

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

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

Case No. 3408

MAX AUGUST RYDEN
PO Box 475
Big Bear Lake, CA 92315

OAH No. 2010080843

Pharmacist Intern Permit No. 18460

Respondent.

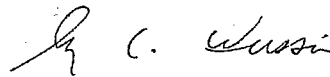
DECISION

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 December 21, 2011.

It is so ORDERED November 21, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

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

Case No. 3408

MAX AUGUST RYDEN,

OAH No. 2010080843

Respondent.

PROPOSED DECISION

Administrative Law Judge Sophie C. Agopian, Office of Administrative Hearings, heard this matter on March 30, 2011, in Los Angeles, California.

Deputy Attorney General Michael A. Cacciotti represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Max August Ryden appeared and represented himself.

Testimonial and documentary evidence was received, and argument was heard. The record was closed and the matter was submitted for decision at the conclusion of the hearing on March 30, 2011.

FACTUAL FINDINGS

1. Complainant brought the Accusation and Petition to Revoke Probation in her official capacity on December 8, 2009.
2. On November 3, 2005, the Board issued respondent a pharmacy intern permit number INT 18460, authorizing respondent to act as a pharmacy intern in California. The intern permit expired on November 30, 2010, and has not been renewed.

Discipline History

3. On July 9, 2008, respondent's permit was placed on probation for a period of five years pursuant to a stipulated settlement agreement entitled, Stipulated Settlement and Disciplinary Order in the case of: In the Matter of Accusation Against Max August Ryden,

Case No. 3048 (Agreement.) The Agreement contained the following relevant terms and conditions:

1. *Obey all laws.* [Term One] Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy....

2. *Reporting to the Board.* [Term Two] Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. The report shall also state the name of Respondent's employer(s) or where he has worked as an intern for the previous quarter and the number of hours he has worked during the previous quarter. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

[¶] ... [¶]

13. *Violation of Probation.* [Term 13] If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

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

14. *Completion of Probation.* [Term 14] Upon successful completion of probation, Respondent's license will be fully restored.

15. *Rehabilitation Program- Pharmacists Recovery Program (PRP)* [Term 15]. Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program for evaluation and shall 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. The costs for PRP shall be borne by the Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

16. *Random Drug Screening.* [Term 16] Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

17. *Abstain from Drugs and Alcohol Use.* [Term 17] Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of Respondent.

[¶] ... [¶]

4. Pursuant to the Agreement, respondent admitted the truth of each and every charge and allegation in the underlying accusation. The relevant charges in the accusation included that respondent, on two occasions, obtained controlled substances by dishonesty, fraud, deceit or subterfuge, and furnished and/or administered the controlled substance to himself. The allegations admitted by respondent included the following:

a. OxyContin is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1), and a dangerous drug under Business and Professions Code section 4022. It is a brand name for oxycodone hydrochloride, an opioid agonist.

b. On April 2, 2006, while working as a pharmacist intern at the University of Southern California (USC), University Hospital, respondent removed eight (8) 80 milligram CR tablets of OxyContin from the Fourth Floor ICU Pyxis machine, by concealment, and without a valid prescription for the medication.

c. On April 28, 2006, while working as a pharmacist intern at USC University Hospital, respondent removed five (5) 80 milligram CR tablets of OxyContin from the Fourth Floor ICU Pyxis machine, by concealment, and without a valid prescription for the medication.

5. Respondent was represented by counsel when he entered into the Agreement and agreed that he "carefully read, fully discussed with counsel, and underst[oo]d the effects of the Agreement on his intern permit. Respondent executed the Agreement on April 10, 2008. The Agreement went into effect sometime thereafter, after it was fully executed by the parties and after the Board approved it.

6. Respondent's probation monitoring as set forth in Term Two of the Agreement, commenced on August 12, 2008, when respondent met with the Board's Supervising Inspector, Joan Coyne. Ms. Coyne reviewed with respondent the terms and conditions of his probation, introduced respondent to his probation monitor, and explained that respondent was required to meet in person or provide a report regarding his progress. According to Ms. Coyne, when a probationary licensee fails to submit a compliant quarterly report, the Board will request a personal meeting with the licensee to ensure that the licensee complies with the requirements. Although respondent substantially complied with Term Two of the Agreement by submitting a quarterly report, Ms. Coyne became concerned when he did not follow the required format. According to Ms. Coyne, even simple noncompliance with probationary terms may be grounds for suspension or even termination.

Probation Violation

7. Respondent failed to comply with terms and conditions of his probation, and in effect breached the Agreement.

8. On August 25, 2008, respondent enrolled in the PRP's treatment program operated by Maximus, Inc. (Maximus). Respondent's clinical case manager from Maximus was Anne Mireles, a licensed nurse of 31 years who now specializes in chemical dependency. Mireles's responsibilities included evaluating respondent, developing a treatment plan for him, and overseeing his implementation of the plan. According to Mireles, respondent appeared to have some success in the program at the outset. He participated in group discussions, vocalized his desire to recover from his addiction and demonstrated a "good understanding" of the recovery process. However, respondent had a relapse in his drug use prior to completing the program. The relapse occurred almost nine months after he entered the program.

9. On May 7, 2009, respondent self-administered "Norco," a combination drug containing hydrocodonebitartrate 10 milligrams and acetaminophen 325 milligrams. Norco is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug under Business and Professions Code section 4022. Respondent ingested the drug after completing a clinical clerkship at USC Pharmacy, from where he diverted the drug for his personal use. According to Mireles, respondent's relapse occurred prior to ingesting the drug because he obtained the drug and concealed it from his worksite monitor several days before ingesting it. Respondent, apparently, waited until after the completion of his rotation to self-administer the drug. He did not report his relapse or his self-administration of the drug to his worksite monitor.

10. On May 8, 2009, respondent was asked to submit to a random biological fluid test. Respondent failed to report for testing, which was in violation of Term 16 of the Agreement.

11. Respondent reported his relapse to Mireles on May 12, 2009. Although respondent asserted that his "self-reporting" constitutes mitigating evidence regarding his relapse, his assertion is unconvincing because he did not report his relapse until after he failed to report for random biological fluid testing. Therefore, it was inevitable that Mireles would discover his relapse.

12. As a result of his relapse, respondent was terminated from PRP following an investigation determining that he was a "public risk." The investigation established that respondent, in his capacity as an intern pharmacist participant, diverted Norco for self-use and concealed this diversion from his worksite manager. Although respondent had a relapse prevention plan in place, to call his sponsor and other supporters, and utilized the plan, the plan was insufficient to prevent respondent from relapsing. Because of the relapse, respondent could no longer establish his sobriety. Respondent was notified of his termination from the program on May 12, 2009.

13. Mireles testified credibly that due to respondent's methadone addiction and history of relapse, she questioned whether pharmacy was the right field for him. She further testified that respondent is in the early stages of his recovery and that his propensity for relapse is high. Respondent requires more time away from narcotics in order to establish his recovery. Although Mireles was sympathetic to respondent's struggle to overcome his addiction, she opined that respondent presented a risk to the public if he were to maintain his license.

14. Respondent is 37 years old. He established that maintaining his license is critical to his plans to becoming a pharmacist and to his self-esteem.

a. Respondent has twice attended the USC School of Pharmacy. He completed two years of pharmacy school from 1996 through 1998. In 1998, he decided to leave the school because he was mourning the death of his brother and he was having pain. However,

before leaving the school, respondent notified the Associate Dean of Academics and Clinical Affairs, Dr. Fred Weissman, of his reasons for leaving. In 2004, respondent informed Dr. Weissman that he made a mistake in leaving school, and requested reentry into the school. Dr. Weissman allowed respondent to reenroll in the pharmacy program, but required him to repeat his first two years. Respondent reenrolled in the program in 2005. From 2005 through 2008, respondent performed well academically. He earned a 3.6 grade point average prior to entering the clinical portion of his studies. According to Dr. Weissman, respondent was a model student who ranked in the top 12 percent of his class.

b. Respondent's grades have dropped because he was unable to complete the clinical portion of his studies due to the events described in Factual Findings 4 through 11. According to Dr. Weissman, if respondent is unable to complete his clinical rotation, he may not be allowed to earn a degree. Dr. Weissman opined that it may be possible for respondent to meet the requirements for a degree by completing coursework that does not require him to be around narcotics. However, respondent needs to have his intern license, even if probationary, in order to earn a degree. Dr. Weissman acknowledged that if respondent is allowed to retain his license, he could potentially work at any pharmacy, which would be a risk to the public. Dr. Weissman's testimony was credible.

15. Respondent testified, on the contrary, that he would not be a risk to the public as an intern because interns are always supervised. Respondent's history and success at diverting and concealing drugs from his worksite in his capacity as an intern undermines his testimony.

16. Respondent believes that the consequences of his latest relapse were too harsh because he did not report to his worksite under the influence of narcotics. Furthermore, if respondent's license is revoked, he would not be able to complete the program at USC. Even if he were to reapply for his license in three years, he is not certain that the school would take him back and allow him to complete his final year. He would likely have to start all over again. Respondent testified that he could earn his pharmacy degree and work in a field that does not require him to dispense drugs, such as in academia as a professor or in ambulatory care. However, he could not establish that he would be limited to those careers.

17. Respondent has taken several detours in his path to become a pharmacist. He earned a B.A. degree, magna cum laude, in 1995. He was licensed as a pharmacy technician in 1996 and worked for six months in a pharmacy before starting pharmacy school at USC. While in school, he was licensed as an intern. When he left school in 1998, he went to work at a Walmart pharmacy for about one year. Between 1999 and 2000, he went to flight school, funded in part by student loans, and earned a commercial pilot license. When he ran out of money, he obtained jobs unrelated to pharmacy or flight school. In around 2003, he was diagnosed with major depression and went on disability from work. He moved back into his mother's home and started seeing a psychiatrist. The psychiatrist also diagnosed him with Panic Disorder and prescribed various medications for him. Since that time, respondent has been on various medications for depression and anxiety. Respondent has also been prescribed pain medication, including narcotics, due to severe headaches he has as a result of

a "slip and fall" accident. Respondent is also seeing a clinical psychologist to help him with his substance abuse issues, although it was not clearly established when his substance abuse issues arose.

18. After being terminated from the PRP, respondent has been unable to find work. He currently lives in Big Bear with his mother and contends that work is not available there. He is currently attending 12-step meetings at least three times each week, and has started a recovery group with another pharmacist that he met in the diversion program. He calls the group "Pills Anonymous." Respondent attends counseling up to three times each month to address his depression and substance abuse issues. Respondent contends that since participating in counseling, he has gained more insight into his relapse tendencies. He now understands that he relapsed as a result of cognitive dysfunction resulting from long-term opiate withdrawal. Because he was unable to function and concentrate during a critical period of his rotation, he became frustrated, depressed and irritable, which caused him to relapse. He admitted to diverting about 20 tablets of Norco from USC Pharmacy. He was aware that he was relapsing, and therefore called his sponsor and other supporters. However, according to respondent, his relapse prevention plan "failed" him and he took the drugs.

19. Respondent appears to blame inadequacies of the PRP for his relapse. Respondent contended that the relapse prevention plan established for him was insufficient. He contends that if he had been aware of other treatment available, such as Naltrexone, which blocks the effects of opiates, that he may have been successful in the program. He does not appear take full responsibility for his relapse and would like to have another chance to be reassessed and provided with further treatment from the PRP.

20. According to respondent's self-assessment of his need for further treatment, he acknowledged that he may have to go back to in-patient treatment. However, he is not certain that he has sufficient health insurance to cover the cost of the treatment.

21. Respondent owes about \$450,000 in student loans and is currently not working.

22. Complainant has incurred reasonable costs for the investigation and prosecution of this matter in the amount of \$7,720.

LEGAL CONCLUSIONS

1. Business and Professions Code¹ section 4300 provides that licenses issued by the Board are subject to discipline, including suspension or revocation. Section 118, subdivision (b), grants the Board continuing jurisdiction over expired licenses during the period that the licenses may be renewed, restored, reissued or reinstated.

2. Section 4301 requires the Board to "take action against," or discipline, "any holder of a license who is guilty of unprofessional conduct..." Unprofessional conduct includes the following:

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

[¶] ... [¶]

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

[¶] ... [¶]

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

[¶] ... [¶]

(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 or by any other state or federal regulatory agency.

3. Health and Safety Code section 11170 states, "No person shall prescribe, administer, or furnish a controlled substance for himself."

¹ All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4060 prohibits any person from possessing a controlled substance, unless furnished upon a prescription by a physician or other authorized professional. Pharmacists are only exempt from this section when the controlled substance is "in stock in containers correctly labeled with the name and address of the supplier or producer."

5. In this matter, the Board has filed an Accusation and a Petition to Revoke Probation against respondent. While the Board is required to prove the allegations in the Accusation by clear and convincing evidence, it is only required to prove the allegations in the Petition to Revoke Probation by preponderance of the evidence to establish grounds for discipline. (*Sandarg v. Dental Board of California* (2010) 184 Cal. App. 4th 1434, 1441.)

Accusation

6. *First Cause for Discipline.* Cause exists to discipline respondent's pharmacy intern permit pursuant to section 4301, subdivisions (j) and (o), because respondent violated section 4060 by obtaining and possessing a controlled substance without a prescription as set forth in Factual Finding 9.

7. *Second Cause for Discipline.* Cause exists to discipline respondent's pharmacy intern permit pursuant to section 4301, subdivisions (h) and (j) because respondent, while acting in the capacity as a pharmacy intern, violated Health and Safety Code section 11170 by furnishing and administering a controlled substance to himself as set forth in Factual Finding 9.

8. *Third Cause for Discipline.* Cause exists to discipline respondent's pharmacy intern permit pursuant to section 4301, subdivision (f), because respondent committed dishonest acts by diverting a controlled substance from his worksite and by concealing his diversion, possession and self-administration of the controlled substance from his worksite monitor, as set forth in Factual Finding 9. Respondent was also dishonest when he concealed his relapse from his worksite monitor although he was aware that he was relapsing. (Factual Finding 9.)

Petition to Revoke Probation

9. *First Cause to Revoke.* Cause exists to revoke respondent's probation because respondent violated Term 13 of the Agreement by failing to comply with the terms and conditions of the Agreement. (Factual Findings 3 through 12.)

10. *Second Cause to Revoke.* Cause exists to revoke respondent's probation because respondent violated Term 15 of the Agreement by failing to successfully complete the PRP, as defined in the Agreement. (Factual Findings 3 through 12.)

11. *Third Cause to Revoke.* Cause exists to revoke respondent's probation because respondent violated Term 16 of the Agreement by failing to submit to random drug screening. (Factual Findings 3 and 10.)

12. *Fourth Cause to Revoke.* Cause exists to revoke respondent's probation because respondent violated Term 17 of the Agreement by failing to abstain from illicit drug use during the term of his probation. (Factual Findings 3 and 7 through 12.)

Discipline

13. In determining the level of discipline to impose upon a licensee, the "Disciplinary Guidelines" (Rev. 10/2007) (Guidelines) adopted by the Board are considered. (Cal. Code of Regs., tit. 16, § 1760.)

14. The Guidelines provide a framework to determine the type of discipline to impose for a particular offense based on the "perceived seriousness of particular offenses." For example, "Category I" offenses are considered to be "relatively minor" in nature, but "are potentially harmful." Category I offenses, therefore, are the least serious and generally warrant only minimal penalties, such as a one-year probation period. "Category IV" offenses are the most serious and generally warrant outright revocation. Respondent's offenses of diverting drugs from his worksite and self-administering them are considered Category II and III offenses. They do not rise to the level of a Category IV offense, primarily, because respondent's possession of the drugs was not for sale, import or transport.

15. Category II offenses include violations having a serious potential for harm, violations involving greater disregard for pharmacy law and public safety than Category I offenses, violations reflecting on ethics, care and competence, and criminal convictions which do not involve dangerous drugs or controlled substances, but many involve possession or use of dangerous drugs or substances.

16. Category III offenses include most criminal convictions involving dangerous drugs or controlled substances (but not those involving the sale, transport or import of controlled substances), any knowing or willful violations of laws or regulations pertaining to dispensing or distributing dangerous drugs or controlled substances, any fraudulent acts committed in connection with the licensee's practice, such as drug shortages.

17. Respondent's dishonest and unprofessional conduct in diverting and self-administering a controlled substance in violation of sections 4060, 4301, subdivisions (f), (h), (j) and (o), and Health and Safety Code section 11170 is considered a "Category II" offense because of its serious potential for causing harm to the public in that 20 tablets of Norco, a dangerous drug, were unaccounted for. Respondent's conduct demonstrated a serious disregard for pharmacy law and for the public safety, and consequently, reflected poorly on his ethics, care and competence as a licensee. Respondent's conduct may also be considered a "Category III" offense because he committed the act knowingly and was deceitful to his worksite monitor. The maximum penalties for both categories are revocation, unless there is cause to impose the minimum penalties of probation. In this case, revocation is warranted because this is respondent's second act of diverting and self-administering drugs while

engaging in a licensed activity and because respondent was previously granted probation, but was not successful.

18. Despite his efforts, respondent failed to establish mitigating circumstances and/or his rehabilitation. (Factual Findings 15 through 20.)

Cost Recovery


19. Section 125.3 permits the Board to recover its reasonable costs in the investigation and prosecution of a matter if a licensee is determined to have committed a violation or violations of the licensing act. By reason of Factual Finding 22 and Legal Conclusions 1 through 18, Respondent is liable to the Board for its costs in the amount of \$7,720, which must be paid prior to respondent reapplying for a license.

ORDER

1. Pharmacy intern permit number INT 18460, issued to respondent Max August Ryden, is revoked.

2. As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$7,720. Said amount shall be paid in full prior to the reapplication or reinstatement of his license unless otherwise ordered by the Board.

DATED: September 1, 2011


SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings

COPY

RECEIVED BY
BOARD OF PHARMACY

2009 NOV 18 PM 4: 24

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 JENNIFER S. CADY
Deputy Attorney General
4 State Bar No. 100437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

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

Case No. 3408

13 **MAX AUGUST RYDEN**
14 **P.O. Box 475**
15 **Big Bear Lake, CA 92315**

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 **Pharmacy Intern Permit No. INT 18460**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about November 3, 2005, the Board of Pharmacy (Board) issued Pharmacy
23 Intern Permit No. INT 18460 to Max August Ryden (Respondent). The Pharmacy Intern Permit
24 will expire on November 30, 2010, unless renewed.

25 3. In a disciplinary action entitled "*In the Matter of the Accusation Against: Max August*
26 *Ryden*," Case No. 3048, the Board issued a decision, effective August 8, 2008, in which
27 Respondent's Pharmacy Intern Permit was revoked. However, the revocation was stayed and
28 Respondent's Pharmacy Intern Permit was placed on probation for a period of five years with

1 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated
2 by reference.

3 JURISDICTION

4 4. This Accusation and Petition to Revoke Probation is brought before the Board, under
5 the authority of the following laws. All section references are to the Business and Professions
6 Code unless otherwise indicated.

7 ACCUSATION

8 STATUTORY PROVISIONS

9 5. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
11 within which the license may be renewed, restored, reissued or reinstated.

12 6. Section 4060 states, in pertinent part:

13 "No person shall possess any controlled substance, except that furnished to a person upon
14 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
16 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
17 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
18 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
19 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
20 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
21 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
22 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
23 labeled with the name and address of the supplier or producer."

24 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
25 subject to discipline, including suspension or revocation.

26 / / /

27 / / /

28 / / /

8. Section 4301 states:

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

.....

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

.....

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

.....

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

.....

(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 or by any other state or federal regulatory agency."

9. Health and Safety Code section 11170 states, "No person shall prescribe, administer, or furnish a controlled substance for himself."

COST RECOVERY

10. Section 125.3 states, 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 licensing

///

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

3 **CONTROLLED SUBSTANCE**

4 11. "Norco," is the brand name for Hydrocodone 10mg./Acetaminophen 325mg. It is a
5 Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(4) and is
6 categorized as a dangerous drug pursuant to section 4022.

7 **FACTUAL SUMMARY**

8 12. On or about August 25, 2008, Respondent enrolled in the Pharmacist Recovery
9 Program (PRP), as required by Term No. 15 of the Stipulated Settlement and Disciplinary Order;
10 Case No. 3048. On or about May 12, 2009, Respondent self-reported a relapse to Maximus, a
11 California State Board of Pharmacy Diversion Program. Between on or about March 31, 2009
12 and May 8, 2009, Respondent participated in a clinical clerkship at USC Pharmacy, in Los
13 Angeles, California. Respondent indicated that he finished his clinical rotation on May 1, 2009
14 and relapsed on May 7, 2009, which lasted four (4) days. During this relapse investigation, by the
15 Clinical Case Manager, Respondent admitted that he obtained, possessed, and self-administered
16 Norco during his recent clinical rotation and concealed his relapse from his worksite monitor at
17 the pharmacy. In addition, Respondent admitted that he was asked to submit to random
18 biological fluid testing on May 8, 2009, but failed to report for testing. Respondent was
19 subsequently terminated from PRP, as a public risk for failure to comply with the terms and
20 conditions of his diversion program contract.

21 **ACCUSATION**

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Obtained and Possessed a Controlled Substance)**

24 13. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
25 (o), for violating section 4060, in that between on or about March 31, 2009 through on or about
26 May 8, 2009, while acting as an Intern Pharmacist, during his clinical clerkship at USC
27 Pharmacy, in Los Angeles, California, Respondent obtained and possessed Norco, a controlled
28

1 substance. Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraph 12, as though set forth fully.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Self-Administered a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
6 (j), for violating Health and Safety Code section 11170, in that between on or about March 31,
7 2009 through on or about May 8, 2009, while acting as an Intern Pharmacist, during his clinical
8 clerkship at USC Pharmacy, in Los Angeles, California, Respondent self-administered Norco, a
9 controlled substance. Complainant refers to, and by this reference incorporates, the allegations
10 set forth above in paragraph 12, as though set forth fully.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Dishonest Acts)**

13 15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
14 that between on or about March 31, 2009 through on or about May 8, 2009, while acting as an
15 Intern Pharmacist, during his clinical clerkship at USC Pharmacy, in Los Angeles, California,
16 Respondent committed dishonest acts by obtaining, possessing, and self-administering, Norco,
17 a controlled substance. In addition, Respondent concealed his diversion relapse from his worksite
18 monitor at the pharmacy. Complainant refers to, and by this reference incorporates, the
19 allegations set forth above in paragraphs 12 through 14, inclusive, as though set forth fully.

20 **PETITION TO REVOKE PROBATION**

21 **FIRST CAUSE TO REVOKE PROBATION**

22 **(Violation of Probation)**

23 16. At all times after the effective date of Respondent's probation, Probation Condition
24 No. 13 stated:

25 "If Respondent violates probation in any respect, the Board, after giving Respondent notice
26 and an opportunity to be heard, may revoke probation and carry out the disciplinary order which
27 was stayed. If a petition to revoke probation or an accusation is filed against Respondent during
28 probation, the Board shall have continuing jurisdiction and the period of probation shall be

1 extended, until the petition to revoke probation or accusation is heard and decided.”

2 17. Respondent’s probation is subject to revocation because he failed to comply with
3 Probation Condition No. 13, referenced above, in that he violated the conditions of his probation.
4 The facts and circumstances regarding this violation are that Respondent has violated the
5 conditions of his probation and is being given another opportunity to be heard and will be subject
6 to revocation and other discipline.

7 **SECOND CAUSE TO REVOKE PROBATION**

8 **(Failure to Complete the Pharmacists Recovery Program)**

9 18. At all times after the effective date of Respondent’s probation, Probation Condition
10 No. 15 stated:

11 “Within 30 days of the effective date of this decision, Respondent shall contact the
12 Pharmacists Recovery Program for evaluation and shall successfully participate in and complete
13 the treatment contract and any subsequent addendums as recommended and provided by the PRP
14 and as approved by the Board. The costs for PRP participation shall be borne by the Respondent.

15 If Respondent is currently enrolled in the PRP, said participation is now mandatory and is
16 no longer considered a self-referral under Business and Professions Code section 4363, as of the
17 effective date of this decision. Respondent shall successfully participate in and complete his
18 current contract and any subsequent addendums with the PRP. Probation shall be automatically
19 extended until Respondent successfully completes his treatment contract. Any person terminated
20 from the program shall be automatically suspended upon notice by the Board. Respondent may
21 not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain
22 jurisdiction to institute action to terminate probation for any violation of this term.”

23 19. Respondent’s probation is subject to revocation because he failed to comply with
24 Probation Condition No. 15, referenced above, in that he failed to successfully complete the
25 Pharmacists Recovery Program. The facts and circumstances regarding this violation are that on
26 or about May 12, 2009, Respondent was terminated from the PRP, as a public risk for obtaining,
27 possessing, and self-administering controlled substances.

28 ///

THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit to Random Drug Screening)

20. At all times after the effective date of Respondent's probation, Probation Condition No. 16 stated:

“Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.”

21. Respondent's probation is subject to revocation because he failed to comply with Probation Condition No. 16, referenced above, in that he failed to submit to random drug screening. The facts and circumstances regarding this violation are that on or about May 8, 2009, Respondent failed to report for random biological fluid testing.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Abstain from Drug Use)

22. At all times after the effective date of Respondent's probation, Probation Condition No. 17 stated:

“Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the Respondent.”

///

1 23. Respondent's probation is subject to revocation because he failed to comply with
2 Probation Condition No. 17, referenced above, in that he failed to abstain from drug use. The
3 facts and circumstances regarding this violation are that on or about May 12, 2009, Respondent
4 self-reported a relapse to Maximus and admitted to injecting the drug Norco.

5 PRAYER

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

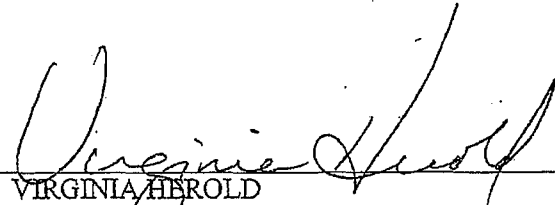
8 1. Revoking the probation that was granted by the Board in Case No. 3408 and
9 imposing the disciplinary order that was stayed thereby revoking Pharmacy Intern Permit No.
10 INT 18460 issued to Respondent;

11 2. Revoking or suspending Pharmacy Intern Permit No. INT 18460, issued to
12 Respondent;

13 3. Ordering Respondent to pay the Board the reasonable costs of the investigation and
14 enforcement of this case, pursuant to section 125.3;

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

16 DATED: 12/8/09



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

17
18
19
20
21
22
23
24 LA2009507477
25 60467020.rtf
26 DAG Final
27
28