

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

In the Matter of the Accusation Against:

LEENA CELESTE BASURTO

20065 Road 31
Madera, CA 93638

Pharmacist License No. RPH 61580

Respondent.

Case No. 4443

OAH No. 2013050489

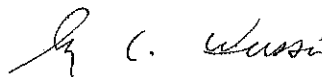
DECISION AND ORDER

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

This decision shall become effective on May 26, 2014.

It is so ORDERED on April 24, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

LEENA CELESTE BASURTO,

Respondent.

Case No. 4443

OAH No. 2013050489

PROPOSED DECISION

This matter came on regularly for hearing on February 20, 2014, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Marichelle S. Tahimic, Deputy Attorney General, Department of Justice, represented Virginia Herold (complainant), the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (board).

Leena Celeste Basurto (respondent) represented herself.

The matter was submitted on February 20, 2014.

FACTUAL FINDINGS

1. On September 19, 2008, the board issued respondent Original Pharmacist License Number RPH 61580. At all relevant times, respondent's license was in full force and effect. It will expire on August 31, 2014, unless renewed or revoked.

2. On March 21, 2013, complainant signed the Accusation in Case No. 4443. The Accusation and other required jurisdictional documents were served on respondent on March 26, 2013.

The Accusation sought to revoke or suspend respondent's pharmacist license based on her conviction for possession of controlled substances and embezzlement (first cause for discipline), for engaging in unprofessional conduct - dishonesty, possession, self-administration, and use of a controlled substance (second, third, fourth and fifth causes for

discipline), and for dispensing drugs while under the influence of a controlled substance (sixth cause for discipline).

The Accusation also alleged that a citation was issued to respondent on September 12, 2011, for her 2010 failure to notify the board of her disassociation as the pharmacist-in-charge of a pharmacy located in Madera, California, in violation of Business and Professions Code section 4101, subdivision (a). Complainant asked the board to consider the citation in determining the level of discipline.

The Accusation also sought the recovery of reasonable costs pursuant to Business and Professions Code section 125.3.

3. On April 7, 2013, respondent submitted her Notice of Defense, and this hearing was set.

Diversion of Controlled Substances from the Murrieta Albertsons

4. From November 2010 until October 14, 2011, respondent was employed as a pharmacist in a Sav-On pharmacy located in an Albertsons' grocery store in Murrieta, California.

5. On September 22, 2011, Bruce Bowers (Bowers), Store Director for the Murrieta Albertsons' store, advised Albertsons' District Loss Prevention Manager Dana Baker (Baker) that controlled substances might be missing from the pharmacy. Pharmacy Manager Urja Narayan (Narayan) conducted an inventory. On September 26, 2011, Narayan advised Baker that 100 Hydrocodone tablets were missing from the pharmacy. She also told Baker that other controlled substances were missing within the two weeks prior to September 22, 2011.

On September 22, 2011, six covert cameras were installed in the Murrieta pharmacy. On October 10, 2011, the positions of two existing cameras were changed to focus on other areas of the pharmacy.

6. In October 2011, Baker asked Loss Prevention Specialist Jennifer Bailey (Bailey) to assist him in the investigation of the missing controlled substances. Bailey reviewed videotapes from the pharmacy's surveillance cameras for the dates September 1, 2011, through October 14, 2011. Bailey observed that, on several days, respondent worked in the pharmacy after she had clocked out ("off the clock"). Bailey also observed that respondent was in the pharmacy with her personal bags, which violated company rules and policies. Bailey additionally observed respondent concealing items in her personal bags and putting pills in her pocket.

Narayan provided Bailey with a list of controlled substances that were missing from the Murrieta pharmacy between May 18, 2011, through October 13, 2011, when respondent was in the pharmacy. The list included a total of 976 hydrocodone tablets (Norco), 308 tablets of Alprazolam (Xanax), and 33 tablets of phentermine (an appetite suppressant).

Bailey prepared a report of her findings that included still photos taken from the videotapes that she reviewed. Baker reviewed Bailey's report.

7. On October 14, 2011, Baker conducted a loss prevention interview with respondent. He first questioned respondent about her working off the clock. Respondent admitted to Baker that she had worked off the clock, and that she had falsified time and attendance records. Respondent handwrote and signed a detailed statement in which she explained that she fell behind in her work due to staffing and personal problems, and that she felt her manager would be disappointed in her if she fell behind, so she worked off the clock to catch up.

Baker then confronted respondent with the evidence that led him to believe that she was diverting controlled substances. Respondent admitted that she had been taking drugs from the pharmacy in the Murrieta store and from the pharmacy in an Albertsons' store in Lake Elsinore, California. Respondent provided a written statement in which she detailed her diversion of controlled substances from the pharmacies. In the statement respondent wrote, in part:

I admit to taking several substances/controlled medications from the pharmacy. I have abused generic norco, xanax, soma, esazolatin, generic ambien and non-controlled medications as follows: generic flexeril, oraphedrine and ibuprofen. The first time I took pills from the pharmacy was at Lake Elsinore. I was a floater pharmacist and I worked at many different stores. I didn't take pills from every store I worked at but the majority of the stores, usually if I was off the clock after the pharmacy had closed. Not only did I take pills but also patient information recently after a regular customer threatened my license because she felt I was refusing to transfer a prescription to Walgreens. . . . I would usually take pills from the pharmacy once a week. While at work I have taken generic xanax 0.25 mg because I had a prescription for this medication and I knew its effects would not make me drowsy, unlike the pain medication, muscle relaxants and sleep aids. . . . I mainly abused the pain medication on my days off and after work.

Respondent also wrote that she abused the drugs she took to "numb my feelings of pain and depression" that stemmed from the loss of "a loved one." Respondent "deeply apologize[d]" and vowed to "get my life back under control." Respondent additionally volunteered that she had begun drinking alcohol to "numb my feelings." Respondent accepted full responsibility for her actions and expressed remorse for what she had done and for breaching the trust given her by her fellow workers and family.

After respondent finished writing her two statements, Baker contacted the Riverside Sheriff's Department. Respondent was arrested and escorted from the Murrieta store. The

deputy sheriff searched respondent at the sheriff's station and found that she was in possession of 12 hydrocodone and 10 alprazolam pills.¹

On November 1, 2011, Narayan prepared and submitted DEA Form 106, "Report of Theft or Loss of Controlled Substances" (DEA Form 106) to the Drug Enforcement Administration (DEA).

Diversion of Controlled Substances from the Lake Elsinore Albertsons

8. On learning of respondent's admission that she diverted controlled substances from the pharmacy in Lake Elsinore, Pharmacy District Manager Tracey Spanklinburg (Spanklinburg) contacted Steven M. Anthony (Anthony) the Pharmacist-in-Charge of the Lake Elsinore pharmacy. Respondent had worked as a floater in the Lake Elsinore store two days a week for approximately four weeks in February/March 2011. Spanklinburg told Anthony to conduct an audit to determine if any controlled substances were missing from the pharmacy.

Anthony conducted an inventory as instructed and determined that 60 tablets of phentermine, 109 tablets of hydrocodone, and 150 tablets of alprazolam were missing from the pharmacy. On November 1, 2011, Anthony prepared and submitted DEA Form 106 to the DEA.

Anthony testified that he was lax in conducting, reviewing and reconciling inventories in 2011, but that he has improved his practices since then.

Conviction for Possession of Controlled Substances and Embezzlement

9. On December 19, 2011, in Riverside County Superior Court case number SWF1102791, respondent pled guilty to, and was convicted of, a felony count of possession of a controlled substance in violation of Health and Safety Code section 11350 and a misdemeanor count of embezzlement in violation of Penal Code section 503. The Superior Court permitted respondent to participate in the drug diversion program which, if successfully completed, could result in the dismissal of the charges against her. The Court placed respondent on three years summary probation with terms and conditions, including the requirements that she enroll in and complete the diversion program, participate in counseling, pay fines and fees in the amount of \$979.84, pay restitution, and serve one day in custody with credit for one day served.

On March 22, 2012, the Superior Court sent a letter to respondent requiring her to appear on April 23, 2012, because it had received notice that she was terminated from the diversion program. Respondent failed to appear on April 23, 2012 as ordered. The court revoked respondent's probation and issued a bench warrant for her arrest. Nothing in the

¹The report prepared by the arresting deputy was received and given the evidentiary value that is to be given such reports under *Lake v. Reed* (1997) 16 Cal.4th 448.

court records indicate that respondent resolved her issues with the court and the warrant for respondent's arrest remains outstanding.

Citation Issued by the Board

10. Katherine Sill (Sill) has been a licensed pharmacist since 1988. She has been employed as an Inspector for the board since June 2011. Sill was asked to investigate the diversion of controlled substances from the Murrieta and Lake Elsinore pharmacies.

11. Sill compiled information from the Murrieta and Lake Elsinore stores, the sheriff's department, and the courts, and she interviewed employees at the two stores.

12. In the course of her investigation, Sills located Citation Number CI 2001 49459 that was issued to respondent on September 12, 2011, before she was suspected of diverting controlled substances. The Citation alleged that respondent failed to report her disassociation as the pharmacist-in-charge (PIC) of a pharmacy located in Madera, California. The Citation alleged that respondent ceased employment as the PIC in March 2010, but had not notified the board of the termination of her employment within 30 days as required by Business and Professions Code section 4101, subdivision (a).

Costs

13. Certifications for costs incurred by the board in the investigation and prosecution of the instant matter were admitted into evidence at the hearing. A certification relating to the board's investigation sought recovery of costs in the amount of \$1,861.50 and a certification from the Attorney General's Office sought costs of \$6,252.50; total costs of investigation and enforcement were claimed in the amount of \$8,114.00. The certification of costs from the board lacked specificity, and the reasonableness of those costs could not be determined. Costs sought by the Attorney General's Office were itemized and were reasonable.

Evidence in Mitigation and of Rehabilitation

14. Respondent is 31 years old and has no children.

15. Respondent denied that she stole controlled substances on the day the videotape showed her putting something in her purse. Respondent nonetheless said she voluntarily admitted her addiction to Baker because she was "tired of hiding" and "tired of [her] addiction." To the best of her ability, respondent provided Baker with a list of the drugs she had taken from the Murrieta pharmacy. Respondent also voluntarily admitted to Baker that she took drugs from the Lake Elsinore pharmacy. Respondent understood the repercussions that would flow from her confessions and she was prepared to accept them.

16. While not excusing her behavior, respondent explained that she was severely depressed and felt alone because her sister had passed away, her grandmother was hospitalized, and a ten year romantic relationship had ended.

17. On the Saturday following her arrest, respondent contacted the Pharmacy Recovery Program (PRP) to get help with her addiction. She was told that someone would call her back, but they did not. Respondent testified that she tried to enroll in the PRP three times but no one contacted her to enroll her in the program.

Respondent attended Narcotics Anonymous/Alcoholics Anonymous (NA/AA) meetings on her own. Although respondent was required by the court to attend a diversion program, she enrolled in that program but did not attend it. Respondent determined that she was not able to complete that program because she was still depressed and because she was unemployed and did not have the ability to pay for the course. Respondent admitted that she took no further action to complete the diversion program. Although she testified that she attended NA/AA meetings since November 2011, she did not report her attendance to the court, nor did she provide evidence of her attendance at the hearing. Respondent stated that she had a NA sponsor, but said that she does not attend NA often since she returned home to live with her parents. She attended a NA meeting the day before the administrative hearing, but had not been to a NA meeting for two months prior to that. Respondent claimed to be unaware that there was a warrant for her arrest and stated she would take care of it.

Respondent testified that the last time she took non-prescribed drugs was on October 11, 2011. She said it was easy for her to stop taking drugs because the idea of going to jail was "scary" and she had never been in trouble before. Respondent was raised in the Church of Jesus Christ of Latter Day Saints and relies upon the church's religious teachings to help her stay away from drugs. Respondent does not attend church, but she reads the Bible which gives her peace and calm.

18. Respondent's life is "not as chaotic" as it had been when she was using drugs. Her family issues have been resolved, and she has been open and honest with her family about what happened to her. She believes she has the inner strength to stay away from drugs. Respondent would like to get a counselor and engage in therapy.

19. Respondent moved back to Northern California after her termination from employment. She serves in an unpaid advisory capacity to a community service group associated with the University of the Pacific. Respondent credited her involvement in this group with helping her to reconnect with people and get her life in order; she now feels that life is worth living when before she did not. Respondent felt that her work as an advisor gave new meaning to her life and has allowed her to control and manage her addiction.

20. Respondent obtained employment in two pharmacies after her termination from Sav-On/Albertsons. She testified that she was honest with her employers and told them about the circumstances of her termination from Sav-On/Albertsons. She was supervised 100 per cent of the time by her new employers. Although she initially felt it was demeaning

to never be left alone, she understood the need for the supervision, took responsibility for her past actions, and tried to move forward. Despite the fact that she was employed as a pharmacist from January 2012 through December 2012 and March through October 2013, respondent did not contact the court or try to get into a diversion program during those periods of employment.

21. Respondent has been unemployed since October 2013, when the pharmacy she last worked in was sold. She lives with her parents and takes odd jobs when she can find them. Respondent stated that she attends NA/AA meetings to keep busy, but the evidence was that her attendance at 12-step meetings is sporadic. She stated that her parents would help pay for costs sought by the board and she hoped to obtain employment soon.

22. As relates to the citation issued by the board in 2011, respondent stated that she did not know that it had been issued. Respondent was not living at her parents' home when the citation issued, but she used her parents' address as her address of record with the board. Respondent asserted that the Madera pharmacy asked her to be the PIC; however, despite her repeated requests, the pharmacy where she was working did not provide her with the proper forms to indicate she was a PIC, and she had not signed any documents accepting responsibility as a PIC. Respondent did not file anything with the board when she left employment in 2010 because she felt that she was never officially appointed as the PIC.

LEGAL CONCLUSIONS

Disciplinary Guidelines

1. The Board of Pharmacy Disciplinary Guidelines, October 2007 (Guidelines), provide that the board "serves the public by: protecting the health, safety, and welfare of the people of California with integrity and honesty"

2. The Guidelines provide that the following factors should be considered when determining the level of discipline to be imposed in a disciplinary case:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence

9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. 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
15. financial benefit to the respondent from the misconduct.

3. The Guidelines provide that a respondent may submit evidence to demonstrate his or her rehabilitative efforts and competency, including the following:

- a. Recent, dated written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of pharmacy including the period of time and capacity in which the person worked with the respondent.
- b. Recent, dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation.
- c. Recent, dated letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.).
- d. Recent, dated laboratory analyses or drug screen reports, confirming abstention from drugs and alcohol.
- e. Recent, dated physical examination or assessment report by a licensed physician, confirming the absence of any physical impairment that would prohibit the respondent from practicing safely.

- f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. . . .

Applicable Statutory and Regulatory Provisions

4. Business and Professions Code section 482 requires the board to “develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490.” Section 482 also requires the Board to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

5. Business and Professions Code section 490, subdivision (a), provides that the board “may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

6. Business and professions Code section 493 provides in part that in a proceeding to revoke or suspend a license

upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

7. Business and professions Code section 4022 provides in part that a “[d]angerous drug” is a drug that “is unsafe for self-use in humans or animals” and “that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

8. Business and professions Code section 4060 provides in part that “[a] person shall not possess any controlled substance, except that furnished to a person upon the prescription of [an appropriate health care provider.]”

9. Business and professions Code section 4301 provides in part that the “board shall take action against any holder of a license who is guilty of unprofessional conduct”

Unprofessional conduct includes, but is not limited to

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

[¶] . . . [¶]

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

[¶] . . . [¶]

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

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of . . . a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

[¶] . . . [¶]

(o) Violating . . . any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . .

10. Business and professions Code section 4327 provides

Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

11. Health and Safety Code section 11055 lists hydrocodone as a Schedule II controlled substance.

12. Health and Safety Code section 11057 lists Alprazolam, Phentermine, estazolam and Zolpidem (Ambien) as Schedule IV controlled substances.

13. Health and Safety Code section 11170 provides that “No person shall prescribe, administer, or furnish a controlled substance for himself.”

14. California Code of Regulations, title 16, section 1769, subdivision (c), provides:

[¶] . . . [¶]

(c) When considering the suspension or revocation of . . . a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

15. California Code of Regulations, title 16, section 1770, provides:

For the purpose of denial, suspension, or revocation of a personal . . . license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications,

functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

Evaluation

16. Cause exists to discipline respondent's Original Pharmacist License Number RPH 61580 pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), because on December 19, 2011, she was convicted of the crimes of possession of a controlled substance and embezzlement, substantially related crimes.

Pharmacists occupy positions that require trustworthiness, honesty, clear-headedness and the exercise of impeccable judgment, particularly because a pharmacist has access to confidential personal and financial information of consumers and to highly regulated medications and devices. The absence of these essential personal characteristics can result in a significant threat to the public health, safety and welfare. The circumstances surrounding the commission of the crimes for which respondent was convicted involve egregious violations of the trust and responsibilities entrusted to her. The fact that respondent was able to steal controlled substances from her places of employment is directly related to the access granted to her by her employers who trusted in her. Respondent's conduct conclusively proves that the convictions are substantially related to the qualifications, functions and duties of a pharmacist. (Cal. Code Regs., tit. 16, § 1770.)

17. Cause exists to discipline respondent's Original Pharmacist License Number RPH 61580 pursuant to Business and Professions Code section 4301, subdivision (f), because respondent committed acts of dishonesty, fraud and deceit when she falsified time and attendance records and re-entered the pharmacy where she worked in to steal controlled substances and dangerous drugs for her own use. These acts constitute unprofessional conduct.

18. Cause exists to discipline respondent's Original Pharmacist License Number RPH 61580 pursuant to Business and Professions Code sections 4301, subdivision (h), because, by her own admission, respondent was addicted to controlled substances and dangerous drugs, and she administered such drugs to herself without a prescription and without obtaining medical advice, all in a manner as to be dangerous and injurious to herself. Respondent's actions constitute unprofessional conduct.

19. Cause exists to discipline respondent's Original Pharmacist License Number RPH 61580 pursuant to Business and Professions Code section 4301, subdivision (j), because her conduct in using and stealing controlled substances violated California statutes regulating controlled substances and constitutes unprofessional conduct. Specifically respondent violated Health and Safety Code section 11170, which prohibits a person from administering controlled substances for his or her personal use. Respondent's actions involved unprofessional conduct.

20. Cause exists to discipline respondent's Original Pharmacist License Number RPH 61580 pursuant to Business and Professions Code section 4301, subdivision (l), because she was convicted of the crime of possession of a controlled substance, which is "conclusive evidence" of unprofessional conduct. Additionally respondent's conviction for embezzlement was based upon her theft of controlled substances from her place of employment.

21. Cause exists to discipline respondent's Original Pharmacist License Number RPH 61580 pursuant to Business and Professions Code section 4301, subdivision (o), because respondent violated laws and regulations governing pharmacies when she abused controlled substances that she stole from the pharmacy where she worked in and when, by her own admission, she stole pills (Xanax) while she was on duty.

Discipline Determination

22. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

23. The determination of whether respondent's license should be revoked or suspended includes an evaluation of the rehabilitation criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (b). Additionally, the board's Guidelines have been considered in reaching the determination of the appropriate level of discipline.

Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

Respondent is commended for acknowledging her drug abuse and for her forthrightness in admitting her thefts of controlled substances from the Murrieta pharmacy and other pharmacies she worked in as a floater. However, respondent has failed in every other aspect to take meaningful steps towards rehabilitation. Instead, her conduct in ignoring her obligations under the terms and conditions of her criminal probation demonstrates that respondent's expressions of remorse are superficial and without conviction. Respondent's failure to complete the requirements of that probation demonstrates that she is currently unable to conform her behavior to societal norms.

In addition to failing to participate in the court ordered diversion program, respondent has not participated in any meaningful way in any other treatment program. Her testimony about her attendance at NA/AA indicated her participation was sporadic at best, and she failed to provide any demonstrative evidence of her actual participation. Her attendance at a

NA meeting the day before the hearing is viewed as a calculated attempt to appear to be dedicated to NA, when, in fact, the evidence was to the contrary.

Respondent testified that she was able to control her addiction on her own, without a formalized rehabilitation program. She credited her strength to resist drugs and her resolve to stay clean to the fact that her life situation was much improved from what it had been when she was stealing and abusing drugs. However, even if respondent has been able to control her addiction to this point, her refusal to participate in a reliable rehabilitation program puts her at risk for future addictive behavior since she did not learn the skills required to resist drugs when life presents challenges.

Respondent appeared sincere in her resolve to remain drug-free, and no evidence was presented to establish that respondent has had any involvement with drugs or law enforcement after October 2011. However, respondent has not demonstrated sustained rehabilitative conduct over an extended period of time. Her conviction occurred in December 2011. She failed to complete diversion and probation. Even if she had complied with probation, she would remain under the supervision of the courts until December 2014. It is likely that respondent will go to jail or that her criminal probation will be extended as a result of her failure to complete the diversion program.

Potential harm to the public and to consumers caused by respondent's drug abuse was foreseeable and imminent. Respondent had no prior disciplinary record; however the nature and severity of her offenses are significant. Respondent did not submit any of the evidence suggested by the board's guidelines to demonstrate rehabilitative efforts.

24. Complainant requested that the citation issued to respondent on September 12, 2011, be considered in determining the degree of discipline, if any, to impose on respondent. The fact that respondent did not know of the citation was unpersuasive in deciding the weight to be given to the citation. However, insufficient evidence was presented to prove that respondent was the PIC for the Madera pharmacy and was obligated to report her termination of employment to the board. The citation was not considered in determining the degree of discipline in this case.

25. Protection of the public can be achieved only if respondent's license is revoked. Granting respondent a probationary license, with or without a period of suspension, would not adequately protect the public.

Cost Recovery

26. Complainant is seeking recovery of the reasonable costs of investigation and prosecution of the instant matter in the amount of \$8,114.00. Costs in the amount of \$1,861.50 were sought by the board and allocated as inspector costs. However, those costs were not itemized and were summarily claimed. It is impossible to determine the reasonableness of these requested costs on the evidence in the record, and those costs are disallowed. The costs claimed by the Attorney General's Office in the amount of \$6,252.50 are reasonable.

Zuckerman v. State Board of Chiropractic Examiners (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it was incumbent on the board in that case to exercise its discretion to reduce or eliminate cost awards in a manner such that imposing costs would not “deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing.” The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his/[her] position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that is set forth in Business and Professions Code section 125.3.

Respondent failed to achieve a reduction in the severity of the discipline sought to be imposed. Although respondent believed her parents would assist her in the payment of any costs awarded against her, respondent is 31 years old and her parents do not have an obligation to satisfy her debts. Respondent was candid with investigators when her diversion of controlled substances was discovered, and she claims to have improved her life and become drug free. On this basis, she had a subjective good faith belief in the merits of her position. Respondent is unemployed and is unable to pay the full costs requested by the board by herself. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is appropriate to reduce the reasonable costs claimed and to require respondent to pay half of the allowable costs. Respondent must pay to the board the sum of \$3,126.25.

ORDER

The Original Pharmacist License Number RPH 61580 issued to respondent Leena Celeste Basurto is revoked.

Respondent shall relinquish her wall license and pocket renewal license to the board within 10 days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of her revoked license for three years from the effective date of this decision.

//

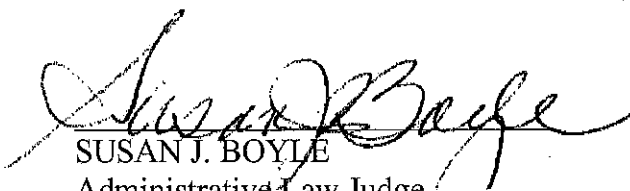
//

//

//

As a condition precedent to reinstatement of her revoked license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$3,126.25. Said amount shall be paid in full prior to the reapplication or reinstatement of her license unless otherwise ordered by the board.

DATED: March 24, 2014



SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4443

12 **LEENA CELESTE BASURTO**
20065 Road 31
13 Madera, CA 93638

A C C U S A T I O N

14 **Pharmacist License No. RPH 61580**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 19, 2008, the Board of Pharmacy issued Pharmacist License
22 Number RPH 61580 to Leena Celeste Basurto (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on August 31,
24 2014, unless renewed.

25 ///

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

15 ...

16 (e) The proceedings under this article shall be conducted in accordance
17 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
18 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.

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

23 **STATUTORY AND REGULATORY PROVISIONS**

24 6. Section 482 of the Code states:

25 Each board under the provisions of this code shall develop criteria to
26 evaluate the rehabilitation of a person when:

27 (a) Considering the denial of a license by the board under Section 480; or

28 (b) Considering suspension or revocation of a license under Section 490.

1 Each board shall take into account all competent evidence of
rehabilitation furnished by the applicant or licensee."

2 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
3 revoke a license on the ground that the licensee has been convicted of a crime substantially
4 related to the qualifications, functions, or duties of the business or profession for which the
5 license was issued.

6 8. Section 492 of the Code states:

7 Notwithstanding any other provision of law, successful completion of any
8 diversion program under the Penal Code, or successful completion of an
9 alcohol and drug problem assessment program under Article 5 (commencing
10 with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall
11 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.

12 This section shall not be construed to apply to any drug diversion
13 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."

14 9. Section 493 of the Code states:

15 Notwithstanding any other provision of law, in a proceeding conducted
16 by a board within the department pursuant to law to deny an application for a
17 license or to suspend or revoke a license or otherwise take disciplinary action
18 against a person who holds a license, upon the ground that the applicant or the
19 licensee has been convicted of a crime substantially related to the qualifications,
20 functions, and duties of the licensee in question, the record of conviction of the
crime shall be conclusive evidence of the fact that the conviction occurred, but
only of that fact, and the board may inquire into the circumstances surrounding
the commission of the crime in order to fix the degree of discipline or to
determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question.

21 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
22 and 'registration.'

23 10. Section 4022 of the Code states

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

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

27 (b) Any device that bears the statement: "Caution; federal law restricts
28 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

1 licensed to use or order use of the device.

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

4 11. Section 4060 of the Code states:

5 No person shall possess any controlled substance, except that furnished to
6 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
8 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
9 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
10 assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section
11 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of,
12 or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of
13 Section 4052. This section shall not apply to the possession of any controlled
14 substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,
15 podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
16 nurse-midwife, nurse practitioner, or physician assistant, when in stock in
17 containers correctly labeled with the name and address of the supplier or
18 producer.

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

22 12. Section 4301 of the Code states:

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

27 ...

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

...

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

...

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

...

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

21 ...

22 (o) Violating or attempting to violate, directly or indirectly, or assisting in
23 or abetting the violation of or conspiring to violate any provision or term of this
24 chapter or of the applicable federal and state laws and regulations governing
25 pharmacy, including regulations established by the board or by any other state
26 or federal regulatory agency.

27 13. Section 4327 of the Code states that any person who, while on duty, sells, dispenses
28 or compounds any drug while under the influence of any dangerous drug or alcoholic beverages
shall be guilty of a misdemeanor.

14. Title 16, California Code of Regulations, section 1669 states in part:

(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
convicted of a crime, the board, in evaluating the rehabilitation of such person
and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee

///

///

1 15. Title 16, California Code of Regulations, section 1770, states:

2 For the purpose of denial, suspension, or revocation of a personal or
3 facility license pursuant to Division 1.5 (commencing with Section 475) of the
4 Business and Professions Code, a crime or act shall be considered substantially
5 related to the qualifications, functions or duties of a licensee or registrant if to a
6 substantial degree it evidences present or potential unfitness of a licensee or
7 registrant to perform the functions authorized by his license or registration in a
8 manner consistent with the public health, safety, or welfare.

9 16. Health and Safety Code section 11170 states that no person shall prescribe,
10 administer, or furnish a controlled substance for herself.

11 17. Health and Safety Code section 11350, subdivision (a) states:

12 (a) Except as otherwise provided in this division, every person who
13 possesses (1) any controlled substance specified in subdivision (b) or (c), or
14 paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),
15 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b)
16 or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2)
17 any controlled substance classified in Schedule III, IV, or V which is a narcotic
18 drug, unless upon the written prescription of a physician, dentist, podiatrist, or
19 veterinarian licensed to practice in this state, shall be punished by imprisonment
20 pursuant to subdivision (h) of Section 1170 of the Penal Code.

21 COST RECOVERY

22 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.

28 DRUGS

29 19. Apidex, the brand name for phentermine, is a Schedule IV controlled substance under
30 California Health and Safety Code section 11057(f)(4), and is classified as a dangerous drug
31 pursuant to Business and Professions Code section 4022. It is used in the treatment of obesity.

32 20. Flexeril, the brand name for cyclobenzaprine, is a dangerous drug pursuant to
33 Business and Professions Code section 4022. It is used in the treatment of muscle pain.

34 21. Motrin, a brand name for ibuprofen, is a dangerous drug pursuant to Business and
35 Professions Code section 4022. It is used in the treatment of inflammation.

1 22. Norco, a brand name for hydrocodone with acetaminophen, is a Schedule III
2 controlled substance as designated by Health and Safety Code section 11056(e)(4) and is
3 classified as dangerous drug pursuant to section 4022. It is used in the treatment of moderate
4 pain.

5 23. Norflex, a brand name for orphenadrine, is a dangerous drug pursuant to Business and
6 Professions Code section 4022. It is used as a muscle relaxant.

7 24. ProSom, a brand name for estazolam, is a Schedule IV controlled substance under
8 California Health and Safety Code section 11057(d)(10), and is classified as a dangerous drug
9 pursuant to Business and Professions Code section 4022. It is used in the treatment of insomnia.

10 25. Soma, sold generically as carisoprodol, is a dangerous drug pursuant to Business and
11 Professions Code section 4022. It is used in the treatment of muscle pain.

12 26. Vicodin ES, a brand name for hydrocodone and acetaminophen, is a Schedule III
13 controlled substance as designated by Health and Safety Code Section 11055(e)(4), and is a
14 dangerous drug pursuant to Business and Professions Code section 4022.

15 27. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance as
16 designated by Health and Safety Code section 11057(d)(1), and is a dangerous drug pursuant to
17 Business and Professions Code section 4022. Alprazolam tablets are indicated for the
18 management of anxiety disorder or the short-term relief of symptoms of anxiety.

19 FACTS

20 28. Respondent was employed as a pharmacist at Sav-On Pharmacy #6734 located in the
21 Albertson's store in Murrieta from November, 2010 until October 14, 2011. On or about
22 September 22, 2011, Sav-On's Loss Prevention Office was notified of possible missing controlled
23 substances from the pharmacy. Six covert cameras were subsequently installed in the pharmacy.
24 Following an inventory of controlled substances on or about September 26, 2011, it was
25 discovered that approximately 100 hydrocodone tablets were missing.

26 29. The surveillance cameras recorded several days when Respondent punched out on the
27 time clock and then re-entered the pharmacy for up to two hours after closing. On October 11,
28 2011, the surveillance cameras recorded Respondent entering the pharmacy after closing, working

1 off the clock, placing unidentified pills in her pocket and counting additional unidentified pills
2 and placing them in her personal bag.

3 30. An inventory of the controlled substances at Sav-On #6734 revealed the following
4 missing drugs on the days when Respondent worked:

Date Missing	Drug	Quantity
5/18/11	Hydrocodone	3 tablets
7/7/11	Hydrocodone	322 tablets
8/7/11	Alprazolam 0.25 mg	60 tablets
8/17/11	Hydrocodone	138 tablets
8/28/11	Alprazolam 0.25 mg	60 tablets
9/13/11	Hydrocodone	230 tablets
9/15/11	Alprazolam 0.5 mg	92 tablets
9/18/11	Hydrocodone	90 tablets
9/22/11	Hydrocodone	100 tablets
9/25/11	Alprazolam 0.5 mg	31 tablets
10/4/11	Hydrocodone	93 tablets
10/13/11	Phentermine 37.5 mg	33 tablets
10/13/11	Alprazolam 0.25 mg	65 tablets

19
20 31. On October 14, 2011, D.B. interviewed Respondent at Sav-On Pharmacy #6734.
21 Respondent admitted she falsified her Time and Attendance form to show she was off the clock
22 but later re-entered the pharmacy. Respondent was asked why she worked off the clock.
23 Respondent explained that it was because other employees were not working to the best of their
24 abilities, which resulted in Respondent being unable to complete her duties on time. Respondent
25 admitted she took pills from the pharmacy when she was off the clock and after the pharmacy had
26 closed. She admitted that she took the pills from the pharmacy for her personal use.

27 32. Respondent stated that she had been drinking more and that she was stealing drugs
28 from the pharmacy because she could not sleep. Respondent admitted she took generic Norco,

1 Xanax, Soma, estazolam, generic Ambien and generic Flexeril, oraphedrine and ibuprofen. She
2 stated she did not take Schedule II controlled substances because she knew those drugs were
3 closely watched. She usually took pills from the pharmacy once a week. She stated the first time
4 she stole medication was when she worked as a floater pharmacist at the Lake Elsinore pharmacy,
5 Sav-On Pharmacy #6798. Respondent worked at Sav-On Pharmacy #6798 four times between
6 late February and early March in 2011.

7 33. Respondent admitted she took and used generic Xanax 0.25 mg while at work. She
8 used the muscle relaxants she had taken from the pharmacy after work and on her days off.
9 Respondent stated that when customers tried to obtain early refills of medication, Respondent
10 changed the dispense date and kept the drugs herself.

11 34. After Respondent's admissions, D.B. contacted the Riverside County Sheriff's
12 Department. Deputies arrived at Sav-On Pharmacy #6734. D.B. advised the deputies of
13 Respondent's admissions and written statement. Respondent was transported to the Sheriff's
14 Station. While searching Respondent's property, 12 yellow oblong pills labeled "Watson 853"
15 were found in her make-up bag. The pills were identified as hydrocodone. In addition, the
16 deputy also found 10 white oval pills marked "603", which were identified as alprazolam.
17 Respondent was arrested and charged with violation of Penal Code section 459, burglary, Health
18 and Safety Code section 11350, possession of a controlled substance and Penal Code 503,
19 embezzlement.

20 35. On November 2, 2011, Supervalu Pharmacies sent the Board a copy of the DEA 106
21 Loss Report documenting the following drug loss due to employee pilferage from Sav-On #6798,
22 in Lake Elsinore:

23	Drug	Dosage and Form	Quantity Missing
24	Phentermine	15 mg capsule	20
25	Phentermine	30 mg capsule	15
26	Hydrocodone/APAP 10-325	Tablets	109
27	Phentermine	37.5 mg tablets	25

Alprazolam	0.5 mg tablet	122
Alprazolam	1 mg tablet	28
TOTAL		319 tablets

36. On November 8, 2011, Supervalu Pharmacies sent the Board a copy of the DEA 106 Loss Report documenting the following drug loss due to employee pilferage from Sav-On #6734, in Murrieta:

Drug	Dosage and Form	Quantity Missing
Hydrocodone/APAP 7.5-750	tablet	114
Estazolam	2 mg tablet	30
Hydrocodone/APAP 10-325	Tablet	976
Phentermine	37.5 mg tablet	33
Alprazolam	0.25 tablet	212
Alprazolam	0.5 mg tablet	100
Apidex	37.5 mg tablet	100
TOTAL		1,566 tablets

37. On November 9, 2011, a criminal complaint was filed against Respondent in *People of the State of California v. Leena Celeste Basurto*, Riverside County Superior Court Case No. SWF1102791, which charged Respondent with violation of Health and Safety Code section 11350, possession of a controlled substance, a felony (Count 1), and Penal Code 503, embezzlement, a misdemeanor (Count 2). On December 19, 2011, Respondent was convicted on her guilty plea. Judgment was deferred for Count 1 pursuant to Penal Code section 1000 and was required to enroll and employ with the court's diversion program. As to Count 2, Respondent was sentenced to 36 months probation, one day in custody, ordered to pay fines and fees of \$939.84, ordered to pay restitution and ordered to stay away from Albertson's supermarkets. On April 23, 2012, Respondent was terminated from the Penal Code 1000 diversion program, the probation order revoked and a bench warrant issued for Respondent.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(December 19, 2011 Conviction of Possession of Controlled Substances**
3 **And Embezzlement)**

4 38. Respondent is subject to disciplinary action under Code sections 490 and 4301,
5 subdivision (l), in that on December 19, 2011, in *People of the State of California v. Leena*
6 *Celeste Basurto*, Riverside County Superior Court Case No. SWF1102791, Respondent was
7 convicted on her guilty plea of violation of Health and Safety Code section 11350, possession of a
8 controlled substance, a crime that is substantially related to the qualifications, functions and
9 duties of a pharmacist, as more fully set forth in paragraphs 28-37 and incorporated herein as
10 though set forth in full.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Dishonesty)**

13 39. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
14 for unprofessional conduct in that Respondent, while employed as a pharmacist at Sav-On
15 pharmacies, committed acts involving dishonesty, fraud and deceit, when she falsified her Time
16 and Attendance forms to show she was off the clock but later re-entered the pharmacy and stole
17 controlled substances and/or dangerous drugs from the pharmacy for her personal use, as more
18 fully set forth in paragraphs 28-37 and incorporated herein as though set forth in full.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Self-Administration of a Controlled Substance)**

21 40. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
22 in conjunction with Health and Safety Code section 11170, for unprofessional conduct in the self-
23 administration of a controlled substance, in that Respondent, while employed as a pharmacist at
24 Sav-On pharmacies, stole controlled substances from her employer and self-administered these
25 drugs, as more fully set forth in paragraphs 28-37 and incorporated herein as though set forth in
26 full.

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of a Controlled Substance)**

3 41. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
4 for unprofessional conduct for administering controlled substances to herself, or using any
5 dangerous drug, to the extent or in a manner as to be dangerous to herself or to the extent the use
6 impairs Respondent's ability to practice pharmacy safely, as more fully set forth in paragraphs
7 28-37 and incorporated herein as though set forth in full.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Possession of Controlled Substances)**

10 42. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
11 in conjunction with Code section 4060 and Health and Safety Code section 11350, for
12 unprofessional conduct in that Respondent unlawfully possessed controlled substances.
13 Respondent, while employed as a pharmacist at Sav-On pharmacies, stole controlled substances
14 from her employer for her personal use and on October 14, 2011 was found to be in possession of
15 hydrocodone and alprazolam, as more fully set forth in paragraphs 28-37 and incorporated herein
16 as though set forth in full.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Dispensing While Under the Influence of a Controlled Substance)**

19 43. Respondent is subject to disciplinary action under Code section 4301, subdivision (o),
20 in conjunction with section 4327, in that Respondent dispensed drugs during her shift as a
21 pharmacist at Sav-On pharmacy while under the influence of controlled substances, as more fully
22 set forth in paragraphs 28-37 and incorporated herein as though set forth in full.

23 **DISCIPLINE CONSIDERATIONS**

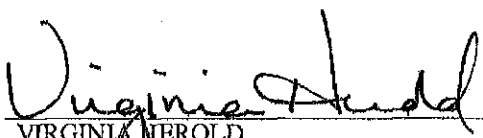
24 44. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that on or about September 12, 2011, in a prior action, the Board of
26 Pharmacy issued Citation Number CI 2011 49459 to Respondent for failing to notify the Board
27 within 30 days of her termination from her employment as the pharmacist-in-charge at CVS
28

1 Pharmacy #9159 on March 10, 2010. This was a violation of Code section 4101, subdivision (a).
2 This Citation is now final and is incorporated by reference as if fully set forth.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacist License Number RPH 61580, issued to Leena
7 Celeste Basurto;
8 2. Ordering Leena Celeste Basurto to pay the Board of Pharmacy the reasonable costs of
9 the investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;
11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 3/21/13 
15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 SD2012704375
22 70676998.doc
23
24
25
26
27
28