

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

In the Matter of the Accusation Against:

**STEVEN MICHAEL MARGOLIN**  
6855 Oak Park Ave.  
Van Nuys, CA 91406

Original Pharmacist License No.  
RPH 36992

Respondent.

Case No. 3618

OAH No. 2010050561

**DECISION**

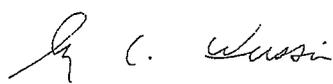
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on October 27, 2010.

It is so ORDERED September 27, 2010.

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 Petition to Revoke  
Probation Against:

STEVEN MICHAEL MARGOLIN,

Original Pharmacist License No. 36992,

Respondent.

Agency Case No. 3618

OAH Case No. 2010050561

**PROPOSED DECISION**

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 16, 2010, in Los Angeles, California.

M. Travis Peery, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (Board).

Michael Duggan, Attorney at Law, represented Steven Michael Margolin (Respondent). Respondent was present.

The parties submitted the matter for decision on July 16, 2010.

**FACTUAL FINDINGS**

1. On or about April 6, 2010, Complainant filed the Petition to Revoke Probation. Respondent filed the Notice of Defense on or about April 21, 2010.

2. Complainant seeks to revoke a previously imposed probation on Respondent's pharmacist license for Respondent's alleged failure to comply with the conditions of that probation. Specifically, Complainant contends Respondent failed to participate in and successfully complete the Pharmacist Recovery Program (PRP), a substance abuse rehabilitation program.

3. Respondent contends he has made a good faith effort to satisfy his probation, although in his opinion, compliance with all of the terms and conditions is extremely difficult. Respondent further contends that the probationary terms and conditions require him to expend more money than he has. He seeks continued probation.

4. The Board issued pharmacist license number RPH 36992 to Respondent on August 18, 1982. The Board suspended the license on December 30, 2009 (see Factual Finding 21); it expires on November 30, 2011, unless renewed.

5. On or about January 5, 2007, Complainant filed an Accusation against Respondent, alleging six causes for discipline: 1) excessive filing and dispensing of prescriptions; 2) knowingly filling and dispensing altered prescriptions; 3) variation from prescriptions, 4) furnishing controlled substances to an addict; 5) conviction of a substantially related crime; and 6) unprofessional conduct (*In the Matter of the Accusation Against Steven Michael Margolin*, agency case number 2928, OAH case number 2007030018).

6. On August 28, 2007, in connection with the Accusation, Respondent entered into an oral settlement agreement with Complainant; however Respondent failed or refused to sign a proffered written settlement agreement thereafter. There was no conclusive evidence establishing why the settlement agreement was unsigned. Complainant then moved the Office of Administrative Hearings to reduce the settlement to a written proposed decision. The Board adopted the Proposed Decision on July 20, 2009, and the Decision became effective on August 19, 2009.

7(a). Among other things, the Decision found that: 1) Respondent dispensed Hydrocodone at a high frequency, and in excess of a patient's prescribed rate of usage; 2) Respondent knowingly filled altered prescription forms; and 3) in 2005, Respondent was convicted of violating Penal Code section 653, subdivision (d) (solicitation to purchase a controlled substance), a misdemeanor and a crime substantially related to a licensed pharmacist's qualifications, functions, and duties. The Board's Decision found cause to revoke Respondent's pharmacist license, but stayed the revocation and placed his license on probation for five years on numerous terms and conditions.

7(b). Term and condition 17 states in part:

Within 30 days of the effective date of this decision, [R]espondent shall contact the Pharmacists Recovery Program [PRP] 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 [B]oard.

. . . Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. . . . Any person terminated from the program shall be automatically suspended upon notice by the [B]oard. . . . The [B]oard shall retain jurisdiction to institute action to terminate probation for any violation of this term.

7(c). Term and condition 19 states in part:

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 a[s] part of a documented medical treatment.

7(d). Term and condition 15 states in part:

If [R]espondent violates probation in any respect, the [B]oard, after giving [R]espondent 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 . . . is filed against [R]espondent . . . the [B]oard shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation . . . is heard and decided.

If [R]espondent has not complied with any term or condition o[f] probation, the [B]oard shall have continuing jurisdiction over [R]espondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the [B]oard 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.

8. On August 6, 2009, Respondent met with Board representatives to discuss his probationary terms. A Board representative reviewed and discussed the terms and conditions of his probation with him. Respondent signed a declaration on that same day that stated in part, "The terms and conditions of my probation have been fully explained to me by the board representatives. I hereby acknowledge that I thoroughly understand these terms and conditions as set forth in the disciplinary action and that failure to comply may result in further disciplinary action." At hearing, Respondent asserted that he signed the declaration without reading the contents and thus was not fully aware of his probationary obligations. Given the meeting and his signed declaration, Respondent's assertion was not credible.

9. Respondent received a copy of the PRP agreement; it was mailed on October 30, 2009, and had an effective date of October 20, 2009. The evidence did not conclusively establish the date Respondent received the PRP agreement. Upon its mailing, the agreement already contained a signature on behalf of Anne Mireles, the PRP Clinical Case Manager in charge of Respondent's case. The agreement recited, among other things, the numerous requirements that Respondent was expected to meet in order to participate and eventually complete the PRP. Among those requirements were to: 1) call and check in weekly with Mireles; 2) attend daily 12-Step meetings (seven times per week); 3) attend a health support group twice per week; 4) provide a monthly self report; 5) abstain from all mind altering

substances, except as prescribed by a licensed health care provider;<sup>1</sup> 6) register with an indicated laboratory and contact the indicated laboratory vendor daily to inquire about submission to randomly scheduled bodily fluid testing; and 7) sign and return the agreement.

10. Despite term and condition 17's requirement that Respondent complete the PRP agreement within 30 days of the effective date of the Board's Decision, and despite the PRP agreement having been mailed to Respondent on October 30, 2009, Respondent did not sign the agreement until December 7, 2009; the Board received the signed agreement on December 14, 2009. At hearing, Respondent described the delay in returning the agreement as "a little bit late." He argued that such a delay should not go against him. The delay, however, constitutes a violation of term and condition 17.

11. Despite term and condition 17's requirement that Respondent contact the PRP for evaluation within 30 days of the effective date of the Board's Decision, Respondent failed to contact the PRP timely. Board representatives sent Respondent a letter informing him of this on September 30, 2009. The Board directed him to contact the PRP by October 15, 2009, and informed him that his [f]ailure to do so will result in further action by the Board." Respondent failed to contact the PRP by October 15, 2009. This failure to contact the PRP by the 30-day requirement, or by the extended October 2009 date, constitutes a violation of term and condition 17.

12. Between approximately October and early December 2009, Respondent remained uncommunicative with the PRP and Mireles, despite numerous calls to Respondent by Mireles. The lack of communication was significant enough that, at some point within this two-month period, after Respondent failed to return Mireles's repeated phone calls, Mireles called the local police and asked them to perform a well-being check of Respondent. It was after the police made contact with Respondent that he began to contact Mireles.

13. On December 2, 2009, in a telephone conversation between Respondent and Mireles, where Mireles informed him of additional opportunities the Board would offer him to comply with the probationary requirements, Respondent informed Mireles that he was taking Vicodin. Respondent explained to Mireles that he could not stop taking the drug because if he did, he would experience gastric upset.

---

<sup>1</sup> The exception for physician prescribed medications included a number of additional requirements placed on Respondent. (See Factual Finding 16 for a discussion of one such requirement.)

14. Between September 14, and November 22, 2009, Respondent obtained 100 tablets of Apap/Hydrocodone Bitartrate, 750 mg-7.5 mg, on each of three occasions.<sup>2</sup> This medication qualifies as a mind altering substance, as proscribed by the PRP agreement. (Factual Finding 9.) He obtained the medication on each occasion by prescription from a physician. Until his December 2, 2009 telephone conversation with Mireles, Respondent had not notified the PRP that he had filled these three prescriptions.

15. At hearing, Respondent explained that he needs pain medication for chronic pain due to diabetic neuropathy. He describes the pain as significant, although he asserted that he had not filled a pain medication prescription since November 2009. The evidence supported Respondent's assertion that he had filled no such prescriptions since November 2009. There was no evidence that Respondent's chronic pain had resolved or that he utilized a source of alternative pain relief.

16. With regard to prescribed pain medication, Respondent argued that an inconsistency exists in that Complainant alleges Respondent's use of prescription medication violates the PRP rules, although probationary term and condition 19 does not prohibit the use of medication "lawfully prescribed by a licensed practitioner a[s] part of a documented medical treatment." There is no inconsistency. Although the PRP agreement requires Respondent to abstain from all mind altering drugs, it provides an exception for physician prescribed medications, in concert with term and condition 19. However, the PRP agreement contains additional requirements including that Respondent must immediately notify the PRP by phone and in writing if a licensed health care provider prescribes such drugs. Respondent failed to do so. Therefore, while the use of prescription medication is potentially allowable under the PRP rules, Respondent failed to comply with the additional requirements. Consequently, his actions related to his use of the prescribed pain medication constitute a violation of the PRP rules and term and condition 17.

17. On December 17, 2009, Respondent again met with Board representatives to review his probationary terms. A Board representative reviewed and discussed the terms and conditions of his probation with him. Respondent signed a declaration on that same day that stated in part, "We discussed my compliance with those terms and conditions. I hereby acknowledge that I thoroughly understand these terms and conditions as set forth in the disciplinary action and that failure to comply may result in further disciplinary action." As with the August 6, 2009 declaration, Respondent asserted that he signed the declaration without reading the contents and thus was not fully aware of his probationary obligations. Given the meeting and his signed declaration, Respondent's assertion was not credible.

---

<sup>2</sup> The evidence admitted into the record used to establish Respondent's prescription medication usage was deemed protected from disclosure beyond the parties by the Health Insurance Portability and Accountability Act of 1996, (HIPPA), 42 U.S.C § 1320d et seq. The use of that evidence (Exhibit 12) was used solely for this proceeding and may be used only in any further proceeding in this same matter, in accordance with federal regulations. (45 C.F.R., § 164.512(e)(1)(i).) Consequently, Exhibit 12 was sealed by court order.

18. Respondent failed to: call and check in weekly with Mireles; attend daily 12-Step meetings (Respondent attended only three 12-Step meetings in the first month); attend a health support group twice per week; provide a monthly self report; and register with the indicated laboratory and contact the indicated vendor daily to inquire about submission to randomly scheduled bodily fluid testing. Respondent asserted at hearing that he was about to begin increasing his 12-Step meeting attendance, as the Board terminated his participation. He further asserted that he enjoys the meetings, finds them helpful, and takes them seriously. However, despite these assertions, Respondent is not currently attending 12-Step meetings. At hearing, Respondent explained that he decided to stop attending the meetings once he became aware that he was being terminated from the PRP. He asserted that he would begin attending again if his probation were reinstated pursuant to the instant proceeding. Respondent described his overall efforts as getting off to “a slow start,” but asserted that he was just beginning to take compliant steps with the PRP.

19. On December 29, 2009, Mireles sent Respondent written notification of these failures (Factual Finding 18) and his lack of compliance with the terms and conditions of probation. She offered him contact information if he chose to submit proof of compliance. Respondent did not submit any such proof.

20. On December 30, 2009, the Board terminated Respondent from the PRP, classifying him as a public risk.

21. Also on December 30, 2009, Complainant wrote to Respondent and informed him that, pursuant to term and condition 17, the Board would automatically suspend his pharmacist license effective that day.

22. Respondent currently drives a delivery truck; he did not disclose the entity for which he drives. He did not describe his work hours. He makes some amount over minimum wage, but failed to disclose his earnings. Respondent argued at hearing that he has insufficient money to fund the random bodily fluid testing and other unspecified requirements that he asserts require payments. He provided no evidence to support his assertion that the probationary requirements were financially straining. Respondent also argued that the Board should give him more time to prove he will comply with the PRP. He described the two months in the PRP as “not long enough,” and as a difficult time in his life. He does not believe his non-compliance should result in termination from the PRP or revocation of his pharmacist license. Respondent described his non-compliance as “technical violations.”

23. Respondent further argued that the probationary terms and conditions appear designed to encourage Respondent’s failure, as he believes the requirements are too stringent. For example, he highlighted that, he is required to attend daily 12-Step meetings, attend health support group meetings twice weekly, make himself available for random bodily fluid testing, and engage in employment. Respondent argued that these requirements create timing conflicts. Respondent’s argument is unavailing. Further, there was no evidence that Respondent ever discussed any problems meeting the probationary

requirements due to his employment, or due to problems inherent in the timing of the various requirements.

### LEGAL CONCLUSIONS

1. Complainant bears the burden of proof.
2. Business and Professions Code section 4300 states in part:
  - (a) Every license may be suspended or revoked.

[¶] . . . [¶]

- (d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation.

3. California Code of Regulations, title 16, section 1770 states:

For the purpose of denial, suspension, or revocation of a personal . . . license . . . a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee . . . if to a substantial degree it evidences present or potential unfitness of a licensee . . . to perform the functions authorized by his license . . . in a manner consistent with the public health, safety, or welfare.

4. Within the first two months of his probation, Respondent failed to: complete the PRP agreement timely, call and check-in with the Clinical Case Manager, attend daily 12-Step meetings, attend health support group meetings twice weekly, provide a monthly self report, follow PRP protocols regarding his use of mind altering drugs, and failed to register for randomly scheduled bodily fluid testing. These failures constitute violations of the PRP, and consequently, a violation of probationary term and condition 17. As the Board imposed these requirements pursuant to a disciplinary action, Respondent's violations are acts substantially related to a licensed pharmacist's qualifications, functions, and duties, and provide cause to revoke Respondent's probation and impose the stayed revocation. (Bus. & Prof. Code, § 4300, subds. (a) and (d); Cal. Code Regs., tit. 16, § 1770.)

5. Respondent did not contest his failed compliance, but argued that his lack of compliance should not result in revocation. The evidence did not support a conclusion that, if given another opportunity, Respondent would act in compliance with the PRP requirements. Saliently, Respondent's assertions and arguments demonstrated that he failed to consider the probationary requirements seriously. He described his lack of action as a slow start and as technical violations. He decided to stop attending 12-Step meetings. He asserted, without credibility, that he did not fully understand his probationary obligations; this after meeting with Board representatives on two occasions to review his probationary

requirements, and signing two declarations affirming his understanding of those requirements. It cannot be concluded that Respondent is currently willing to take his rehabilitation seriously. He has committed a number of probationary violations. In such a circumstance, it is appropriate for the Board to revoke probation and impose the stayed revocation.

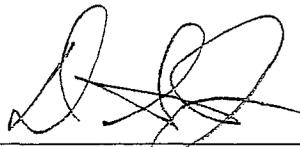
6. Cause exists to revoke the probation granted and impose the stayed revocation, as ordered *In the Matter of the Accusation Against Steven Michael Margolin*, agency case number 2928, OAH case number 2007030018, for violations of probation, pursuant to Business and Professions Code section 4300, subdivisions (a) and (d), and probationary term and condition 15 of said case, as set forth in Factual Findings 1, 4-23, and Legal Conclusions 1-5.

### ORDER

1. The Probation granted by the Board of Pharmacy in case number 2928 is revoked and the stay of the revocation is lifted. License number RPH 36992, issued to Respondent Steven Michael Margolin is revoked.

2. Respondent shall relinquish his wall license and pocket renewal license to the Board of Pharmacy within 10 days of the effective date of this Decision. Respondent may not petition the Board of Pharmacy for reinstatement of his revoked license for three years from the effective date of this Decision.

Dated: August 12, 2010

  
\_\_\_\_\_  
DANIEL JUAREZ  
Administrative Law Judge  
Office of Administrative Hearings

**Exhibit A**  
**Petition to Revoke Probation No. 3618**

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

EDMUND G. BROWN JR.  
Attorney General of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
M. TRAVIS PEERY  
Deputy Attorney General  
State Bar No. 261887  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-0962  
Facsimile: (213) 897-2804

*Attorneys for Complainant*

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

In the Matter of the Petition to Revoke  
Probation Against:  
  
**STEVEN MICHAEL MARGOLIN**  
6855 Oak Park Ave.  
Van Nuys, CA 91406  
  
Original Pharmacist License No. 36992  
  
Respondent.

Case No. 3618

**PETITION TO REVOKE PROBATION**

Complainant alleges:

**PARTIES**

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
2. On or about August 18, 1982, the Board of Pharmacy (Board) issued Original Pharmacist License No. RPH 36992 to Steven Michael Margolin (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2011, unless renewed. Pursuant to Condition No. 17 of his

1 probation, Respondent has been suspended from practicing as a registered pharmacist effective  
2 December 30, 2009 until the Board makes a final decision on the Petition to Revoke Probation.

3 3. In a disciplinary action entitled "*In the Matter of the Accusation Against: Steven*  
4 *Margolin*," Case No. 2928, the Board issued a Decision adopting the proposed decision of the  
5 administrative law judge, effective August 19, 2009, in which Respondent's Original Pharmacist  
6 License was revoked. However, the revocation was stayed and Respondent's license was placed  
7 on probation for a period of five (5) years subject to certain terms and conditions. A copy of that  
8 decision is attached as Exhibit A and is incorporated by reference.

9 **JURISDICTION**

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

13 **STATUTORY PROVISIONS**

14 5. Section 118 provides, in pertinent part, that the suspension or expiration of a license  
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
16 within which the license may be renewed, restored, reissued, or reinstated.

17 6. Section 4300 states, in pertinent part:

18 "(a) Every license issued may be suspended or revoked.

19 .....

20 "(d) The board may initiate disciplinary proceedings to revoke or suspend any  
21 probationary certificate of licensure for any violation of the terms and conditions of probation."

22 **PETITION TO REVOKE PROBATION**

23 7. Grounds exist for revoking the probation and reimposing the order of revocation of  
24 Respondent's Original Pharmacist License in that Respondent has failed to comply with  
25 Condition 17 of his probation.

26 ///

27 ///

28 ///

1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Participate in and Successfully Complete the Pharmacists Recovery  
3 Program)

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

6 "Within 30 days of the effective date of this decision, respondent shall contact the  
7 Pharmacists Recovery Program for evaluation and shall successfully participate in and complete  
8 the treatment contract and any subsequent addendums as recommended and provided by the PRP  
9 and as approved by the board. The costs for PRP participation shall be borne by respondent.

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

18 9. Respondent's probation is subject to revocation because he failed to comply with  
19 Probation Condition No. 17, referenced above, in that Respondent failed to comply with the  
20 mandates of his Pharmacists Recovery Program (PRP) contract as follows:

21 a. Respondent failed to register with FirstLab and contact this vendor daily to  
22 submit to randomly scheduled bodily fluid testing.

23 b. Respondent failed to maintain complete abstinence from all mind altering  
24 substances. On or about December 2, 2009, during a phone conversation with his case manager,  
25 Respondent admitted to his continuing use of Vicodin. On or about December 16, 2009, the PRP  
26 reviewed a Controlled Substance Utilization Review and Evaluation System (CURES) report  
27 indicating that Respondent picked up 300 tablets of Norco 7.5mg from September 14, 2009 to  
28 November 22, 2009.

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

- c. Respondent failed to check in weekly with his Clinical Case Manger.
- d. Respondent failed to attend daily 12-Step Meetings.
- e. Respondent failed to attend Health Support Group two times per week.
- f. Respondent failed to provide Maximus Diversion Program with a monthly self

report.

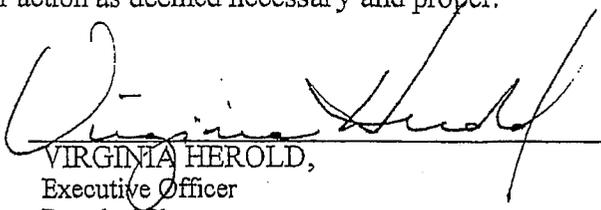
g. Respondent failed to review and sign his preliminary program contract with Maximus Diversion Program.

**PRAYER**

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

- 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2928 and imposing the disciplinary order that was stayed thereby revoking Original Pharmacist License No. 36992, issued to Respondent;
- 2. Revoking or suspending Original Pharmacist License No. 36992, issued to Respondent; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 4/6/10



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

LA2010600181

**Exhibit A**  
**Decision and Order No. 2928**

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

In the Matter of the Accusation Against:

STEVEN MICHAEL MARGOLIN

Original Pharmacist License No. RPH 36992

Respondent.

Case No. 2928

OAH No. 2007030018

DECISION

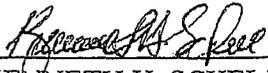
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on August 19, 2009.

It is so ORDERED on July 20, 2009.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
KENNETH H. SCHELL  
Board President

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

In the Matter of the Accusation Against:	Case No. 2928
STEVEN MICHAEL MARGOLIN,  Respondent.	OAH No. L2007030018

**PROPOSED DECISION**

On August 28, 2007, Steven Michael Margolin (respondent) orally entered into a settlement agreement with Virginia K. Herold (complainant), Executive Officer of the Board of Pharmacy (board). On May 1, 2009, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, granted complainant's motion to reduce the settlement to a written proposed decision due to respondent's failure or refusal to sign the proffered written settlement agreement. This Proposed Decision is submitted in furtherance of the granting of complainant's motion.

**FACTUAL FINDINGS**

1. The Accusation was filed by complainant in her official capacity.
2. On August 18, 1982, the board issued Original Pharmacist License No. RPH 36992 to respondent.
3. From on or about May 18, 2004, to on or about August 22, 2004, respondent dispensed Hydrocodone at a high frequency, and in excess of patient D.W.'s prescribed rate of usage. The number of pills dispensed in the three months represented a nearly 20-month supply of the pills. Hydrocodone is a controlled substance. There was no documentation that respondent contacted any of the prescribers to verify the refills or alert them of early refill requests.
4. The prescription forms that had been presented to respondent by D.W. had been altered. Respondent knowingly filled those prescriptions.
5. On August 24, 2005, respondent was convicted by his plea of nolo contendere in Los Angeles Superior Court case number BA 278579 of violating Penal Code section 653, subdivision (d), solicitation to purchase a controlled substance, a

misdemeanor. Respondent had solicited an undercover officer to purchase rock cocaine. The conviction is substantially related to the qualifications, functions or duties of a pharmacy licensee.

6. Complainant incurred costs for the investigation and enforcement of the matter in the sum of \$12,070.75. The sum is reasonable.

### LEGAL CONCLUSIONS

1. By reason of Factual Findings 3 and 4, cause for the discipline of respondent's license exists pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (d), (e) and (o), in that respondent knowingly filled and dispensed a controlled substance in clearly excessive amounts.

2. By reason of Factual Findings 3 and 4, cause for the discipline of respondent's license exists pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (f), (j) and (o), in that respondent knowingly filled and dispensed altered prescriptions.

3. By reason of Factual Findings 3 and 4, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 4300 and 4301, subdivisions (i) and (o), in that respondent knowingly sold or furnished controlled substances to an addict.

4. By reason of Factual Finding 5, cause for discipline of respondent's license exists pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), and California Code of Regulations, title 16, section 1770, in that respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy licensee.

5. Business and Professions Code section 125.3 provides that an agency may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

### ORDER

Pharmacist License No. RPH 36992 issued to respondent Steven Michael Margolin is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions.

1. Actual Suspension: License No. RPH 36992, issued to respondent Steven Michael Margolin, is suspended for a period of six months.

During suspension, respondent 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. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent 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 devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, respondent may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. 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:

- a) 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.
- b) A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- c) A conviction of any crime.
- d) 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 any drug, device or controlled substance.

3. Reporting to the Board: 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. 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.

4. Interview with the Board: Upon reasonable notice, respondent shall appear in person for interviews with the board upon request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.

5. Cooperation with Board Staff: Respondent shall cooperate with the board's inspectional program and in the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

6. Continuing Education: Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

7. Notice to Employers: Respondent shall notify all present and prospective employers of the decision in case number 2928 and the terms, conditions and restrictions imposed on respondent by this decision. Within 30 days of the effective date of this decision, and within 15 days of respondent's undertaking new employment, respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the board in writing acknowledging the employer has read the decision in case number 2928.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of the decision in case number 2928 in advance of the respondent commencing work at each pharmacy. "Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the respondent is considered an employee or independent contractor.

8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC) or Serving as a Consultant: Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

9. Reimbursement of Board Costs: Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$12,070.75. Respondent shall make said payments as follows: Equal monthly payments. Full costs must be paid by the end of the fourth year of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

10. Probation Monitoring Costs: Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of

probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

11. Status of License: Respondent 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. If respondent's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

12. License Surrender while on Probation/Suspension: Following the effective date of this decision, should respondent cease to practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the board for surrender. The board 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, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

13. Notification of Employment/Mailing Address Change: Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

14. Tolling of Probation: Should respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, respondent must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years. "Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of pharmacy as defined in Business and Professions Code section 4052.

15. Violation of Probation: 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, or if the board has requested that the Office of the Attorney General prepare a petition to revoke probation or an accusation, 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 that was stayed.

16. Ethics Course: Respondent shall take and successfully complete a board-approved course in ethics that must contain at least 22 hours of instruction. This course shall be in addition to respondent's continuing education requirements. Failure to successfully complete the board-approved ethics course within one year of the effective date of this decision shall be considered a violation of probation.

17. Rehabilitation Program – Pharmacists Recovery Program (PRP): 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 participation shall be borne by 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.

18. Random Drug Screening: 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. 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.

19. Abstain from Drugs and Alcohol Use: 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 a part of a documented medical treatment. Upon request by 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.

20. Completion of probation: Upon successful completion of probation, respondent's license will be fully restored.

DATED: May 2, 2009

  
TIMOTHY S. THOMAS  
Administrative Law Judge  
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General  
of the State of California  
2 JENNIFER S. CADY  
Supervising Deputy Attorney General  
3 BARRY G. THORPE, State Bar No. 126422  
Deputy Attorney General  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-5845  
6 Facsimile: (213) 897-2804  
7 Attorneys for Complainant

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:

Case No. 2928

STEVEN MICHAEL MARGOLIN  
6855 Oak Park Avenue  
Van Nuys, CA 91406

ACCUSATION

Original Pharmacist License No. RPH 36992

Respondent.

Complainant alleges:

PARTIES

1. Virginia K. Herold (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

2. On or about August 18, 1982, the Board issued Original Pharmacist License No. RPH 36992 to Steven Michael Margolin (Respondent). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2007, unless renewed.

///

///

///



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

4 . . . .

5 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving  
6 away, or administering or offering to sell, furnish, give away, or administer any controlled  
7 substance to an addict.

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

10 . . . .

11 (l) The conviction of a crime substantially related to the qualifications, functions,  
12 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
14 substances or of a violation of the statutes of this state regulating controlled substances or  
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
17 The board may inquire into the circumstances surrounding the commission of the crime, in order  
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
19 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
21 or a conviction following a plea of nolo contendere is deemed to be a conviction within the  
22 meaning of this provision. The board may take action when the time for appeal has elapsed, or  
23 the judgment of conviction has been affirmed on appeal or when an order granting probation is  
24 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
25 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a  
26 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,  
27 or indictment.

28 . . . .

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
2 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
3 applicable federal and state laws and regulations governing pharmacy, including regulations  
4 established by the board.”

5 7. Section 490 provides that the Board may suspend or revoke a license when  
6 it finds that the licensee has been convicted of a crime, if the crime is substantially related to the  
7 qualifications, functions, or duties of that license.

8 8. California Code of Regulations, title 16, section 1716, states:

9 “Pharmacists shall not deviate from the requirements of a prescription except  
10 upon the prior consent of the prescriber or to select the drug product in accordance with Section  
11 4073 of the Business and Professions Code.

12 Nothing in this regulation is intended to prohibit a pharmacist from exercising  
13 commonly-accepted pharmaceutical practice in the compounding or dispensing of a  
14 prescription.”

15 9. California Code of Regulations, title 16, section 1761, states:

16 “(a) No pharmacist shall compound or dispense any prescription which contains  
17 any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of  
18 any such prescription, the pharmacist shall contact the prescriber to obtain the information  
19 needed to validate the prescription.

20 (b) Even after conferring with the prescriber, a pharmacist shall not compound or  
21 dispense a controlled substance prescription where the pharmacist knows or has objective reason  
22 to know that said prescription was not issued for a legitimate medical purpose.”

23 10. Title 16, California Code of Regulations section 1770 provides that for  
24 purpose of denial, suspension, or revocation of a license, a crime or act shall be considered  
25 substantially related to the qualifications, functions or duties of a licensee if to a substantial  
26 degree it evidences present or potential unfitness of a licensee to perform the functions  
27 authorized by his license in a manner consistent with public health, safety, or welfare.

28 ///



1	123189	8/08/2004	90	22
	123752	8/13/2004	100	20
2	123752	8/17/2004	100	20
3	124440	8/22/2004	130	11

4 b. There was no documentation that Respondent contacted any of the  
5 prescribers to verify the refills or alert them of early refill requests. Additionally, Respondent  
6 failed to discuss the high frequency and large number of the prescriptions for D. W. with the  
7 prescribers.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Knowingly Filled and Dispensed Altered Prescriptions)

10 13. Respondent is subject to disciplinary action under sections 4300 and 4301,  
11 subdivisions (f), (j) and (o), of the Code on the grounds of unprofessional conduct, as defined in  
12 California Code of Regulations, title 16, section 1761, in that Respondent knowingly filled and  
13 dispensed altered prescriptions. The circumstances are as follows:

14 a. From on or about May 16, 2004 to on or about August 13, 2004,  
15 Respondent filled and refilled prescriptions for D. W. that had been altered. The prescribers  
16 were contacted by the investigator to verify the prescription. Each prescriber reviewed the  
17 prescriptions and informed the investigator that they had not authorized those altered  
18 prescriptions.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Variation From Prescription)

21 14. Respondent is subject to disciplinary action under sections 4300 and 4301,  
22 subdivisions (j) and (o), of the Code on the grounds of unprofessional conduct, as defined in  
23 California Code of Regulations, title 16, section 1716, in that Respondent knowingly, as more  
24 fully set forth in paragraphs 12 and 13, above.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 (Furnishing Controlled Substances to an Addict)

27 15. Respondent is subject to disciplinary action under sections 4300 and 4301,  
28 subdivisions (i) and (o), of the Code on the grounds of unprofessional conduct, as defined in

1 California Code of Regulations, title 16, section 1716, in that Respondent knowingly sold,  
2 furnished or gave away controlled substances to addict D. W., as more fully set forth in  
3 paragraphs 12 and 13, above.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 (Conviction of Substantially Related Crime)

6 15. Respondent is subject to disciplinary action pursuant to section 490, in  
7 conjunction with Title 16, California Code of Regulations section 1770, by reason of his  
8 conviction of a crime which is substantially related to the qualifications, functions, and duties of  
9 the profession for which the license was issued, as follows:

10 On August 24, 2005, Respondent was convicted by his plea of *nolo contendere*, of  
11 violating Penal Code section 653F(D), a misdemeanor [Solicitation to purchase a controlled  
12 substance], in the County of Los Angeles Superior Court, Case No. BA278579.

13 The circumstances of the crime is that Respondent solicited an undercover officer  
14 to purchase a controlled substance, to wit, rock cocaine.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct - Conviction)

17 16. Respondent has subjected his license to discipline pursuant to section 4300  
18 for unprofessional conduct as defined in section 4301(l), by reason of his conviction, as  
19 described in paragraph 15 above, of a crime which is substantially related to the qualifications,  
20 functions, and duties of a pharmacist licensee.

21 **PRAYER**

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

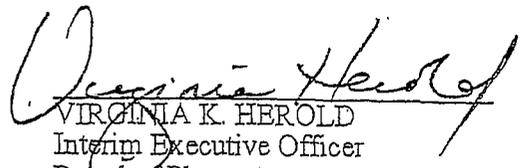
24 1. Revoking or suspending Original Pharmacist License No. RPH 36992,  
25 issued to Steven Michael Margolin.

26 2. Ordering Steven Michael Margolin to pay the Board of Pharmacy the  
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
28 Professions Code section 125.3;

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

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

DATED: 1/5/07



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

LA2005600899  
60122733.wpd