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

In the Matter of the Accusation Against: CHARLES WALKER, Respondent.	Case No. 3865 OAH No. 2011040798

DECISION AFTER NONADOPTION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on August 15, 2011, in Oakland, California.

Deputy Attorney General Timothy J. McDonough represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

Respondent Charles Walker was self-represented.

The matter was submitted for decision on August 15, 2011.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy (hereinafter "Board") on September 26, 2011. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter issued an Order of Non-adoption on December 9, 2011, and subsequently, on March 14, 2012, issued an Order Fixing Date for Submission of Argument. Written argument having been received from Complainant and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board of Pharmacy pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. On August 14, 1978, the Board of Pharmacy issued Pharmacist License Number RPH 32316 to respondent Charles Walker. The license expiration date is December 31, 2013.

2. Respondent is a 61-year-old man who owned Vallejo Medical Plaza Pharmacy for 28 years. In June 2008, he sold the pharmacy to Walgreens and arranged for his three employees to be hired by Walgreens. Three weeks later, respondent started working for Walgreens. Although he did not realize it at the time, losing the business that had been the center of his world caused respondent to become depressed. After a couple of weeks working for Walgreens, he started smoking marijuana a couple of times a week to deal with his depression.[1] Respondent had not used marijuana since 1984, when he quit using the drug and went through a 12-step program.

3. In December 2009, one of respondent's former employees who was his close friend died suddenly at the age of 46 from the H1N1 virus. Respondent felt bereft and blamed himself for her death. He reasoned that if he had not sold his pharmacy he would have been able to monitor her health and see that she got an H1N1 vaccination, or recognize that she was sick and get her in early for medical treatment. Respondent testified that he went into "a major depression" and admitted that he started smoking marijuana every day.

4. a. Although Respondent admitted that he smoked marijuana every day, Respondent testified that he never smoked marijuana at work or was under the influence of marijuana at work, but he wanted to stop using the drug and felt he needed help. On February 8, 2010, he went on medical leave due to a foot injury[2], and he decided it was a good time to address his drug problem. Several days later, after having seen an advertisement in a pharmacy magazine for the pharmacists recovery program[3](PRP), respondent called MAXIMUS. MAXIMUS contracts with the Board of Pharmacy and other licensing boards to provide recovery services for licensed professionals.

b. On February 16, 2010, respondent spoke with Clinical Case Manager Anne Mireles at MAXIMUS as part of the intake assessment process for the PRP. During the intake process, Respondent shared that he had previously been enrolled in a recovery program for the Board and had successfully completed it. (State's Ex. 4, p. 2; see also, State's Ex. 4, incorporating Respondent's statement at Ex. 3, p.1.) During the intake assessment, Mireles suggested that respondent attend 90 12-step meetings in 90 days, get a sponsor, and establish a random drug testing account. She also asked him to locate and attend an outpatient drug treatment program in his area, and told him he would be expected to attend Jim O'Donnell's health support group meetings twice a week. Respondent

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[1] Under Health and Safety Code section 11054, subdivision (d)(13), marijuana is a Schedule 1 controlled substance, in the category of hallucinogenic substances. Under Business and Professions Code section 4022, marijuana is a dangerous drug.

[2] Respondent was prescribed hydrocodone for his foot pain on February 11, 2010. (State's Ex. 4, incorporating Respondent's statement at Ex. 3, at p.1.)

[3] The pharmacists recovery program is a Board-operated rehabilitation program, established and authorized pursuant to Article 21 of the Pharmacy Law (commencing with Section 4360 of the Business and Professions Code).

established a random drug testing account, and on February 27, 2010, began checking in daily to see if he needed to report for testing.

5. On March 2, 2010, Anne Mireles sent respondent a letter describing the requirements of the rehabilitation program for the Board of Pharmacy, along with a preliminary agreement and informed consent forms for respondent to sign to enter the program. Respondent never signed this agreement or the consent forms because he decided not to continue with MAXIMUS. Regardless, the documents provided to Respondent disclosed that "[i]nformation or records received by the Board prior to the acceptance of the applicant into the program...may be utilized by the Board in any disciplinary or criminal proceedings brought against the participant." (Respondent's Ex. "A", Informed Consent form, p. 3.)

6. In explaining his decision to not continue with the PRP, Respondent stated:

> My observation of the Maximus Program was that, initially, to be in the program, you have to stop work completely. After you stop work, you have to agree to paying *(sic)* so much money a month to certain parts of the program. Financially, Maximus is a very expensive program. Whilst I was in some of the support groups, I talked to patients that were involved with the Maximus Program. They informed me that the expenses were going up. (RT 60:13-20.)

Respondent also testified about his perception that at his first meeting of Jim O'Donnell's health support group,[4] the participants seemed to be saying what MAXIMUS wanted to hear rather than being honest. According to respondent, after he shared his story, some of the participants allegedly told him he did not need to be in the MAXIMUS program. They said he just needed a drug recovery program, which would be cheaper than MAXIMUS, and they told him about an outpatient treatment program at the John Muir Behavioral Health Center for Recovery.

7. Around March 3, 2010, respondent contacted John Muir Behavioral Health Center for Recovery and found out that his insurance from Walgreens would pay for his treatment there. He decided to enroll in the John Muir program and informed MAXIMUS that he was not going to continue with them. Respondent was told that he needed to continue in the MAXIMUS program, and that if he did not continue to participate in random drug testing MAXIMUS would report him to the board. (RT 22:11-13; 29:20-23.) Respondent continued with random drug testing for MAXIMUS. A baseline hair follicle analysis came out positive for hydrocodone. Respondent later explained that it was a drug respondent's podiatrist had prescribed to him for foot pain. Respondent later stopped taking the drug. However, respondent's use of this drug was not disclosed to MAXIMUS during the course of his initial intake assessment with Ms. Mireles. (State's Ex. 4, incorporating letter dated

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[4] It is noted that in a sworn statement given to the Board's investigator, Respondent stated that he was "familiar with Jim O'Donnell from 1984, so I was comfortable with him." (State's Ex. 4, incorporating Respondent's statement as Ex. 3, p.2.)

4/7/10 as Ex. 1.) MAXIMUS sent respondent for a clinical assessment with a marriage and family therapist on March 16, 2010, but the assessment was cancelled when respondent declined to sign a form allowing assessment information to be released to Anne Mireles.

8. Respondent began outpatient treatment at John Muir on March 18, 2010, and successfully completed treatment on April 16, 2010. The treatment program included chemical dependency education, relapse prevention, coping skills, 12-step meeting attendance and obtaining a temporary sponsor while in treatment. Respondent testified that he learned a lot about himself and about being honest and open-minded and going to any lengths to recover. Respondent attended up to 18 12-step meetings per week, mostly of Alcoholics Anonymous (AA) since it was difficult to find Marijuana Anonymous (MA) meetings.

9. After several letters from MAXIMUS regarding non-compliance with random drug testing for the PRP, on March 30, 2010, respondent took a random drug test for MAXIMUS as well as for John Muir. The results of the MAXIMUS test were positive for THC[5] (16 ng/mL) while the results of the John Muir test were negative for cannabinoids (with a cutoff of 100 ng/mL). The MAXIMUS test was more sensitive than the John Muir test, but respondent was adamant that he has not used marijuana since February 12, 2010.

10. On April 7, 2010, MAXIMUS notified the board that respondent had been terminated from the diversion program with the classification "Terminated – Public Risk." The notification letter detailed respondent's self-referral and involvement with MAXIMUS, including his refusal to sign the preliminary agreement or the clinical assessment consent form. The following excerpt from the letter explains why MAXIMUS classified respondent (referred to as "applicant") as a public risk:

> On March 30, 2010 applicant submitted to a RBFT [Random Bodily Fluid Test]. On April 6th these results were reported to MAXIMUS as positive for THC 16 ng/mL. Prior to this positive result this applicant had not tested positive for THC. CCM [Clinical Case Manager] contacted applicant regarding these results and applicant denied using marijuana or being exposed to marijuana in any form. CCM reviewed the previous test results with applicant which had been reported to MAXIMUS which were reported as negative. Again, applicant denied any use of marijuana. CCM has reviewed these results with Deputy Project Manager – J. Perry, RN who concurs with CCM that this applicant may withdraw from the Pharmacy Recovery Program as enrollment is strictly voluntary and applicant self-referred. After a review of this applicant's current

[5] THC (tetrahydrocannabinol) is one of the cannabinoid chemical compounds in marijuana.

> MAXIMUS file, it is the consensus of this review that the applicant will be closed a 'Public Risk,' based on a review of the applicant's request for withdrawal, resistance to program procedures, refusal to consent to an assessment, and most recent THC positive.

11. After the board received the MAXIMUS letter, inspector Anne Hunt, R.Ph., was assigned to investigate respondent. She talked with respondent on May 21, 2010, and she met with him on June 2, 2010. He was forthright with her about what led to his marijuana use and his decision to contact MAXIMUS, and why he had chosen the John Muir treatment program instead of continuing with MAXIMUS. He provided Hunt with a copy of the February 11, 2010, prescription for hydrocodone from his podiatrist; a copy of the John Muir drug test results from March 30, 2010; letters verifying his completion of the John Muir primary treatment program and continued attendance of weekly Continuing Care meetings; a May 26, 2010, letter from licensed clinical social worker Mark E. Ealey stating that respondent had been seen for therapy three times beginning April 9, 2010; a letter from respondent's AA sponsor attesting to respondent's commitment to his recovery; and sign-in sheets documenting respondent's frequent attendance at AA and MA meetings. At the end of the interview, respondent also provided Inspector Hunt with a sworn statement for the Board's consideration regarding respondent's account of the facts, including issues leading up to respondent's decision to contact MAXIMUS. (RT 22:16-25; 23-25; State's Ex. 4, incorporating Ex. 3.)

12. Respondent remained off work on disability for his right foot until September 2010. From September 2010 until January 2011, he worked for Walgreens as a "floater"; his hours and the locations where he worked varied. On January 26, 2011, respondent had surgery on his left foot, after which he was off on disability until July 2011. At the time of the hearing, respondent had been working for Walgreens two days a week since July 5, 2011. He may have to have total reconstructive surgery on his right foot, however, which would involve more time on disability.

13. Respondent provided testimony on his recent recovery efforts and position on illegal drug use. Respondent believes marijuana is a dangerous and addictive drug which should not be legal. He is proud to be clean and sober, and he tries to set an example for young people. Respondent asserted at hearing that he has a strong support network for his recovery, attending MA meetings three times a week and leading the Friday night meeting at John Muir. Respondent sponsors two people in MA and has a sponsor of his own. At the time of the hearing, he was active in the John Muir extended program. Respondent sees a licensed clinical social worker for therapy occasionally.

14. Respondent talked to Deputy Attorney General Timothy McDonough numerous times after the accusation was filed. The first time they talked, McDonough challenged respondent to take a drug test to prove his claim that he was drug-free. The following day, respondent showed up at McDonough's office with a report for a drug test he had just taken, showing negative results for marijuana and other drugs. This drug test report,

dated March 8, 2011, and another negative drug test report from August 12, 2011, three days before the hearing and provided by a private drug testing company unaffiliated with the board or MAXIMUS, were admitted in evidence.

15. Respondent has three adult children, ages 35, 30 and 23, and two grandchildren. His elderly parents live in San Diego, and respondent anticipates that his parents' health problems may eventually require him to relocate from Vallejo to be near them. There have been no complaints about respondent's work as a pharmacist, and Respondent testified that he feels he still has a lot to offer professionally. If the board puts him on probation, respondent is willing to participate in counseling and be subject to random drug screening, although Respondent protests any suggestion that he enroll into the Board's rehabilitation program administered by MAXIMUS. At hearing, he asked that, if the board deems it necessary, then he suggested that the John Muir Behavioral Health Center for Recovery is willing to implement a random drug screening program like the one MAXIMUS uses.

16. Inspector Anne Hunt testified that because of the board's contract with MAXIMUS, they work together with the Board to closely monitor pharmacists on probation for substance abuse problems. A board representative meets monthly with MAXIMUS to monitor a probationer's progress. Unlike private recovery programs like John Muir, MAXIMUS is required to work "in tandem" with the Board while monitoring participants and keep the Board "abreast of situations involving probationers" including, "if a probationer fails out of the program..." as part of its contract with the Board. (RT 38:15-20.) Without this reporting requirement, the Board would not be kept informed when there is a problem with one of its licensees (RT 38:15-24).

17. As of August 12, 2011, the Administrative Law Judge in this matter had determined that the board had incurred the following costs for the investigation and enforcement of this case:

Attorney General's costs for legal services:

Paralegal			
2010/2011:	1.25 hrs. @ $120/hr.	–	$ 150.00
Deputy Attorney General			
2010/2011:	17.50 hrs. @ $170/hr.	–	$2,975.00
2011/2012:	17.25 hrs. @ $170/hr.	–	$2,932.50
		Total	$6,057.50

18. Respondent testified that he can afford to pay the board $200 per month in cost recovery; he is not sure if he can afford to pay $300 per month. His income is reduced when he is off work on disability.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 authorizes the board to take disciplinary action against a licensee for unprofessional conduct. Under subdivision (h) of that section, unprofessional conduct includes:

> 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.

The fact that respondent sought help to stop using marijuana establishes that he had been using that drug to an extent that was dangerous or injurious to himself. Cause for license discipline therefore exists under Business and Professions Code section 4301, subdivision (h). Factual Findings 2-8.

2. Under Business and Professions Code section 4301, subdivision (j), unprofessional conduct includes: "The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs." Respondent admitted smoking marijuana, a controlled substance, which he necessarily possessed in violation of the Pharmacy Law. See Factual Findings 2-8. Cause for license discipline therefore exists under this section by reason of respondent's violation of Business and Professions Code section 4060, which prohibits possession of a controlled substance except upon the prescription of a health care practitioner.[6]

Disciplinary Guidelines

3. The Board enacted comprehensive regulatory guidelines to be followed in disciplinary actions.[7] With regard to a pharmacist, the guidelines state, in pertinent part:

> In determining whether the minimum, maximum, or an intermediate penalty should be imposed, factors such as the following should be considered: (1) actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior record, including level of compliance with any disciplinary orders; (4) prior warnings of record, including citations and fines;

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[6] The accusation alleges that respondent "violated state and federal laws regarding controlled substances and dangerous drugs," which is undoubtedly true, except that no specific statutes were cited other than Business and Professions Code section 4060.

[7] California Code of Regulations, title 16, section 1760.

(5) number and/or variety of current violations; (6) nature and severity of the acts, offenses, or crimes under consideration; (7) mitigating evidence; {8) rehabilitation evidence; (9) compliance with terms of any criminal sentence; (10) overall criminal record; (11) if applicable, evidence of proceedings for a case being set aside and dismissed pursuant to section 1203.4 of the Penal Code; (12) time passed since the acts or offenses; (13) whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; and (14) any financial benefit from the misconduct.

No single or combination of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one. (Guidelines, p. 3.)

4. Respondent's misconduct involved a Category II violation. The guidelines for for self-administration and a Category II violation provide, in pertinent part:

A minimum three-year probation period has been established by the board as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation... The board may also impose any other condition appropriate to the case where the condition is not contrary to public policy.
(Guidelines, pg. 5; see also pg. 11.)

Factors Considered for the Appropriate Measure of Discipline

5. Protection of the public is the Board's highest priority. (Bus.&Prof. Code, § 4001.1.) The Board fulfills its public mandate by, among other things, imposing discipline. It is very important that the Board's licensees abide by applicable pharmacy laws. Respondent's violations of the Pharmacy Law demonstrate that respondent has a substance abuse history involving marijuana and that he has relapsed from recovery efforts in the past. Such conduct raises concerns about his ability to practice his profession unimpaired and with safety to the public. The Board is nevertheless, encouraged by respondent's efforts at rehabilitation from his problem, including his initial admissions to the Board's rehabilitation program, and the steps he took on his own to seek recovery from his problem. (See Factual Findings 4, 7, and 8.) Therefore, it would not be contrary to the public interest to allow respondent to keep his pharmacist license subject to appropriate terms and conditions of probation. Respondent's rehabilitation efforts shall be considered in reducing the probationary period that the Board's guidelines normally suggest should be imposed for these types of violations.

6. The Board's Pharmacist Recovery Program (PRP) was created to identify and rehabilitate pharmacists whose competency may be impaired due to the abuse of alcohol or other drugs so that pharmacists and interns may be treated and returned to the practice of pharmacy in a manner that will not endanger the public health and safety. To that end, a probationer's participation in the PRP is strictly controlled and monitored by the Board in concert with its contractor (MAXIMUS), including having drug testing protocols and cut-off levels that are much stricter than at the private recovery program suggested by respondent. Further, to ensure public oversight of such participants, any vendor administering the PRP has a mandatory reporting relationship with the Board and must work "in tandem" with the Board to ensure oversight over the participants the Board licenses. Although, as discussed above, Respondent has submitted evidence that he has taken steps to remediate his past substance abuse problem; lingering concern is generated by the fact that Respondent has a history of relapse, refused to cooperate with the Board's PRP program and tested positive with MAXIMUS for THC before completely refusing to continue with the PRP. Although Respondent's efforts are commendable, without direct oversight of respondent's recovery, the Board cannot provide assurances to the public that respondent is unimpaired and that he can practice safely.

7. As a result of the foregoing, respondent's probation shall include a three-year probationary period, and, include in addition to the standard terms and conditions, conditions requiring him to abstain from drugs and alcohol, to be subject to random drug screening, and to enroll and successfully complete the PRP. To avoid possible compliance issues resulting from any further surgeries to respondent's foot, a term and condition requiring prescription coordination and monitoring of prescription use with a board-approved health care practitioner shall also be included in the Disciplinary Order. (Factual Findings 2-14, 16 and Legal Conclusions 1-7.)

8. Complainant has requested that respondent be ordered to pay the board the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement are $6,057.50. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The only factor possibly militating in respondent's favor is his financial ability to pay a cost recovery award, but he represented that he could pay at least $200 per month. Under these circumstances, the Administrative Law Judge found that the actual costs of investigation and enforcement of $6,057.50 are determined to be reasonable, as long as they are payable in installment payments over the term of probation. Factual Findings 17-18. Pursuant to Business and Professions Code section 125.3(d), this finding is not reviewable by the Board to increase the cost award.

ORDER

Pharmacist License Number RPH 32316 issued to respondent Charles Walker is revoked; however, the revocation is stayed and respondent is placed on probation for a period of three (3) years upon the following terms and conditions:

1. OBEY ALL LAWS: Respondent shall obey all state and federal laws and regulations.

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

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

   Failure to timely report such occurrence shall be considered a violation of probation.

2. REPORT TO THE BOARD: Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. INTERVIEW WITH THE BOARD: Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee.

Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. COOPERATE WITH BOARD STAFF: Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. CONTINUING EDUCATION: Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. NOTICE TO EMPLOYERS: During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3865 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3865 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 3865 in advance of respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 3865 and the terms and conditions imposed thereby. It shall be respondent's

responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

7. NO SUPERVISION OF INTERNS, SERVING AS PHARMACIST-IN-CHARGE (PIC), SERVING AS DESIGNATED REPRESENTATIVE-IN-CHARGE, OR SERVING AS A CONSULTANT: During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. REIMBURSEMENT OF BOARD COSTS: As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and enforcement in the amount of $6,057.50. Respondent shall make said payments as follows:

> Commencing 30 days from the effective date of this decision, respondent shall make monthly payments to the board in the amount of $200, until the total amount of $6,057.50 has been paid in full. Each installment payment is due on or before the 10th day of the month.

There shall be no deviation from this schedule absent prior written approval by the board or its designee, except that respondent may pay more than $200 per month if he wishes to pay off the total amount sooner. Failure to make timely payments as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board for its costs of investigation and enforcement.

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

10. STATUS OF LICENSE: 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. Failure to maintain an active, current license shall be considered a violation of probation.

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

11. LICENSE SURRENDER WHILE ON PROBATION/SUSPENSION: Following the effective date of this decision, should respondent cease 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 or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and wall 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 (3) 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, including any outstanding costs.

12. NOTIFICATION OF CHANGE IN NAME, RESIDENCE ADDRESS, MAILING ADDRESS OR EMPLOYMENT: Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if

known. Respondent shall further notify the board in writing within 10 days of a change in name, residence address, mailing address, or phone number.

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

13. TOLLING OF PROBATION: Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 50 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 50 hours per calendar month in California, respondent must notify the board in writing within 10 days of the cessation of practice, and must further notify the board in writing within 10 days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 50 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 50 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. VIOLATION OF PROBATION: 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.

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 that was stayed. Notice and opportunity to be

heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. COMPLETION OF PROBATION: Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

16. 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 other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

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 controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, 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 a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

17. ABSTAIN FROM DRUGS AND ALCOHOL USE: 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 or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

18. PHARMACISTS RECOVERY PROGRAM: Within thirty (30) days of the effective date of this decision, respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board or its designee. The costs for PRP participation shall be borne by the respondent.

If respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP.

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

Probation shall be automatically extended until respondent successfully completes the PRP. Any person terminated from the PRP program shall be automatically suspended by the board. Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

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 controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, 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 a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

19. PRESCRIPTION MONITORING AND MONITORING OF PRESCRIPTION USE: Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with the use of controlled substances and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

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 controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, 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 a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

This Decision shall become effective on June 22, 2012.

IT IS SO ORDERED this 23rd day of May, 2012.

STAN C. WEISSER
Board President

EDMUND G. BROWN JR.
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
TIMOTHY J. MCDONOUGH
Deputy Attorney General
State Bar No. 235850
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2134
Facsimile: (510) 622-2270
Attorneys for Complainant

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

In the Matter of the Accusation Against: **CHARLES WALKER** **191 Lippizan Dr.** **Vallejo, CA 94591** **Pharmacist No. RPH 32316** Respondent.	Case No. 3865 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 14, 1978, the Board of Pharmacy issued Pharmacist License Number RPH 32316 to Charles Walker (Respondent). The Pharmacist was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on December 31, 2011, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

. . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

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

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STATUTORY AND REGULATORY PROVISIONS

6. Section 4301 of the Code states, relevant part:

"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:

. . .

"(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."

7. Section 4060 of the Code states:

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

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

8. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

9. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

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DRUGS

10. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.

COST RECOVERY

11. Section 125.3 of the Code 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 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Use of Controlled Substance)
(Bus. & Prof. Code §§ 4060 & 4301(h))

12. Respondent has subjected his Pharmacist License to disciplinary action under Code sections 4060 and 4301, subdivision (h), in that he was in possession of Marijuana and self-administered Marijuana over a period of several months. Marijuana is a controlled substance and considered a dangerous drug. The circumstances are as follows:

13. In June 2008, Respondent became depressed after he sold his pharmacy, which he had owned for 28 years, to Walgreens. He continued to work at the Pharmacy as a Pharmacist after selling it to Walgreens. After working for there for a couple of weeks he began smoking Marijuana a couple of times a week in order to deal with his depression. After the death of a close friend in December of 2009, Respondent began smoking Marijuana everyday to cope with the pain of losing his friend. Respondent was smoking Marijuana until at least February 15, 2010.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct-Violation of Laws Regarding Controlled Substance)
(Bus. & Prof. Code §§ 4301(j))

14. Respondent has subjected his Pharmacist License to disciplinary action under Code section 4301, subdivision (j), in that he violated state and federal laws regarding controlled substances and dangerous drugs. Respondent admitted to smoking Marijuana, a controlled

substance, for several months between June 2009 and February 2010. The circumstances are further explained in paragraph 13, above.

PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 32316, issued to Charles Walker;

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

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

DATED: 2/23/11

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

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