipulated Settlement, Decision and Order in Citation Case No. 2000-21045-C (OAH No. L-20020080836) entitled *In the Matter of the Citation Against: WILLIAM CHARLES PACKER, Respondent*. The citation arose out of Mr. Packer's dispensing Viagra, Celebrex, Valtrex, RetinA/Renova, Propecia, Zyban, or Xenical, each a dangerous drug, following orders made over the Internet. The Board's Decision became effective on August 2, 2003.

Mr. Packer's license¹ was revoked, but the revocation was stayed and Mr. Packer was placed on three years probation. Terms and conditions of probation required Mr. Packer to obey all laws; to report any arrests to the Board; to file quarterly reports with the Board; to appear for interviews; to cooperate with the Board's staff; to pay probation monitoring costs; and to pay a fine of \$25,000 (reduced from \$697,500).

3. On August 6, 2007, the Board's Executive Officer signed First Amended Accusation/First Amended Petition to Revoke Probation in Case No. 3108. The first amended accusation and petition arose out of Mr. Packer's criminal convictions and violations of the terms of probation previously imposed. Complainant sought to suspend or revoke Mr. Packer's license and to obtain an order for cost recovery. The matter went to an administrative hearing that was held on February 11, 2008, before Administrative Law Judge Eric Sawyer (ALJ Sawyer). Mr. Packer was represented by counsel.

On April 10, 2008, the Board adopted ALJ Sawyer's Proposed Decision as its Decision in the matter. The Board's Decision became effective on May 9, 2008.

The Board revoked the pharmacist license issued to Mr. Packer. In addition, the Board ordered Mr. Packer to pay \$17,672.50 in costs.

Relevant portions of the Decision follow.

In a prior disciplinary action, bearing case number 2000-21045-C, the Board issued a decision pursuant to a stipulated settlement and disciplinary order, effective August 2, 2003, in which Respondent's license was revoked; however, the revocation order was stayed, and the license was placed on probation for three years under certain terms and conditions. Respondent admitted in that matter that he was subject to discipline for violating Business and Professions Code section 4067 (dispensing or furnishing dangerous drugs on the Internet without a prescription issued pursuant to a good faith examination). The decision is now final.

¹ The term "license" referred to Pharmacist License No. RPH 31171, which is sometimes referred to as a "registration."

[¶] . . . [¶]

4. (A) On June 19, 2006, in Los Angeles County Superior Court, case number YA064085, Respondent was convicted by the court on his plea of nolo contendere to violating Vehicle Code section 23103, a misdemeanor (reckless driving involving ingestion of alcohol or drugs). The court ordered the deferred entry of judgment (diversion) on Respondent's other plea, i.e. guilty of violating Health and Safety Code section 11350, subdivision (a), a felony (possession of a controlled substance). Respondent subsequently violated the terms of the deferred entry of judgment. Therefore, on October 12, 2006, the court convicted Respondent on his previous guilty plea of violating Health and Safety Code section 11350, subdivision (a), a felony.

(B) Imposition of sentence was suspended and Respondent was placed on three years summary probation under terms including that he attend and complete a three-month first-offender alcohol and drug education and counseling program and pay fines totaling \$465.

(C) The circumstances surrounding these convictions are that, on December 30, 2005, Respondent was driving under the influence of the controlled substances Xanax and Vicodin, and was in possession of the controlled substances and dangerous drugs Vicodin, Soma, Oxycodone and Adderall. Respondent admitted to the arresting police officer that while working as a pharmacist at Del Rey Pharmacy in Playa Del Rey, California (Del Rey Pharmacy), he took the controlled substances from the pharmacy's stock, without the knowledge or permission of his employer and without a prescription. Respondent also admitted that he had been taking "two or three" Vicodin per day consistently for the past "two or three weeks."

5. (A) On May 14, 2007, in Los Angeles County Superior Court, case number YA066305, Respondent was convicted by the court on his plea of guilty of violating Vehicle Code section 23152, subdivision (a), a misdemeanor (driving under the influence of alcohol or drugs).

(B) Imposition of sentence was suspended and Respondent was placed on three years summary probation under terms including that he serve 120 days in jail (less credit for 120 days), pay fines and restitution totaling \$1,564.00, attend and complete an 18-month second-offender alcohol and drug education and counseling program, and complete a drug treatment program.

(C) The circumstances surrounding the conviction are that, on April 7, 2006, Respondent was driving under the influence of controlled substances, Benzodiazepine and Opiate. Respondent drove erratically and struck a parked pickup truck, which caused his vehicle to partially roll over. Respondent thereafter discarded items in the bushes, which police later discovered, tested, and found to contain Hydrocodone, a controlled substance and dangerous drug.

6. (A) On May 14, 2007, in Los Angeles County Superior Court, case number YA065405, Respondent was convicted by the court on his plea of guilty of violating Vehicle Code section 23152, subdivision (a), a misdemeanor (driving under the influence of alcohol or drugs).

(B) Imposition of sentence was suspended and Respondent was placed on three years summary probation under terms including that he serve four days in jail, pay fines and restitution totaling \$1,565.00, and attend and complete an 18-month second-offender alcohol and drug education and counseling program.

(C) The circumstances surrounding the conviction are that, on August 24, 2006, Respondent was driving under the influence of controlled substances, Benzodiazepine and Opiate. Respondent admitted to the arresting police officer that he had consumed Valium, Xanax, Soma, Ativan and Vicodin shortly before driving. The police also found Respondent in possession of Amphetamines, Adderall, Morphine, Methadone, Tylenol with Codeine, Lorazepam, and Phentermine. Respondent admitted that he took the controlled substances from his employing pharmacy's stock,

without the knowledge or permission of his employer, and without a prescription.

7. After being advised of Respondent's arrest described in Factual Finding 4, the Board conducted an investigation of the Del Rey Pharmacy. The investigation revealed that, from on or about June 14, 2005, through on or about September 18, 2006, while Respondent was pharmacist-in-charge of Del Rey Pharmacy, he failed to maintain accurate records of the acquisition and disposition of controlled substances.

8. An audit conducted during the Board's investigation also revealed that, for the period in which Respondent was pharmacist-in-charge at Del Rey Pharmacy, there were significant losses of controlled substances ordered by the pharmacy, including Adderall XR, Amphetamine Salts, Adderall plain, Oxycodone, and Oxycontin.

9. The Board's investigation also revealed that, from on or about June 14, 2005, through on or about September 18, 2006, Respondent failed to have an employee theft and impairment policy in place, as required by law, while he was the pharmacist-in-charge of Del Rey Pharmacy.

10. Respondent was still on probation from the Board's disciplinary matter in case number 2000-21045-C when he was arrested and convicted in the three criminal matters described above. Respondent failed to notify the Board of the arrests, criminal complaints, pleas, and convictions for any of those matters as required by Condition 34 of his probationary order. In fact, after the Board discovered the first two criminal cases and confronted Respondent about them, Respondent still failed to disclose his arrest in the third criminal case. Respondent admitted, while testifying during the hearing of this matter, that he failed to report the first two criminal cases because he was "in denial." Respondent's explanation regarding his failure to disclose his third arrest was not persuasive.

11. Respondent is addicted to prescription medications. He has had that problem for over 20 years. Respondent admitted that he has periodically taken

controlled substances from the stock of pharmacies where he has worked over that period without permission or a prescription. According to Respondent, his addiction substantially worsened in 2000 for unspecified reasons, and escalated through August 2006. Respondent's addiction was so great that beginning in November 2005, he not only took controlled substances from the stock of the Del Rey Pharmacy without permission, but he also consumed those substances at work while on duty.

12. Respondent has recently begun to address his addiction. He has been sober since October 15, 2006. Respondent was admitted into a detox program at the Pat Moore Foundation on October 13, 2006, and remained there until he was admitted to Sober Living by the Sea's Extended Residential Treatment Program (Sober Living) on October 18, 2006. Respondent remained at Sober Living for 132 days and successfully completed the program. Respondent has also completed 12 months of his court-ordered 18-month multiple offender program. Respondent has also meaningfully participated in the Inglewood Drug Court Program since June 5, 2007. Through these programs Respondent has been frequently tested for drugs and has engaged in group and one-on-one counseling and therapy. Respondent has also embraced the 12-step concept and he regularly attends Alcoholics Anonymous (AA) meetings. Respondent is now tested for drugs twice each week. While testifying during the hearing, Respondent also displayed a positive attitude about remaining sober and committing himself to successfully completing these programs.

13. Respondent is trying to develop a healthy lifestyle to support his sobriety. He exercises and meditates regularly. Respondent remains in a stable relationship with his wife of over 20 years. The two are financially secure as a result of an inheritance.

14. Respondent remains on probation in the three above-described criminal cases. He has so far complied with the terms of those probations.

15. Respondent has not been employed since September 2006, when he quit his job as pharmacist-in-

charge at Del Rey Pharmacy after his arrest described in Factual Finding 6.

16. Complainant established that costs in the amount of \$17,672.50 were reasonably incurred in the investigation and prosecution of this matter.

The Decision concluded that Mr. Packer was guilty of unprofessional conduct and that he violated probation as a result of his convictions of substantially related crimes; by his use of controlled substances and dangerous drugs; by his unauthorized possession of controlled substances; as a result of his violation of state laws regulating controlled substances; by committing acts of dishonesty; by failing to maintain records of controlled substance; by failing to have a theft/impairment policy; and by violating terms of his probation.

The Petition for Reinstatement

17. In a petition for reinstatement dated July 12, 2008, Mr. Packer sought the reinstatement of Pharmacist License No. RPH 31171. A typewritten statement, various court documents, the Decision in Case No. 3018, and ten letters in support of the petition accompanied the petition, along with evidence of continuing professional education.

Petitioner's Written Statement: In a two page typewritten statement, Mr. Packer represented that he continued to take full responsibility for the moral failings leading to his addiction and misconduct that resulted in the revocation of his license; that by engaging in that misconduct he put himself and others at risk; that he believes addiction is a disease; that he is determined to continue in his recovery program; that he would like to serve his wife and community by returning to the practice of pharmacy; and that he would accept whatever result the Board might reach.

The Letters and Declarations in Support of the Petition: The letter from Del Sakamoto, a drug court coordinator with AADAP, Inc., stated that Mr. Packer graduated from the Inglewood Drug Court Program; that Mr. Packer's successful completion of the program resulted in the dismissal of criminal charges; that Mr. Packer consistently demonstrated compliance with program requirements; that he successfully passed drug screening testing; that he attended more than 250 AA meetings; that he attended nearly 200 AADP counseling sessions; and that Mr. Packer provided encouragement and support to newer members of the program and was a leader.

A letter from Chuck Kalajovic, the clinical director of Driver Benefits, Inc., stated that Mr. Packer successfully completed a mandated 18-month multiple offender program on August 26, 2006; that he completed about 75 hours of counseling and education; that he completed a 120-day residential treatment program at Sober-Living by the Sea; that he attended more than 300 self-help meetings; that he came to accept his dependency and that he made successful lifestyle changes; that he had demonstrated more than five years of continuous sobriety; that he assisted newly recovering persons; and that Mr. Packer's

prognosis for continued personal growth and abstinence was "very good." Mr. Kalajovic recommended that Mr. Packer's license be restored.

A letter from Warrant Gee, a clinical pharmacist/production supervisor, stated that he endorsed the reinstatement of Mr. Packer's license; that he had known Mr. Packer for more than eight years as a result of Mr. Packer's participation in the Morning Attitude Adjustment Meeting; that Mr. Packer had attended that meeting at least twice a week since 2006; that Mr. Packer had grown through his participation in the AA program of recovery; that he knew of Mr. Packer's misconduct and his reformation; and that he believed Mr. Packer possessed high moral character.

A letter from Donald Toombs, a registered pharmacist who had successfully served a period of probation for substance abuse, stated that he had known Mr. Packer over the past two years through AA meetings; that through them he had gained a great deal of insight into Mr. Packer's circumstances and recovery efforts; that Mr. Packer did not blame others for his situation, and took full responsibility for his misconduct; that Mr. Packer recognized that sobriety is a lifelong program and he was committed to recovery; that Mr. Packer sought personal recovery without direction from the Board of Pharmacy or any other legal entity; and that "my experience tells me that those who work the program, like William, on their own accord, are by far the most successful in recovery" and "Honestly, William has the best chance of any healthcare professional I have come across to both practice his profession and continue successfully recovering from his disease."

A letter from Greg Sowders, an executive with Warner Chappel Music, stated that he had known Mr. Packer for four years as a result of their membership and interaction in the AA program; that Mr. Packer was a fine example of the program; that Mr. Packer was a kind and honest man with a high measure of personal integrity; and that he endorsed Mr. Packer's effort to reinstate his license.

The declaration of James P. Edmission, a retired Chevron employee, stated that he met Mr. Packer in 2006 at an AA meeting; that he became Mr. Packer's AA sponsor; that Mr. Packer "has taken a very serious and driven approach to make sure he gets the [AA] program right and ensures long term success"; that Mr. Packer met with Mr. Edmission weekly for 18 months in completing the 12 steps of recovery; that Mr. Packer was one of Mr. Edmission's most successful sponsees; that Mr. Packer's honesty, integrity, and success attracted others to the AA program; and that Mr. Packer deserved a chance to return to his profession.

A letter from Bernard T. McNamara, M.D., stated that he had known Mr. Packer for more than four years as a result of attending a Men's Stag meeting in Hermosa Beach; that Mr. Packer was a respected member of the AA fellowship who had completed the 12 steps of recovery and was active in service work; that Mr. Packer was well liked by others in the AA program and carried the message of recovery with a cheerful, positive outlook; and that he recommended that Mr. Packer's license be restored "enthusiastically and without reservation."

The declaration of Kirk Reeves Melton stated that he had known Mr. Packer since October 2009; that he was aware of Mr. Packer's misconduct; that Mr. Packer was instrumental in Mr. Melton obtaining continuous sobriety and recovery since their first meeting; that Mr. Packer was Mr. Melton's AA sponsor; and that Mr. Packer was committed to a life of sobriety and service.

A letter from Mitchell N. Spirt, D.C., stated that he had known Mr. Packer for the past four years; that they had attended hundreds of AA meetings; that Dr. Spirt knew Mr. Packer's AA sponsor; and that Mr. Packer demonstrated stability, good judgment, integrity, and honesty sufficient to permit the Board to conclude that consumers would be safe if Mr. Packer's license were reinstated.

The declaration of Michael C. Cullen stated that he knew Mr. Packer through their involvement in AA; that Mr. Packer was his friend and sponsor; that Mr. Packer holds a weekly Big Book reading with the men he sponsors; and that Mr. Packer is of service within the AA community.

Court Documents: The court documents Mr. Packer provided verified his criminal history; Mr. Packer's involvement in a deferred entry of judgment program; the revocation and reinstatement of the deferred entry of judgment program; an order directing Mr. Packer to complete a residential substance abuse program and imposing other conditions of probation; Mr. Packer's involvement in the drug court program; and the dismissal of some criminal charges upon Mr. Packer's completion of the drug court program.

Evidence Presented at the Hearing

18. Counsel for Mr. Packer permitted Mr. Packer to answer under oath questions posed by the Administrative Law Judge, the Deputy Attorney General, and Board Members. The following summarizes Mr. Packer's testimony before the Board.

Mr. Packer was a pharmacist all of his professional life. He has not worked since 2006, living off of retirement savings and a small inheritance. Mr. Packer, who is now 59 years old, had problems with drugs and alcohol all his life. He first consumed alcohol when he was 15 ½ years old. He continued to consume alcohol despite having physical and legal difficulties. Mr. Packer diverted methadone and Percodan in 1989 for about three months, attended a 30 day recovery program, and then was abstinent for 11 years. He began drinking in moderation in 2000, but his consumption of alcoholic beverages progressed rapidly. By 2001, he could not stop using alcohol; he obtained controlled substances through his employment; he ended up doing things he never thought he would do. Mr. Packer admitted that he was under the influence on occasion when he was a pharmacist and that in doing so he endangered the public. Mr. Packer stated that his problems with drugs took him "straight down."

After his license was disciplined the first time, he thought he paid the entire \$25,000 fine that was levied, but he did not disagree with evidence establishing that he failed to make a final payment of \$1,264.

After being placed on probation the first time, Mr. Packer continued consuming alcoholic beverages and controlled substances, which resulted in his arrests, convictions, sentencing, and commitment to a residential treatment facility. He was, during this period, a dangerous practitioner, although he did not write phony prescriptions to obtain controlled substances.

Mr. Packer claimed a most recent sobriety birthday of October 15, 2006, and he recently celebrated five years of continuous abstinence. Mr. Packer claimed that as a result of his residential treatment and involvement in the AA program, there has been a radical shift in his perception. He stated that he has conceded to his innermost self that he is an alcoholic and an addict, something he did not believe before. Mr. Packer is "heavily in recovery," attending at least six AA meetings a week. He has an AA sponsor and he sponsors others in the AA program. Mr. Packer believes his primary purpose is to remain sober and to work the AA program one day at a time.

Mr. Packer admitted that he has not made any payments towards the \$17,672.50 cost recovery order.² Mr. Packer said he could not pay the entire cost bill if his license were reinstated, but that he would make installment payments. Mr. Packer conceded that he was unfamiliar with all the progress that has taken place in the practice of pharmacy since his license was revoked, and that he needed to obtain further education before he can practice safely. Mr. Packer has no physical, emotional, or mental conditions that require him to ingest narcotics or other illicit drugs.

The Attorney General's Recommendation

19. The Office of the Attorney General made no recommendation to the Board concerning the disposition of the petition.

Evaluation

20. Mr. Packer is commended for his most recent commitment to abstinence. He appears to be well on the path to recovery and rehabilitation. Granting Mr. Packer's petition for the reinstatement of his pharmacist license would not endanger the public so long as certain conditions and terms of probation are imposed.

Mr. Packer has not served as a registered pharmacist for many years. The practice of pharmacy has changed since he last worked in a professional capacity. For this reason, Mr. Packer must take and pass the North American Pharmacist Licensure Examination

² The Deputy Attorney General stated no payments on cost recovery were due until the reinstatement of Mr. Packer's license.

(NAPLEX) and the California Practice Standards and Jurisprudence Examination for Pharmacists (CPJE) within a year of the effective date of this Decision.

Mr. Packer currently enjoys over five years of abstinence; however, Mr. Packer suffered a relapse after 11 years of abstinence, and permanent sobriety is not a certainty. Under these circumstances, a five year period of probation is required. Appropriate terms of probation will require Mr. Packer to not supervise interns and not serve as a Pharmacist-In-Charge, a Designated Representative-in Charge, or as a consultant; he must reimburse the Board \$18,936.50 under a payment schedule agreeable to the Board's designee; he must provide at least 20 hours per week of professional services in the capacity of a registered pharmacist while he is on probation; he must participate in the Pharmacists Recovery Program; he must submit to random drug screening at his own expense; he must abstain from the illegal use of controlled substances; he must abstain from the consumption of alcoholic beverages; and he must participate in a prescription coordination and monitoring program.

The condition precedent and the terms and conditions of probation set forth above are sufficient to protect the public.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.)

Statutory Authority

2. Business and Professions Code section 4309 provides in part:

(a) A person whose license has been revoked . . . may petition the board for reinstatement . . . after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a revoked license.

[¶] . . . [¶]

(b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board sitting with an administrative law judge. . . .

(d) In considering reinstatement . . . the board . . . may consider factors including, but not limited to, all of the following:

(1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability. . . .

Rehabilitation

3. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) The evidentiary significance of a petitioner's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) An alcoholic's rehabilitation is almost universally predicated on a choice to confront his problem, followed by abstinence sustained through ongoing participation in a supportive program, such as Alcoholics Anonymous. (*In re Menna*, supra, at 951.)

ORDER

The petition to reinstate Pharmacist License No. RPH 31171 is granted subject to Petitioner's successful completion of the following condition precedent to reinstatement; following reinstatement, the Petitioner's license shall be subject to the terms and conditions of probation set forth hereafter.

As a condition precedent to the reinstatement of Pharmacy License No. RPH 31171, Petitioner William Charles Packer shall take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the California Practice Standards and Jurisprudence Examination for Pharmacists (CPJE) within one year of the effective date of this Decision.

Upon proof satisfactory to the Board that Petitioner has taken and passed the NAPLEX and CPJE examinations as directed, Pharmacy License No. RPH 31171 shall be reinstated. Upon reinstatement, the registration shall be immediately revoked; however, the order of revocation shall be stayed, and Petitioner shall be placed on probation for a period of five years under the following terms and conditions:

1. Obey All Laws

Petitioner shall obey all state and federal laws and regulations. Petitioner 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;
- any discipline, citation, or other administrative action filed by any state or federal agency which involves Petitioner's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Petitioner 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, Petitioner 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, Petitioner shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Notice to Employers

During the period of probation, Petitioner shall notify all present and prospective employers of the decision in case number and the terms, conditions and restrictions imposed on Petitioner by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Petitioner undertaking any new employment, Petitioner shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Petitioner's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3108, and terms and conditions imposed thereby. It shall be Petitioner's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Petitioner works for or is employed by or through a pharmacy employment service, Petitioner must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in

case number 3108 in advance of Petitioner commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Petitioner undertaking any new employment by or through a pharmacy employment service, Petitioner shall cause his or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3108 and the terms and conditions imposed thereby. It shall be Petitioner's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the Board shall be considered a violation of probation.

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

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, Petitioner shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition to successful completion of probation, Petitioner shall pay to the Board its costs of investigation and prosecution in the amount of \$18,936.50. Petitioner shall make installment payments in accordance with a schedule agreeable to the Board's designee. Full payment must be made before the termination of probation. 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 Petitioner shall not relieve Petitioner of his or her responsibility to reimburse the Board its costs of investigation and prosecution.

9. Probation Monitoring Costs

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

10. Status of License

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

If Petitioner's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision and the reinstatement of his license, should Petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Petitioner may tender his or her 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, Petitioner 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 Petitioner's license history with the Board.

Upon acceptance of the surrender, Petitioner shall relinquish his or her pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Petitioner may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Petitioner 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. Petitioner shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

13. Tolling of Probation

Except during periods of suspension, Petitioner shall, at all times while on probation, be employed as a pharmacist in California for a minimum of twenty (20) hours per week 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, Petitioner must nonetheless comply with all terms and conditions of probation.

Should Petitioner, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of twenty (20) hours per week each calendar month in California, Petitioner must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of practice" means any calendar month during which Petitioner is not practicing as a pharmacist for at least twenty (20) hours per week per calendar month, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which Petitioner is practicing as a pharmacist for at least 20 hours per week per calendar month as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. No Ownership of Licensed Premises

Petitioner shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board.

Petitioner shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

15. Pharmacists Recovery Program (PRP)

Within thirty (30) days of the effective date of this decision, Petitioner shall contact the Pharmacists Recovery Program (PRP) for evaluation, and he 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 Petitioner.

If Petitioner is currently enrolled in the PRP, his participation shall become 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). Petitioner shall successfully participate in and complete his or current contract and any subsequent addendums with the PRP.

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

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

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

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

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

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

Petitioner 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.

16. Random Drug Screening

Petitioner, at his or her 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. Petitioner 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, Petitioner 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, Petitioner 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 Petitioner.

Failure to timely provide such documentation shall be considered a violation of probation.

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

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

During suspension Petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board. Subject to the above restrictions, Petitioner 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.

17. Abstain from Drugs and Alcohol Use

Petitioner 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, Petitioner 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 Petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Petitioner shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if Petitioner 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.

18. Prescription Coordination and Monitoring of Prescription Use

Within thirty (30) days of the effective date of this decision, Petitioner shall submit to the Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of Petitioner's choice, who shall be aware of Petitioner's history with the use of alcohol, controlled substances, and dangerous drugs, and who will coordinate and monitor any prescriptions for Petitioner for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the Board's [accusation or petition to revoke probation] and decision. A record of this notification must be provided to the Board upon request. Petitioner shall sign a release authorizing the practitioner to communicate with the Board about Petitioner's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of probation regarding Petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should Petitioner, for any reason, cease supervision by the approved practitioner, Petitioner shall notify the Board immediately and, within thirty (30) days of

ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of Petitioner's choice to the Board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that Petitioner is unable to practice safely or independently as a pharmacist, the practitioner shall notify the Board immediately by telephone and follow up by written letter within three (3) working days.

Upon notification from the Board or its designee of this determination, Petitioner shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

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

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

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

19. Violation of Probation

If a Petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Petitioner, 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 Petitioner violates probation in any respect, the Board, after giving Petitioner 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 Petitioner 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.

20. Completion of Probation

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

DATED: January 9, 2012



Board of Pharmacy
Department of Consumer Affairs
State of California

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

In the Matter of the First Amended Accusation and
First Amended Petition to Revoke Probation
Against:

WILLIAM CHARLES PACKER

Pharmacist License No. RPH 31171

Respondent.

Case No. 3018

OAH No. L2007080963

DECISION

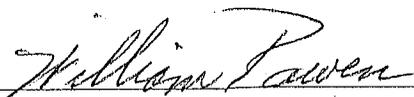
The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on May 9, 2008.

It is so ORDERED on April 10, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


WILLIAM POWERS
Board President

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

In the Matter of the First Amended Accusation
and First Amended Petition to Revoke Probation
Against:

WILLIAM CHARLES PACKER,

Pharmacist License Number RPH 31171,

Respondent.

Case No. 3018

OAH No. L2007080963

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 11, 2008, in Los Angeles. Alvaro Mejia, Deputy Attorney General, represented Complainant. Phillip A. Rafferty, Esq., represented William Charles Packer (Respondent), who was also present. The parties presented oral and documentary evidence and made closing arguments. The record was closed and the matter was submitted for decision on the hearing date.

FACTUAL FINDINGS

1. Virginia Herold (Complainant) brought the First Amended Accusation and First Amended Petition to Revoke Probation solely in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board). Respondent timely requested a hearing.
2. On August 1, 1977, the Board issued Pharmacist License Number RPH 31171 to Respondent. The license has an expiration date of July 31, 2008.
3. In a prior disciplinary action, bearing case number 2000-21045-C, the Board issued a decision pursuant to a stipulated settlement and disciplinary order, effective August 2, 2003, in which Respondent's license was revoked; however, the revocation order was stayed, and the license was placed on probation for three years under certain terms and conditions. Respondent admitted in that matter that he was subject to discipline for violating Business and Professions Code section 4067 (dispensing or furnishing dangerous drugs on the Internet without a prescription issued pursuant to a good faith examination). The decision is now final. The probationary order includes the following term:

34. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the board, in writing, within 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 and federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

4. (A) On June 19, 2006, in Los Angeles County Superior Court, case number YA064085, Respondent was convicted by the court on his plea of nolo contendere to violating Vehicle Code section 23103, a misdemeanor (reckless driving involving ingestion of alcohol or drugs). The court ordered the deferred entry of judgment (diversion) on Respondent's other plea, i.e. guilty of violating Health and Safety Code section 11350, subdivision (a), a felony (possession of a controlled substance). Respondent subsequently violated the terms of the deferred entry of judgment. Therefore, on October 12, 2006, the court convicted Respondent on his previous guilty plea of violating Health and Safety Code section 11350, subdivision (a), a felony.

(B) Imposition of sentence was suspended and Respondent was placed on three years summary probation under terms including that he attend and complete a three-month first-offender alcohol and drug education and counseling program and pay fines totaling \$465.

(C) The circumstances surrounding these convictions are that, on December 30, 2005, Respondent was driving under the influence of the controlled substances Xanax and Vicodin, and was in possession of the controlled substances and dangerous drugs Vicodin, Soma, Oxycodone and Adderall. Respondent admitted to the arresting police officer that while working as a pharmacist at Del Rey Pharmacy in Playa Del Rey, California

(Del Rey Pharmacy), he took the controlled substances from the pharmacy's stock, without the knowledge or permission of his employer and without a prescription. Respondent also admitted that he had been taking "two or three" Vicodins per day consistently for the past "two or three weeks."

5. (A) On May 14, 2007, in Los Angeles County Superior Court, case number YA066305, Respondent was convicted by the court on his plea of guilty of violating Vehicle Code section 23152, subdivision (a), a misdemeanor (driving under the influence of alcohol or drugs).

(B) Imposition of sentence was suspended and Respondent was placed on three years summary probation under terms including that he serve 120 days in jail (less credit for 120 days), pay fines and restitution totaling \$1,564.00, attend and complete an 18-month second-offender alcohol and drug education and counseling program, and complete a drug treatment program.

(C) The circumstances surrounding the conviction are that, on April 7, 2006, Respondent was driving under the influence of controlled substances, Benzodiazepine and Opiate. Respondent drove erratically and struck a parked pickup truck, which caused his vehicle to partially roll over. Respondent thereafter discarded items in the bushes, which police later discovered, tested, and found to contain Hydrocodone, a controlled substance and dangerous drug.

6. (A) On May 14, 2007, in Los Angeles County Superior Court, case number YA065405, Respondent was convicted by the court on his plea of guilty of violating Vehicle Code section 23152, subdivision (a), a misdemeanor (driving under the influence of alcohol or drugs).

(B) Imposition of sentence was suspended and Respondent was placed on three years summary probation under terms including that he serve four days in jail, pay fines and restitution totaling \$1,565.00, and attend and complete an 18-month second-offender alcohol and drug education and counseling program.

(C) The circumstances surrounding the conviction are that, on August 24, 2006, Respondent was driving under the influence of controlled substances, Benzodiazepine and Opiate. Respondent admitted to the arresting police officer that he had consumed Valium, Xanax, Soma, Ativan and Vicodin shortly before driving. The police also found Respondent in possession of Amphetamines, Adderall, Morphine, Methadone, Tylenol with Codeine, Lorazepam, and Phentermine. Respondent admitted that he took the controlled substances from his employing pharmacy's stock, without the knowledge or permission of his employer, and without a prescription.

7. After being advised of Respondent's arrest described in Factual Finding 4, the Board conducted an investigation of the Del Rey Pharmacy. The investigation revealed that, from on or about June 14, 2005, through on or about September 18, 2006, while Respondent was pharmacist-in-charge of Del Rey Pharmacy, he failed to maintain accurate records of the acquisition and disposition of controlled substances.

8. An audit conducted during the Board's investigation also revealed that, for the period in which Respondent was pharmacist-in-charge at Del Rey Pharmacy, there were significant losses of controlled substances ordered by the pharmacy, including Adderall XR, Amphetamine Salts, Adderall plain, Oxycodone, and Oxycontin.

9. The Board's investigation also revealed that, from on or about June 14, 2005, through on or about September 18, 2006, Respondent failed to have an employee theft and impairment policy in place, as required by law, while he was the pharmacist-in-charge of Del Rey Pharmacy.

10. Respondent was on still on probation from the Board's disciplinary matter in case number 2000-21045-C when he was arrested and convicted in the three criminal matters described above. Respondent failed to notify the Board of the arrests, criminal complaints, pleas, and convictions for any of those matters as required by Condition 34 of his probationary order. In fact, after the Board discovered the first two criminal cases and confronted Respondent about them, Respondent still failed to disclose his arrest in the third criminal case. Respondent admitted, while testifying during the hearing of this matter, that he failed to report the first two criminal cases because he was "in denial." Respondent's explanation regarding his failure to disclose his third arrest was not persuasive.

11. Respondent is addicted to prescription medications. He has had that problem for over 20 years. Respondent admitted that he has periodically taken controlled substances from the stock of pharmacies where he has worked over that period without permission or a prescription. According to Respondent, his addiction substantially worsened in 2000 for unspecified reasons, and escalated through August 2006. Respondent's addiction was so great that beginning in November 2005, he not only took controlled substances from the stock of the Del Rey Pharmacy without permission, but he also consumed those substances at work while on duty.

12. Respondent has recently begun to address his addiction. He has been sober since October 15, 2006. Respondent was admitted into a detox program at the Pat Moore Foundation on October 13, 2006, and remained there until he was admitted to Sober Living by the Sea's Extended Residential Treatment Program (Sober Living) on October 18, 2006. Respondent remained at Sober Living for 132 days and successfully completed the program. Respondent has also completed 12 months of his court-ordered 18-month multiple offender program. Respondent has also meaningfully participated in the Inglewood Drug Court Program since June 5, 2007. Through these programs Respondent has been frequently tested for drugs and has engaged in group and one-on-one counseling and therapy. Respondent has also embraced the 12-step concept and he regularly attends Alcoholic's Anonymous (AA)

meetings. Respondent is now tested for drugs twice each week. While testifying during the hearing, Respondent also displayed a positive attitude about remaining sober and committing himself to successfully completing these programs.

13. Respondent is trying to develop a healthy life-style to support his sobriety. He exercises and meditates regularly. Respondent remains in a stable relationship with his wife of over 20 years. The two are financially secure as a result of an inheritance.

14. Respondent remains on probation in the three above-described criminal cases. He has so far complied with the terms of those probations.

15. Respondent has not been employed since September 2006, when he quit his job as pharmacist-in-charge at Del Rey Pharmacy after his arrest described in Factual Finding 6.

16. Complainant established that costs in the amount of \$17,672.50 were reasonably incurred in the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. FIRST CAUSE FOR DISCIPLINE (Conviction of Substantially Related Crimes). Respondent has subjected his license to disciplinary action under Business and Professions Code sections 4301, subdivision (l), and 490,¹ in that Respondent was convicted of crimes, in three different criminal cases, which are substantially related to the qualifications, functions, or duties of a pharmacist as defined in California Code of Regulations, title 16, section 1770. Those convictions have a substantial relationship to licensed activity because they demonstrate Respondent's addiction to prescription medications and thereby evidence his present and potential unfitness to perform the functions authorized by his pharmacist license in a manner consistent with the public health, safety or welfare. (Factual Findings 4-6.)

2. SECOND CAUSE FOR DISCIPLINE (Use of Controlled Substances and Dangerous Drugs). Respondent has subjected his license to disciplinary action under section 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used controlled substances and dangerous drugs to an extent and in a manner dangerous or injurious to himself and the public, on December 30, 2005, April 7, 2006, and August 24, 2006. (Factual Findings 4-6.)

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¹ All further statutory references are to the Business and Professions Code unless otherwise noted.

3. THIRD CAUSE FOR DISCIPLINE (Violation of Chapter- Possession of Controlled Substances). Respondent has subjected his license to disciplinary action under section 4301, subdivision (o), on the grounds of unprofessional conduct, in that he violated section 4060 by possessing controlled substances without a valid prescription, on December 30, 2005, April 7, 2006, and August 24, 2006. (Factual Findings 4-6.)

4. FOURTH CAUSE FOR DISCIPLINE (Violation of State Laws Regulating Controlled Substances). Respondent has subjected his license to disciplinary action under section 4301, subdivisions (j) and (o), in conjunction with Health and Safety Code sections 11170, 11171, 11350, and 11377, on the grounds of unprofessional conduct, in that Respondent consumed controlled substances and dangerous drugs and/or was in possession of the same without a valid prescription on December 30, 2005, April 7, 2006, and August 24, 2006. (Factual Findings 4-6.)

5. FIFTH CAUSE FOR DISCIPLINE (Committed Acts of Dishonesty). Respondent has subjected his license to disciplinary action under section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts of dishonesty by taking pharmaceutical drugs from his place of employment without his employer's knowledge or consent. (Factual Findings 4(C) and 6(C).)

6. SIXTH CAUSE FOR DISCIPLINE (Failure to Maintain Records of Controlled Substances). Respondent has subjected his license to disciplinary action under sections 4301, subdivisions (f), (j) and (o), and 4081, in conjunction with California Code of Regulations, title 16, section 1718, on the grounds of unprofessional conduct. While he was the pharmacist-in-charge of Del Rey Pharmacy, Respondent failed to maintain accurate records of the acquisition and disposition of controlled substances. Respondent was also the pharmacist-in-charge of Del Rey Pharmacy when significant losses of controlled substances ordered by the pharmacy occurred. (Factual Findings 7 and 8.)

7. SEVENTH CAUSE FOR DISCIPLINE (Failure to have Theft/Impairment Policy). Respondent has subjected his license to disciplinary action under sections 4301, subdivisions (j) and (o), and 4104, on the grounds of unprofessional conduct, in that, from on or about June 14, 2005, through on or about September 18, 2006, while Respondent was pharmacist-in-charge of Del Rey Pharmacy, he failed to have an employee theft and impairment policy in place. (Factual Finding 9.)

8. CAUSE TO REVOKE PROBATION (Violation of Probationary Term). Grounds exist for revoking Respondent's probation and re-imposing the order of revocation of Respondent's license due to his violation of a term of his probation, i.e. paragraph 34 of the Board's probationary order. Respondent failed to obey all laws substantially related to the practice of pharmacy, as demonstrated by his three drug-related convictions and his various statutory and regulatory violations described in Legal Conclusions 2 through 7 above. In addition, Respondent failed to notify the Board within 72 hours of the occurrence of the arrests, criminal complaints, pleas and convictions in any of his three criminal cases. (Factual Findings 3-10; Legal Conclusions 2-7.)

9A. DISPOSITION. Since cause for discipline and to revoke probation was established, the level of discipline must be determined. In reaching a decision on disciplining a license, the Board's disciplinary guidelines (Guidelines) (revised 1/2001) shall be considered. (Cal. Code Regs, tit. 16, § 1760.)

9B. Respondent's misconduct established in this case is serious. His various convictions demonstrate his profound addiction to prescription medications. The convictions also demonstrated his willingness to jeopardize the health and safety of himself and others while under the influence of those controlled substances. Respondent also committed dishonest acts by essentially stealing controlled substances and dangerous drugs from his employing pharmacy. He again displayed reckless indifference to the health and safety of others by consuming those substances at work and engaging in his duties as a pharmacist. More alarming is that Respondent committed his misconduct while on probation with the Board. Of similar concern is Respondent's intentional failure to disclose his arrests or convictions to the Board, despite being required to do so as a term of his probation with the Board. The maximum discipline recommended in the Guidelines for most of Respondent's misconduct is revocation. In fact, the only suggested recommendation for violation of probation is revocation. Thus, ample cause exists to support the revocation of Respondent's license. (Legal Conclusions 1-8.)

9C. However, the Guidelines list 14 different factors to be considered in determining the level of discipline to be imposed. Overall, these factors weigh against Respondent and do not support reducing the level of discipline suggested by the Guidelines.

1. *Actual or potential harm to the public.* One of Respondent's convictions was the result of his colliding with a pickup truck while driving under the influence of drugs, which caused actual harm to a member of the public. The potential for harm to the public was also present every time Respondent drove under the influence.
2. *Actual or potential harm to any consumer.* The potential for harm to consumers existed when Respondent worked as a pharmacist under the influence of controlled substances.
3. *Prior disciplinary record, including level of compliance with disciplinary order(s).* Respondent is currently on probation with the Board. As concluded above, he has violated Condition 34 of his probationary order.
4. *Prior warnings of record(s), including citation(s) and fine(s).* Respondent has received no prior warnings from the Board.
5. *Number and/or variety of current violations.* This factor weighs against Respondent because there is a significant number and variety of violations arising from multiple instances of his misconduct.

6. *Nature and severity of the act(s), offense(s) or crime(s) under consideration.* Respondent's misconduct established in this case is serious.

7. *Mitigating evidence.* While some mitigating evidence is present, it is not complete. For example, Respondent did not submit documentation regarding his current competence to act as a pharmacist, his AA meeting attendance record, confirmation of negative drug tests, or reports from professional healthcare providers attesting to his level of sobriety or ability to function safely as a licensee in light of his addiction. These are all items specifically listed by the Guidelines to be satisfactory evidence of mitigation.

8. *Rehabilitation evidence.* Respondent presented evidence of rehabilitation, in that he is now seriously addressing his addiction. However, it cannot be concluded that he has sufficiently rehabilitated himself at this time. Respondent's sobriety is recent. In light of the length and severity of his addiction, his recent sobriety should be considered relatively fragile. Since Respondent has not worked as a pharmacist since September 2006, it is not currently known if he can withstand the rigors of battling his addiction while engaging in licensed activity in the presence of the very substances to which he is addicted.

9. *Compliance with terms of any criminal sentence.* While Respondent is currently in compliance with his criminal probations, he had previously violated the terms of his first conviction, which led to a deferred entry of judgment being vacated and his being convicted of a felony. Respondent has not yet successfully completed any of his three probations.

10. *Overall criminal record.* This factor is not in Respondent's favor. His overall criminal record includes convictions from three different cases, over a period of almost one year, the last two of which are fairly recent. One of his convictions was for felony possession of a controlled substance, which is a serious crime.

11. *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to section 1203.4 of the Penal Code.* None of his convictions have been expunged because Respondent remains on probation.

12. *Time passed since the act(s) or offense(s).* This factor weighs against Respondent, in that his misconduct is relatively recent.

13. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.* This factor weighs against Respondent, in that his misconduct was intentional and cannot be attributable to another person.

14. *Financial benefit to the respondent from the misconduct.* This factor is not in Respondent's favor, because he was able to supply his addiction, in part, by essentially stealing stock from his employing pharmacy.

9D. After considering the factual findings and legal conclusions above, and the application of the Guidelines, revocation is warranted in this case in order to protect the public health, safety and welfare. A licensed pharmacist, with a serious drug addiction, who in the past has stolen drugs from his employer and thereafter consumed them on duty, poses a serious threat to the public. Although Respondent should be applauded for his recent efforts to seriously address his addiction, it cannot be concluded that those efforts are substantial enough to outweigh the potential risk to the public should he lose his sobriety and/or relapse. The continuation of Respondent's probation, even with additional terms and an extension of time, was not proven in this case to be an alternative that could protect the public safety. Respondent's previous track record of compliance with probationary terms does not support such relief. For example, he has previously violated his probation with the Board. Respondent also violated his probation and the terms of a drug diversion program in one of his criminal cases. (Factual Findings 1-15.)

10. COSTS. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the Pharmacy Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In this case, Respondent was found to have violated various provisions of that law. In accordance with section 125.3, Respondent should pay the Board its reasonable costs of investigating and enforcing this disciplinary matter, which amounts to \$17,672.50. (Factual Finding 16.)

ORDER

The probation previously granted to Respondent William Charles Packer by the Board of Pharmacy, in case number 2000-21045-C, is revoked. The disciplinary order that was stayed in that matter is now imposed. Therefore, Pharmacist License Number RPH 31171, issued to Respondent William Charles Packer, is revoked.

Respondent shall relinquish his wall license and pocket renewal license to the Board within 10 days of the effective date of this decision.

Respondent is ordered to pay the Board its reasonable costs of the investigation and enforcement of this case in the amount of \$17,672.50, pursuant to Business and Professions Code section 125.3.

DATED: March 3, 2008



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the First Amended Accusation
and First Amended Petition to Revoke Probation
13 Against:

14 **WILLIAM CHARLES PACKER**
615 Esplanade #805
15 Redondo Beach, CA 90277
16 Pharmacist License No. RPH 31171

17 Respondent.

Case No. 3018

OAH No.

**FIRST AMENDED ACCUSATION
AND
FIRST AMENDED PETITION TO
REVOKE PROBATION**

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 1, 1977, the Board issued Pharmacist License No.
24 RPH 31171 to William Charles Packer ("Respondent"). The Pharmacist License will expire on
25 or about July 31, 2008, unless renewed.

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JURISDICTION

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2 3. This First Amended Accusation and First Amended Petition to Revoke
3 Probation are brought before the Board, under the authority of the following laws. All section
4 references are to the Business and Professions Code ("Code") unless otherwise indicated.

5 4. Section 4300 of the Code permits the Board to take disciplinary action to
6 suspend or revoke a license issued by the Board.

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

STATUTORY PROVISIONS

11
12 6. Section 4081 of the Code states, in part:

13 (a) All records of manufacture and of sale, acquisition, or disposition of
14 dangerous drugs or dangerous devices shall be at all times during business hours
15 open to inspection by authorized officers of the law, and shall be preserved for at
16 least three years from the date of making. A current inventory shall be kept by
17 every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
18 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
19 or establishment holding a currently valid and unrevoked certificate, license,
20 permit, registration, or exemption under Division 2 (commencing with Section
21 1200) of the Health and Safety Code or under Part 4 (commencing with Section
22 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
23 of dangerous drugs or dangerous devices.

24 (b) The owner, officer, and partner of a pharmacy, wholesaler, or
25 veterinary food-animal drug retailer shall be jointly responsible, with the
26 pharmacist-in-charge or representative-in-charge, for maintaining the records and
27 inventory described in this section.

28 7. Section 4104 of the Code states:

29 (a) Every pharmacy shall have in place procedures for taking action to
30 protect the public when a licensed individual employed by or with the pharmacy is
31 discovered or known to be chemically, mentally, or physically impaired to the
32 extent it affects his or her ability to practice the profession or occupation
33 authorized by his or her license, or is discovered or known to have engaged in the
34 theft, diversion, or self-use of dangerous drugs.

35 (b) Every pharmacy shall have written policies and procedures for
36 detecting chemical, mental, or physical impairment, as well as theft, diversion, or
37 self-use of dangerous drugs, among licensed individuals employed by or with the
38 pharmacy.

1 (c) Every pharmacy shall report to the board, within 30 days of the receipt
2 or development of the following information with regard to any licensed
individual employed by or with the pharmacy:

3 (1) Any admission by a licensed individual of chemical, mental, or
4 physical impairment affecting his or her ability to practice.

5 (2) Any admission by a licensed individual of theft, diversion, or self-use
of dangerous drugs.

6 (3) Any video or documentary evidence demonstrating chemical, mental,
7 or physical impairment of a licensed individual to the extent it affects his or her
ability to practice.

8 (4) Any video or documentary evidence demonstrating theft, diversion, or
self-use of dangerous drugs by a licensed individual.

9 (5) Any termination based on chemical, mental, or physical impairment of
10 a licensed individual to the extent it affects his or her ability to practice.

11 (6) Any termination of a licensed individual based on theft, diversion, or
self-use of dangerous drugs.

12 (d) Anyone participating in good faith in the making of a report authorized
13 or required by this section shall have immunity from any liability, civil or
14 criminal, that might otherwise arise from the making of the report. Any participant
shall have the same immunity with respect to participation in any administrative
15 or judicial proceeding resulting from the report.

16 8. Section 4301 of the Code states, in pertinent part:

17 The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct . . . Unprofessional conduct shall include, but is not
limited to, any of the following:

19 . . .

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

22 . . .

23 (h) The administering to oneself, of any controlled substance, or the use of
24 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,
25 or to any other person or to the public, or to the extent that the use impairs the
ability of the person to conduct with safety to the public the practice authorized by
26 the license.

27 . . .

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

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(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...
(o) Violating 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.

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

“No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . .”

10. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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1 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
2 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
3 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
4 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
5 unless upon the written prescription of a physician, dentist, podiatrist, or
6 veterinarian licensed to practice in this state, shall be punished by imprisonment
7 in the state prison.

8 (b) Except as otherwise provided in this division, every person who
9 possesses any controlled substance specified in subdivision (e) of Section 11054
10 shall be punished by imprisonment in the county jail for not more than one year or
11 in the state prison.

12 17. Health and Safety Code section 11377, subdivision (a), states:

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

25 18. Section 4022 of the Code prohibits the dispensing or furnishing of a
26 dangerous drug or dangerous device, which is any drug or device that is unsafe for self-use in
27 humans or animals, without a prescription or as legally authorized.

28 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

19 19. "Opiates" are defined by Health and Safety Code section 11020 as "any
20 substance having an addiction-forming or addiction-sustaining liability similar to morphine or
21 being capable of conversion into a drug having addiction-forming or addiction-sustaining
22 liability."

23 20. Adderall, an Amphetamine (stimulant), is a Scheduled II controlled
24 substance as defined in Health and Safety Code section 11055, subdivision (d)(1), and is
25 categorized as a dangerous drug pursuant to section 4022 of the Code. Adderall contains mixed
26 amphetamine salts.

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1 21. Benzodiazepine is a Schedule IV controlled substance as defined in Health
2 and Safety Code section 11057, subdivision (d), and is categorized as a dangerous drug pursuant
3 to section 4022 of the Code. Valium (diazepam) is a benzodiazepine derivative.

4 22. Hydrocodone/APAP is a Schedule III controlled substance pursuant to
5 Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant
6 to section 4022 of the Code.

7 23. Methadone, a synthetic opiate, is a Schedule II controlled substance as
8 designated by Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug
9 according to Business and Professions Code section 4022.

10 24. Morphine/Morphine Sulfate, a narcotic substance, is a Schedule II
11 controlled substance pursuant to Health and Safety Code Section 11055, subdivision (b)(1)(M),
12 and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

13 25. Oxycodone, a semisynthetic opioid analgesic, is a Schedule II controlled
14 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(N), and a
15 dangerous drug pursuant to section 4022 of the Code. Oxycontin is a brand name for controlled-
16 release Oxycodone.

17 26. Phentermine, a stimulant, is classified as a Schedule IV controlled
18 substance pursuant to the Health and Safety Code section 11057, subdivision (f)(4), and is a
19 dangerous drug within the meaning of Business and Professions Code section 4022.

20 27. Soma, a brand name for Carisoprodol, is a dangerous drug according to
21 section 4022 of the Code. Its indicated use is as a muscle relaxant that is used with rest, physical
22 therapy, and other measures to relax muscles and relieve pain and discomfort caused by strains,
23 sprains, and other muscle injuries.

24 28. Vicodin, a trade name for a combination drug containing hydrocodone
25 bitartrate (opioid analgesic) and acetaminophen, is a Schedule III controlled substance as defined
26 in Health and Safety Code section 11056, subdivision (e)(4), and is categorized as a dangerous
27 drug according to section 4022 of the Code.

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1 Somas, Oxycodone and Adderall. Respondent admitted to a Redondo Beach police officer that,
2 while working as a pharmacist at Del Rey Pharmacy in Playa Del Rey, California ("Del Rey
3 Pharmacy"), Respondent took the controlled substances from the pharmacy's stock, without the
4 knowledge or permission of his employer and without a prescription. Respondent admitted that
5 he had been taking "two or three" Vicodins per day consistently for the past "two or three
6 weeks."

7 c. On or about May 14, 2007, Respondent was convicted by the court on one
8 count of violating Vehicle Code section 23152, subdivision (a), a misdemeanor (driving under
9 the influence of alcohol or drugs), in Los Angeles County Superior Court, Southwest Division,
10 Case No. YA066305, entitled *People v. William Charles Packer*. Respondent was sentenced, as
11 follows: three years probation, 120 days in jail, and payment of fine and restitution.

12 d. The circumstances surrounding the conviction are that on or about April 7,
13 2006, Respondent was driving under the influence of controlled substances, Benzodiazepines and
14 Opiates. Pursuant to law enforcement reports, Respondent was driving erratically and struck a
15 parked truck, which caused Respondent's vehicle to roll over. Respondent was found in
16 possession of Hydrocodone by a Hermosa Beach police officer.

17 e. On or about May 14, 2007, Respondent was also convicted by the court on
18 one count of violating Vehicle Code section 23152, subdivision (a), a misdemeanor (driving
19 under the influence of alcohol or drugs), in Los Angeles County Superior Court, Southwest
20 Division, Case No. YA065405, entitled *People v. William Charles Packer*. Respondent was
21 sentenced, as follows: three years probation, 4 days in jail, and payment of fine and restitution.

22 f. The circumstances surrounding the conviction are that on or about August
23 24, 2006, Respondent was driving under the influence of the controlled substances,
24 Benzodiazepines and Opiates, in violation of Vehicle Code section 23152, subdivision (a).
25 Pursuant to law enforcement reports, Respondent was driving erratically and displayed symptoms
26 of being under the influence of a controlled substance. Respondent admitted to a Manhattan
27 Beach police officer that he consumed Valium, Xanax, Soma, Ativan and Vicodin shortly before
28 driving. Respondent was found in possession of Amphetamines, Adderall, Morphine,

1 Methadone, Tylenol with Codeine, Lorazepam, and Phentermine. Respondent admitted that he
2 took the controlled substances from the pharmacy's stock, without the knowledge or permission
3 of his employer and without a prescription.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Use of Controlled Substances and Dangerous Drugs)**

6 32. Respondent has subjected his license to disciplinary action under section
7 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used
8 controlled substances and dangerous drugs to an extent and in a manner dangerous or injurious to
9 himself and the public, as follows:

10 a. On or about December 30, 2005, Respondent consumed Vicodin and
11 Xanax and was arrested by a Redondo Beach police officer for driving under the influence of a
12 controlled substance, in violation of Vehicle Code section 23152, subdivision (a), as set forth in
13 paragraph 31(b), above.

14 b. On or about April 7, 2006, Respondent consumed Benzodiazepines and
15 Opiates and was driving under the influence of these controlled substances, in violation of
16 Vehicle Code section 23152, subdivision (a). Pursuant to law enforcement reports, Respondent
17 was driving erratically and struck a parked truck, which caused Respondent's vehicle to roll over,
18 as set forth in paragraph 31(d), above.

19 c. On or about August 24, 2006, Respondent consumed Benzodiazepines and
20 Opiates and was driving under the influence of these controlled substances, in violation of
21 Vehicle Code section 23152, subdivision (a). Pursuant to law enforcement reports, Respondent
22 was driving erratically and displayed symptoms of being under the influence of a controlled
23 substance. Respondent admitted to a Manhattan Beach police officer that he consumed Valium,
24 Xanax, Soma, Ativan and Vicodin shortly before driving, as set forth in paragraph 31(f), above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Violation of Chapter - Possession of Controlled Substances)

3 33. Respondent has subjected his license to disciplinary action under section
4 4301, subdivision (o), on the grounds of unprofessional conduct, in that he violated section 4060,
5 as follows:

6 a. On or about December 30, 2005, a Redondo Beach police officer found
7 that Respondent was in possession of the controlled substances and dangerous drugs, Vicodin,
8 Soma, Oxycodone, and Adderall, without prescriptions, as set forth in paragraph 31(b) above.

9 b. On or about April 7, 2006, a Hermosa Beach police officer found that
10 Respondent was in possession of the controlled substance and dangerous drug, Hydrocodone,
11 without a prescription, as set forth in paragraph 31(d), above.

12 c. On or about August 24, 2006, a Manhattan Beach police officer found that
13 Respondent was in possession of the controlled substances and dangerous drugs, Amphetamines,
14 Adderall, Morphine, Methadone, Tylenol with Codeine, Lorazepam, and Phentermine, without a
15 prescription, as set forth in paragraph 31(f), above.

16 FOURTH CAUSE FOR DISCIPLINE

17 (Violation of State Laws Regulating Controlled Substances)

18 34. Respondent has subjected his license to disciplinary action under section
19 4301, subdivisions (j) and (o), in conjunction Health and Safety Code sections 11170, 11171,
20 11350, and 11377, on the grounds of unprofessional conduct, as follows:

21 a. On or about December 30, 2005, Respondent consumed the controlled
22 substances and dangerous drugs, Benzodiazepines and Opiates, without a prescription, as set
23 forth in paragraph 31(b), above.

24 b. On or about December 30, 2005, Redondo Beach police officers found
25 Respondent in possession of the controlled substances and dangerous drugs, Vicodin, Soma,
26 Oxycodone, and Adderall, as set forth in paragraph 31(b), above.

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1 c. On or about April 7, 2006, Respondent consumed the controlled
2 substances and dangerous drugs, Benzodiazepines and Opiates, without a prescription, as set
3 forth in paragraph 31(d), above.

4 d. On or about April 7, 2006, Hermosa Beach police officers found
5 Respondent in possession of the controlled substance and dangerous drug, Hydrocodone, without
6 a prescription, as set forth in paragraph 31(d), above.

7 e. On or about August 24, 2006, Respondent consumed the controlled
8 substances and dangerous drugs, Benzodiazepines and Opiates, without a prescription, as set
9 forth in paragraph 31(f), above.

10 f. On or about August 24, 2006, Manhattan Beach police officers found
11 Respondent in possession of the controlled substances and dangerous drugs, Amphetamines,
12 Adderall, Morphine, Methadone, Tylenol with Codeine, Lorazepam, and Phentermine, without a
13 prescription, as set forth in paragraph 31(f), above.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Committed Acts of Dishonesty)**

16 35. Respondent has subjected his license to disciplinary action under section
17 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed
18 acts of dishonesty by taking pharmaceutical drugs from his place of employment without his
19 employer's knowledge or consent, as set forth in paragraphs 31(b) and 31(f), above.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Failure to Maintain Records of Controlled Substances)**

22 36. Respondent has subjected his license to disciplinary action under sections
23 4301, subdivisions (f), (j) and (o), and 4081, in conjunction with California Code of Regulations,
24 title 16, section 1718, on the grounds of unprofessional conduct, in that from on or about June
25 14, 2005, through on or about September 18, 2006, while Respondent was pharmacist-in-charge
26 of Del Rey Pharmacy, he failed to maintain accurate records of the acquisition and disposition of
27 controlled substances. An audit of Del Rey Pharmacy for the period in which Respondent was
28 pharmacist-in-charge revealed significant losses of controlled substances ordered by the

1 pharmacy, including Adderall XR, Amphetamine Salts, Adderall plain, Oxycodone, and
2 Oxycontin.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to have Theft/Impairment Policy)**

5 37. Respondent has subjected his license to disciplinary action under sections
6 4301, subdivisions (j) and (o), and 4104, on the grounds of unprofessional conduct, in that from
7 on or about June 14, 2005, through on or about September 18, 2006, while Respondent was
8 pharmacist-in-charge of Del Rey Pharmacy, he failed to have an employee theft and impairment
9 policy in place, as required.

10 **DISCIPLINE CONSIDERATIONS**

11 38. To determine the degree of discipline, if any, to be imposed on
12 Respondent, Complainant alleges that on or about August 2, 2003, in a prior disciplinary action
13 entitled *In the Matter of the Citation Against William Charles Packer* before the Board of
14 Pharmacy, in Citation Case No. 2000-21045-C, Respondent's Pharmacist License No. RPH
15 31171 was revoked, stayed, and the license was placed on probation for three (3) years with
16 terms and conditions for violating section 4067, subdivision (a). That decision is now final and
17 is incorporated by reference as if fully set forth.

18 **PETITION TO REVOKE PROBATION**

19 39. In a disciplinary action entitled *In the Matter of the Citation Against*
20 *William Charles Packer*, Citation Case No. 2000-21045-C, the Board issued a decision pursuant
21 to a stipulated settlement and disciplinary order, effective August 2, 2003, in which Respondent's
22 license was revoked; however, the revocation order was stayed, and the license was placed on
23 probation for three (3) years under terms and conditions. A true and correct copy of that decision
24 is attached as exhibit "A" and is incorporated by reference. The probation included the following
25 term and condition:

26 a. Term No. 1 [Stipulation, page 11, paragraph 34]

27 "Obey All Laws. Respondent shall obey all state and federal laws and
28 regulations substantially related to or governing the practice of pharmacy.

1 Respondent shall report any of the following occurrences to the board, in
writing, within 72 hours of such occurrence:

- 2 • an arrest or issuance of a criminal complaint for violation of any
3 provision of the Pharmacy Law, state and federal food and drug
laws, or state and federal controlled substances laws
- 4 • a plea of guilty or nolo contendere in any state or federal criminal
5 proceeding to any criminal complaint, information or indictment
- 6 • a conviction of any crime
- 7 • discipline, citation, or other administrative action filed by any
8 state and federal agency which involves respondent's license or
9 which is related to the practice of pharmacy or the
manufacturing, obtaining, handling or distribution or billing or
charging for of any drug, device or controlled substance."

10 **CAUSE TO REVOKE PROBATION**

11 **(Failure to Obey All Laws)**

12 40. Grounds exist for revoking probation and reimposing the order of
13 revocation of Respondent's license in that he violated Probation Condition No. 1 (Stipulation,
14 paragraph 1), in that he failed to obey all laws as set forth in paragraphs 31 through 37, above.
15 In addition, Respondent failed to notify the Board within 72 hours of the occurrence of the
16 arrests, issuances of criminal complaints, pleas, and convictions, in connection with the events
17 set forth in paragraphs 31 through 37, above.

18 **PRAYER**

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

- 21 1. Revoking or suspending Pharmacist License Number RPH 31171,
22 issued to William Charles Packer;
- 23 2. Revoking the probation that was granted by the Board of Pharmacy in
24 Citation Case No. 2000-21045-C and imposing the disciplinary order that was stayed, thereby
25 revoking Pharmacist License No. RPH 31171 issued to William Charles Packer;

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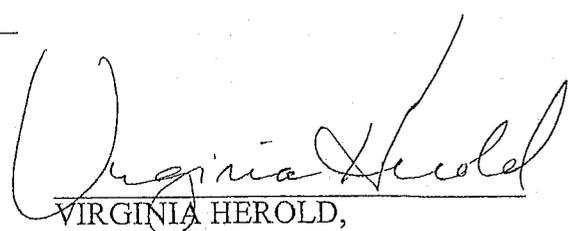
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1 3. Ordering William Charles Packer to pay the Board the reasonable costs
2 of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3; and,

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

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6 DATED: 8/6/07

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9 VIRGINIA HEROLD,
10 Executive Officer
11 Board of Pharmacy
12 Department of Consumer Affairs
13 State of California
14 Complainant

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EXHIBIT A
In the Matter of the Citation Against William Charles Packer,
Citation Case No. 2000-21045-C
Decision, effective August 2, 2003

CALIFORNIA BOARD OF PHARMACY
CITATION & FINE
ORDER OF ABATEMENT

ORIGINAL

CITATION NUMBER : 2000-21045-C

NAME: WILLIAM CHARLES PACKER

LICENSE NO: Pharmacist License No. RPH 31171

VIOLATION : Business and Professions Code Section 4067

AMOUNT OF FINE : \$697,500.00

ORDER OF ABATEMENT:

Respondent is ordered to **IMMEDIATELY CEASE AND DESIST** dispensing, furnishing, and/or causing to be dispensed or furnished any drug or device identified in Business and Profession Code section 4067, subdivision (a), on the Internet for delivery to any person in this state without a prescription issued pursuant to a good faith prior examination if Respondent either knows or reasonably should know that the prescription was not issued pursuant to a good faith medical examination. This order is intended to prohibit Respondent from continuing to engage in dispensing dangerous drugs or devices in a manner which violates section 4067, subdivision (a), and/or in any manner assisting - directly or indirectly - any other person or entity to do so.

CORRECTION OF THE VIOLATION MUST BE MADE :

Immediately upon service of this Order.

DESCRIPTION OF VIOLATION :

Respondent WILLIAM CHARLES PACKER (hereinafter "Respondent"), during his employment at Total Remedy and Prescription Center II, a licensed Pharmacy located at 6064 West Olympic Boulevard, Los Angeles, California (hereinafter "Total Remedy"), violated Business and Professions Code section 4067 by the following conduct:

Respondent dispensed or caused personnel under his supervision to dispense the drugs Viagra, or Celebrex, or Valtrex, or RetinA/Renova, or Propecia, or Zyban, or Xenical, each of which is a dangerous drug as defined in Business and Professions Code section 4022, pursuant to orders made on the Internet for delivery to consumers in the State of California.

Total Remedy received Internet orders pursuant to a business arrangement with a non-licensed intermediary, which obtained drug orders via the Internet from consumers, then faxed Respondent a "prescription" document for each order. Total Remedy then filled the order and arranged for delivery to the consumer, using an express delivery service.

Between approximately February 1, 2001 and approximately May 31, 2001, Total Remedy filled more than 3,500 such "prescriptions" pursuant to Internet orders. The Internet orders for which Respondent is cited are listed below. According to Total Remedy records, Respondent's initials (indicating he was the dispensing pharmacist) appear on each of the 279

Internet orders listed below.

With regard to each and every one of the listed Internet orders, Respondent either knew or should have known that said "prescription" was not issued pursuant to a "good faith prior examination."

Drug	Rx No.	Drug	Rx No.	Drug	Rx No.
Viagra	6000221	Viagra	6000598	Viagra	6001461
Viagra	6000214	Viagra	6000599	Viagra	6001440
Viagra	6000243	Viagra	6000600	Propecia	6001420
Viagra	6000230	Viagra	6000601	Viagra	6001435
Xenical	6000238	Viagra	6001273	Viagra	6001436
Viagra	6000237	Viagra	6001271	Viagra	6001437
Viagra	6000242	Viagra	6001272	Viagra	6001438
Viagra	6000234	Viagra	6001464	Viagra	6001439
Viagra	6000236	Viagra	6001457	Viagra	6001515
Viagra	6000239	Viagra	6001450	Propecia	6001505
Viagra	6000223	Viagra	6001441	Viagra	6001507
Viagra	6000240	Viagra	6001443	Viagra	6001508
Viagra	6000233	Viagra	6001444	Viagra	6001509
Viagra	6000593	Viagra	6001445	Viagra	6001511
Viagra	6000619	Viagra	6001446	Viagra	6001513
Viagra	6000614	Viagra	6001447	Viagra	6001514
Viagra	6000611	Viagra	6001448	Viagra	6001512
Viagra	6000590	Viagra	6001449	Viagra	6001510
Viagra	6000604	Viagra	6001452	Viagra	6000688
Viagra	6000603	Viagra	6001453	Viagra	6000689
Viagra	6000587	Viagra	6001454	Viagra	6000687
Viagra	6000588	Viagra	6001455	Viagra	6000703
Viagra	6000589	Viagra	6001458	Viagra	6000704
Viagra	6000608	Viagra	6001459	Viagra	6000706
Viagra	6000606	Viagra	6001462	Viagra	6000707
Viagra	6000607	Viagra	6001465	Viagra	6000708
Viagra	6000618	Viagra	6001467	Viagra	6000709
Viagra	6000613	Viagra	6001468	Viagra	6000710
Viagra	6000610	Viagra	6001469	Viagra	6000716
Viagra	6000612	Viagra	6001470	Viagra	6000702
Viagra	6000617	Viagra	6001471	Viagra	6000714
Viagra	6000605	Xenical	6001472	Viagra	6000715
Viagra	6000609	Propecia	6001473	Viagra	6000713
Viagra	6000602	Viagra	6001456	Viagra	6000712
Viagra	6000591	Viagra	6001442	Viagra	6000711
Viagra	6000592	Viagra	6001463	Viagra	6000700
Viagra	6000594	Viagra	6001466	Viagra	6001720
Viagra	6000595	Viagra	6001451	Viagra	6001761
Viagra	6000596	Viagra	6001460	Viagra	6001768
Viagra	6000597				

Drug	Rx N	Drug	Rx No.	Drug	Rx No.
Viagra	6001764	Viagra	6003021	Viagra	6003087
Viagra	6001769	Viagra	6003022	Viagra	6003095
Viagra	6001815	Viagra	6003023	Viagra	6003099
Viagra	6001818	Viagra	6003024	Viagra	6003098
Viagra	6001820	Xenical	6003026	Viagra	6003183
Viagra	6001821	Viagra	6003039	Viagra	6003184
Viagra	6001822	Viagra	6003041	Viagra	6003185
Viagra	6001825	Viagra	6003042	Viagra	6003186
Viagra	6001831	Viagra	6003025	Viagra	6003187
Viagra	6001835	Viagra	6003027	Viagra	6003188
Viagra	6001837	Viagra	6003028	Viagra	6003182
Viagra	6001742	Viagra	6003029	Viagra	6003293
Xenical	6001743	Viagra	6003030	Viagra	6003294
Viagra	6001744	Viagra	6003031	Renova	6003455
Viagra	6001745	Viagra	6003032	Viagra	6003429
Viagra	6001746	Viagra	6003033	Viagra	6003428
Viagra	6001747	Viagra	6003034	Viagra	6003561
Viagra	6001748	Viagra	6003035	Viagra	6003562
Viagra	6001749	Viagra	6003036	Viagra	6003563
Viagra	6001750	Viagra	6003037	Viagra	6003564
Propecia	6001751	Viagra	6003038	Viagra	6003565
Viagra	6001767	Viagra	6003080	Viagra	6003566
Viagra	6001765	Viagra	6003075	Viagra	6003567
Viagra	6001766	Viagra	6003081	Viagra	6003568
Celebrex	6001770	Viagra	6003079	Viagra	6003569
Propecia	6001771	Viagra	6003077	Viagra	6003570
Viagra	6001755	Viagra	6003082	Propecia	6003571
Viagra	6001756	Viagra	6003083	Xenical	6003572
Viagra	6001757	Viagra	6003084	Viagra	6003573
Viagra	6001758	Viagra	6003085	Viagra	6003574
Viagra	6001762	Viagra	6003086	Viagra	6003452
Viagra	6001763	Viagra	6003096	Viagra	6003451
Viagra	6001759	Viagra	6003097	Zyban	6003447
Viagra	6001760	Viagra	6003100	Renova	6003444
Viagra	6001836	Viagra	6003101	Viagra	6003442
Viagra	6001816	Viagra	6003102	Viagra	6003438
Viagra	6001828	Viagra	6003103	Viagra	6003437
Viagra	6001827	Viagra	6003104	Viagra	6003434
Viagra	6001826	Viagra	6003074	Viagra	6003432
Viagra	6001829	Propecia	6003076	Viagra	6003430
Viagra	6001830	Viagra	6003078	Viagra	6003454
Viagra	6001832	Viagra	6003088	Viagra	6003453
Viagra	6001833	Viagra	6003089	Viagra	6003446
Viagra	6001817	Viagra	6003090	Viagra	6003445
Viagra	6001834	Viagra	6003091	Viagra	6003443
Viagra	6002693	Viagra	6003092	Viagra	6003439
Viagra	6003094	Viagra	6003093	Viagra	6003440

Drug	Rx No.	Drug	Rx No.
Viagra	6003435	Viagra	6000235
Viagra	6003436	Viagra	6003462
Viagra	6003433	Viagra	6003456
Viagra	6003431	Viagra	6003457
Viagra	6003448	Viagra	6003458
Viagra	6003449	Viagra	6003459
Viagra	6003450	Viagra	6003460
Viagra	6000705	Viagra	6003040
Viagra	6000701	Viagra	6001814
Xenical/	6000211/	Viagra	6003461

FURTHER, Respondent WILLIAM CHARLES PACKER failed to act in accord with his professional responsibilities under 16 California Code of Regulations Section 1761(a), by dispensing drugs pursuant to Internet prescription orders which contained significant omissions, inaccuracies, uncertainties, or ambiguity, without contacting the prescriber to validate the prescription. Uncertain prescriptions filled by Respondent include but are not limited to above noted orders assigned customer numbers 345, 346, 383, 385, 410, 411, 412, 442, 452, 494, 495, 496, 497, 498, 528, 579, 580, 581, 606, 607, 633, 1139, 1227, 1228, 1246, 1361, 1391, 1393, 1448, 1449, 1549, 1550, 1551, 1658, 1659, 1688, 1810, 1811, 1821, 1886, 1890, 1913, 1943, 1944, 1978, 2069, 2195, 2196, 2259, 2260, 2261, 2262, 2263, 2299, 2432, 2433, 2557, 2597, 2641, 2694, 2695, 2696, 2697, 2894, 3127, 3128, 3129, 3130, 3159, 3188, 3236, 3237, 3241, 3242, 3243, 3532, and 3534.

Date: 5/22/02


 For CITE AND FINE COMMITTEE
 BOARD OF PHARMACY