

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

In the Matter of the First Amended Accusation
Against:

GERARDO CASTILLO
a.k.a. GERARDO CASTILLO RICO
904 Elm Avenue
Modesto, CA 95351

Intern Pharmacist License No. INT 22538
Original Pharmacist License No. RPH 68819

Respondent.

Case No. 4469

OAH No. 2013070239

DECISION AFTER REJECTION OF THE PROPOSED DECISION

This matter was heard before the Administrative Law Judge (ALJ) Jonathan Lew, Office of Administrative Hearings, on January 7, 2015, in Modesto, California. Anahita S. Crawford, Deputy Attorney General, appeared on behalf of complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. Gerardo Castillo appeared on his own behalf.

Evidence and testimony were received. The ALJ left the record open pending submission of a Certification of Prosecution Costs, and opportunity for respondent to respond. Complainant submitted a Certification of Prosecution Costs on January 9, 2015, which was marked and received into evidence as Exhibit 9. Respondent filed no response. The record was thereafter closed, and the matter was submitted to the ALJ for decision on January 16, 2015.

The ALJ issued a Proposed Decision on February 4, 2015, and, after due consideration, the Board declined to adopt that decision as its own. On March 23, 2015, the parties were notified of the Board's rejection and intention to consider the matter itself upon the record. On April 27, 2015, the parties were notified that the transcript had been received and the deadline for the parties to submit written argument was set for May 27, 2015. Written argument was timely received by the complainant. No argument was received by respondent.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument, now issues the following decision:

FACTUAL FINDINGS

1. On May 9, 2013, complainant issued an Accusation against Gerardo Castillo (respondent) seeking to revoke or suspend his Intern Pharmacist Registration Number INT 22538. Complainant subsequently filed a First Amended Accusation on March 3, 2014, seeking disciplinary action as well against respondent's Original Pharmacist License Number RPH 68819. Complainant alleges that respondent has: 1) engaged in dishonest acts; 2) violated statutes regulating dangerous drugs and controlled substances; 3) violated pharmacy laws; and 4) committed acts that would have warranted a denial of his Original Pharmacist License.

2. The Board first issued Intern Pharmacist Registration Number INT 22538 to respondent on August 22, 2008. On June 25, 2013, the Board issued Original Pharmacist License Number RPH 68819 to respondent. The Intern Pharmacist Registration and/or Original Pharmacist License were in full force and effect at all times pertinent to this case. The Original Pharmacist License was set to expire on February 28, 2015, unless renewed. The Intern Pharmacist Registration was, however, cancelled on the same day the Original Pharmacist License issued. The Board's jurisdiction over the cancelled license is addressed below in the Legal Conclusions.

May 19, 2012 Incident

3. In May 2012, respondent was employed as a pharmacy intern at a CVS Pharmacy located at 300 Travis Boulevard, Fairfield, California. The Pharmacist-In-Charge (PIC) was Ala Mohempour. The two knew each other, having attended the same pharmacy school, Touro University College of Pharmacy, in Vallejo, California. Both were working at the CVS Pharmacy on May 19, 2012. It was the first time that they had worked together at CVS. Mr. Mohempour instructed respondent to perform specific tasks, specifically telephoning customers and doing consultations at the window. Respondent was asked not to dispense or fill medications that day. Other employees were available to do this. Respondent nevertheless disregarded Mr. Mohempour's instruction and engaged in other tasks such as ringing up customers at the register. Mr. Mohempour redirected respondent to assigned tasks on multiple occasions. He became increasingly irritated and impatient with respondent's failure follow his instructions and to stay on task.

4. Respondent took a late afternoon lunch break. He walked to the front of the CVS store and purchased a snack. He then returned to the enclosed pharmacy area in the back of the store. He stopped at the end of the first aisle of the shelving area. Mr. Mohempour observed him and walked back to this area and asked respondent, "What is going on?" Respondent started

crying. Respondent held an open container of Alprazolam (2 mg)¹ in his hand which he was attempting to conceal underneath a can of Planters nuts. Mr. Mohempour grabbed respondent's wrist and forcibly opened the hand holding the medication container. Some pills fell to the floor. Mr. Mohempour demanded that respondent immediately leave the pharmacy. He paged the CVS store manager to escort respondent out of the store. Respondent was cooperative.

Mr. Mohempour determined that the medication container taken from respondent was a 100-count bottle of Alprazolam. The seal had been broken. Only 21 pills were recovered from respondent or found on the floor. The remaining 79 pills were never accounted for. Respondent was terminated from his employment with CVS based on this incident.

5. On May 23, 2012, the Board received a *CVS/Pharmacy Notification of Suspected Controlled Substance Theft or Significant Loss* report. Board Investigator Hilda Nip, Pharm.D. was assigned to investigate this case. She interviewed respondent on July 3, 2012. He reported that his behavior at CVS on May 19, 2012, was caused by several insensitive comments made by Mr. Mohempour. Respondent indicated that he did not attempt to take the Alprazolam container out of the pharmacy, and he repeatedly denied having taken any of the medications in the pharmacy, or to having any addiction to dangerous drugs or alcohol. He noted that he self-reported his actions to the CVS store manager and requested to be searched and tested for drugs. CVS denied his request. Respondent also indicated that he was legally prescribed Alprazolam, but never took the medication because he did not want to be medicated while working.

Respondent's Statements/Testimony

6. Respondent has admitted to opening the seal of the bottle of Alprazolam and attempting to remove the medication from the CVS Pharmacy without a valid prescription, and without an intention of paying for it. On May 22, 2012, he made a handwritten statement to CVS loss prevention. In answer to the question "Did you remove or attempt to remove Alprazolam 2 mg without a valid prescription from CVS # 9371 on 5/19/12?" he wrote: "Yes, I attempted to remove the medication. I was just standing there w/ the open bottle in deep thought about taking the medication when I was approached by Al." When asked if he intended to pay for the medication respondent wrote: "I knew I couldn't without a prescription, and had never wanted to take such a medication. But I was thinking irrationally ... "

7. On July 9, 2012, respondent provided the following handwritten explanation to the Board for his actions on May 19, 2012:

... Not to mention from a very young age I was diagnosed with
Panic Disorder, for which I see my Doctor and Therapist on a

¹ "Alprazolam" (also known as Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

regular basis. Thus far I have been able to manage without a problem. However, this day was much more than I was prepared to handle. I had already initiated the day with some very disturbing news, and once again found myself being poked by Al's rude comments. I suddenly began to feel so discouraged, angry and demoralized that I quickly became overwhelmed with anxiety. I felt as if the room was spinning and my heart was gonna burst out of my chest. But my biggest concern and fear of all was having a panic attack in front of my coworkers. I did everything possible to redirect my thinking. I remember buying a can of almonds and walking away and toward the aisle before even receiving my change. In this moment I briefly considered taking a Xanax tablet, which I had been prescribed, but chose to avoid. I even thought about calling my Physician in hopes of getting a prescription called in. But even then I was humiliated at the idea of Al knowing any of my medical history. When Al approached me the foil from the top had been removed by me, but the cotton still remained inside. He raised his voice and asked me to hand him whatever I had in my hands. I was very embarrassed and weeping when I handed him the bottle. He then very hastily grabbed it and yelled out "Leave now!" motioning with the same hand, I pleaded with him to see absolutely nothing had been removed. He then went on to threaten me twice, saying "Leave now! Before I make this worse for you!" I refused and immediately seeked the Store manager and also requested a full check on myself to prove I had nothing. I also informed both management and the inspector that the bottle was new and full. I wanted to make it very clear that I had nothing to hide. I also agreed to any drug testing necessary.

8. At hearing, respondent assumed full responsibility for his actions. He explained that at that time he was close to taking the Board examination and that there were "so many distractions" in his personal life. These personal issues were straining him and he "broke down emotionally." He believes that this put him in a bad position, and that it was exacerbated by the fact that he did not have a good relationship with the PIC, Mr. Mohempour. He described that day as a "perfect storm" of cascading events. He and the PIC got off to a bad start. He felt he was being judged and "bullied" by Mr. Mohempour. He became very wrapped up in being angry and emotional. He now understands that he should not have been so temperamental. Respondent admitted to taking the bottle and breaking the seal, but is adamant that he did not ingest any Alprazolam.

Rehabilitation Evidence

9. Respondent has participated in numerous therapy/counseling sessions, both individual and group. He participated in up to 10 hours of group sessions through the Center for Intervention on goal directed behaviors. He initially went to individual therapy on a weekly basis, and is now in monthly sessions. He noted that he is now more in control of his emotions and the way he interacts with others. By letter to respondent dated February 20, 2014, Annette Campo, MIT, confirmed that respondent has been in treatment to reduce anxiety and anger since June 5, 2012, and that he had participated in cognitive behavioral therapy, talk therapy and bibliotherapy. The latter involves the use of books in a planned reading program designed to facilitate the recovery of patients suffering from mental illness or emotional disturbance. Ms. Campo wrote:

During our time together, you have shown great willingness to participate in your treatment and have made great strides toward reaching your goal of reducing your anger and anxiety. This clinician believes that your interest in reaching your goals, and your willingness to engage in bibliotherapy, you have decreased much of your anger and anxiety. As we agreed, we will spread your sessions out so and work on termination over the next few months.

10. Respondent's treating physician is Jose G. Limon-Olivares, M.D. He has diagnosed respondent with Post Traumatic Stress Disorder and Panic Disorder. By letter dated May 27, 2012, Dr. Limon-Olivares noted that clinical manifestations and physical symptoms of respondent's panic attacks include "intense pounding of the heart an inability to move, dizziness, a feeling of being separated from reality, stomach sickness, numbing of the senses, tightening in the throat, an inability to breathe comfortably, hot or cold sensations, excessive perspiration, and shaking." Dr. Limon-Olivares elaborated further on respondent's condition:

Panic disorder is a problem characterized by extremely powerful feelings of fear and anxiety that quickly overwhelm a person. Most often, a panic attack will intensify over a ten to fifteen-minute period and will usually end within thirty minutes. They typically begin with hyperventilation that often accompanies fear and stress. People who struggle with other anxiety problems such as PTSD will also experience panic attacks when they're forced to do something that they're afraid of. However, people who have panic disorder experience multiple, unexpected panic attacks that seem to come out of nowhere. They also worry about the possibility of the attacks reoccurring and often change their behavior to try to prevent the attacks.

Dr. Limon-Olivares opined that in respondent's case the most effective treatment option will be a combination of psychotherapy and pharmacotherapy. He indicated that respondent was prescribed Xanax (Alprazolam) as needed for severe anxiety as of February 23, 2012.

Dr. Limon-Olivares recommended that his medications also include Effexor (Venlafaxine) 75 mg daily, along with cognitive behavioral therapy. He believes all of these approaches will help respondent "gain control over his condition."

11. Respondent views the events of May 19, 2012, as a scar in his history from which he would like to redeem himself and move forward. Following his termination from employment with CVS, he continued employment as a pharmacist with Carranza Pharmacy in Modesto. He averred that he disclosed everything to the owner, and remained employed there through 2014. He subsequently moved to Merced and worked at Rite Aid pharmacies in Chowchilla and Mariposa. He stopped working in June 2014 after Rite Aid human resources learned of this matter pending before the Board. He was terminated from employment after a short leave of absence. He has not worked as a pharmacist from that time forward. He remains unemployed.

Respondent is regularly involved with his family and church. He feels that he has a better understanding of the triggers that lead to his distress and anxiety, and that he is now better able to anticipate and manage such events. For example, if the events of May 19, 2012, were to recur, he would now ask to be excused and leave the premises. He believes that he has never felt so in control of his emotions as he is now. Respondent is not taking any prescription medications for his anxiety or panic disorder at this time.

Discussion

12. The Board certainly has legitimate and serious concerns in any case where a pharmacist obtains dangerous drugs or controlled substances by deceit or concealment of a material fact. Respondent admitted to opening the seal of the Alprazolam bottle and attempting to remove the medication from the pharmacy without a valid prescription, and without paying for it.

Pharmacists have regular access to dangerous drugs and controlled substances, as well access to confidential patient health and personal information. They hold positions of trust in our communities. The removal of medications for self-use or sale to the public may result in harm to the pharmacist or to the public. Pharmacists are further expected to exercise sound judgment in the performance of all their duties and responsibilities, and to do so at all times with self-control and alertness. They are also responsible for direct and careful supervision of ancillary pharmacy staff. Respondent's conduct on May 19, 2012, was in derogation of the very high standards governing his profession, and compromised his effectiveness and ability to perform pharmacist duties and responsibilities with competence and safety to the public.

13. Also considered in determining the degree of discipline to be imposed in this case is respondent's license history. On February 23, 2011, the Board issued a Letter of Admonishment to respondent pursuant to Business and Professions Code sections 4005 and 4315 for his failure to comply with the laws and regulations that govern the practice of pharmacy. The circumstances were that, in 2010, respondent was arrested and charged with driving under the influence of alcohol. He pled guilty to a violation of Vehicle Code section 23103, driving recklessly involving alcohol, a misdemeanor.

14. The events of May 19, 2012, are best understood and explained by respondent's underlying anxiety and panic disorder, conditions he has manifested throughout his life. He was feeling overwhelmed that day and his emotions were amplified to such degree that he was no longer in control. He perceived that his supervisor was both insensitive and bullying towards him. When approached by the PIC, he broke down emotionally and started weeping. There was no evidence that he ingested the Alprazolam. Respondent has consistently indicated that he offered that day to be both searched and drug tested. There is no evidence that respondent had engaged in similar or drug diverting behavior in the past.

15. At hearing, respondent was contrite and apologetic. He accepted responsibility for his actions. He has engaged in individual and group therapy directed at gaining control of his emotions and condition, and learning how to identify and respond to trigger events. Respondent impressed as being both sincere and committed to addressing his condition. He continues in monthly therapy. His therapist, Ms. Campo, confirmed the progress he has made to date. And his physician, Dr. Limon-Olivares, confirmed and explained the nature and extent of his disorder.

Respondent has yet to demonstrate, however, that he is now in full control of his emotions. He manifested a heightened level of emotional response at hearing despite the fact that he has been in therapy for some time. It is further noted that he has not followed his physician's recommendation to take medications in tandem with cognitive behavioral therapy. For these reasons, respondent has not demonstrated with requisite certainty that he will respond differently in the future when confronted with stressful circumstances as a pharmacist. It was not established that respondent can engage in unrestricted practice as a pharmacist at this time without risk of harm to the public.

16. Respondent is open to being placed on Board probation with any conditions that the Board deems appropriate to place on his license. Complainant is not opposed to respondent being placed on probation provided that as a condition precedent he undergo and pass a psychological evaluation to confirm that his mental condition is now well controlled, and that permitting him to practice under his license would not endanger the public health, safety or welfare. Complainant also recommends that any Board probation include participation in the Board's Pharmacist Recovery Program. Probation that includes the Pharmacist Recovery Program should also include provisions requiring drug and alcohol abstinence and testing to ensure compliance. In addition, respondent's history also warrants a term requiring respondent

to coordinate his prescriptions with a single provider, who can also monitor respondent for fitness to practice as a pharmacist and report to the Board. Given the gravity of the misconduct, a lengthy probation is appropriate.

With such condition precedent and other probationary terms and conditions in place, it would not be contrary to the public interest to place respondent on probation at this time.

Cost Recovery

17. Complainant has requested that respondent be ordered to pay costs incurred for investigation and enforcement, and for the legal work performed by the Attorney General's Office in this matter.

The Department of Justice provided a billing summary of time spent working on this case on various items including pleading preparation, case management, analysis/strategy, document analysis, communication with other party, and witness-related preparation, settlement preparation/negotiation. Total costs that the Department of Justice billed to the Board through the commencement of hearing equaled \$8,900 (52 attorney hours @ \$170, and .5 paralegal hours @ \$120). Complainant seeks an additional \$2,601 associated with investigation and report preparation time by Hilda Nip (25.5 hours @ \$102/hour).

Total costs incurred in connection with the investigation and prosecution of this case equal \$11,501. Complainant's request for costs is addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. Pursuant to Business and Professions Code section 4300.1, the expiration, cancellation, forfeiture, or suspension of a Board-issued license by operation of law or by order or decision of the Board or a court of law, does not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

3. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] ... [¶]

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

[¶] ... [¶]

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

[¶] ... [¶]

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

(p) Actions or conduct that would have warranted denial of a license.

4. Pursuant to Business and Professions Code section 4300, subdivision (c), the Board may refuse a license to any individual guilty of unprofessional conduct. In addition, Business and Professions Code section 480, subdivision (a)(3)(A), provides in part that a board may deny a license on grounds that an applicant has done "any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

5. Business and Professions Code section 4022 provides:

"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.

6. Health and Safety Code section 11173, subdivision (a), provides in part: "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact ..."

7. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (f), by reason of the matters set forth in Findings 3 through 8. It was established through clear and convincing evidence that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when he opened a bottle of Alprazolam and attempted to remove the medication from the pharmacy without a valid prescription, and without intention of paying for it.

8. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (j), by reason of the matters set forth in Findings 3 through 8. It was established through clear and convincing evidence that respondent attempted to obtain a dangerous drug and controlled substance by deceit or concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022.

9. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (o), by reason of the matters set forth in Findings 3 through 8. Respondent violated provisions of the applicable federal and state laws and regulations governing pharmacy.

10. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (p); as defined in section 4300, subdivision (c), and section 480, subdivision (a)(3)(A), by reason of the matters set forth in Findings 3 through 8. Respondent committed acts that would have warranted a denial of his Original Pharmacist License.

11. The matters set forth in Findings 9 through 16 have been considered. When all the evidence is considered, in order to ensure that the public health, safety and welfare are adequately protected, respondent's license should be placed on probation for three years under standard terms and conditions. As a condition precedent to being allowed to practice as a pharmacist, respondent must first undergo and pass a psychological evaluation to confirm that his mental condition is now well controlled, and that permitting him to practice under his license would not endanger the public health, safety or welfare. In addition, as a condition of probation respondent must participate in the Board's Pharmacist Recovery Program.

12. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal. 4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions

Code section 125.3. These 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 in light of the alleged misconduct.

13. Complainant seeks \$11,501 in costs. Respondent was successful in not having his licenses revoked. The scope of the investigation and prosecution was appropriate in light of the alleged misconduct. Respondent has been unemployed since June 2014. His brother has been assisting him financially. Paying full costs, however reasonable, would pose a significant financial hardship on respondent. When all the *Zuckerman* factors are considered, the reasonable costs of investigation and prosecution of this case are determined to be \$6,000. The Board may assess respondent's current financial circumstances, in determining whether he should be allowed to pay these costs over time according to a payment plan acceptable to the Board.

14. While cause exists to revoke respondent's cancelled intern pharmacist license as outlined above, by its nature, the intern pharmacist's registration is temporary, and the need for it ceases to exist once the original pharmacist's license is obtained. (Bus. & Prof. Code, §§ 4208, 4209; 16 C.C.R. §§ 1726, 1728.) Because respondent has actually received an original pharmacist's license, which license is also the subject of this proceeding, and because his intern registration is cancelled, the Board can neither reinstate the intern pharmacist registration nor place it on probation. Should, however, under facts not currently contemplated, there ever be a subsequent need for respondent to seek registration as an intern pharmacist, he will be required to demonstrate his then fitness for registration through a petition for reinstatement.

ORDER

Intern Pharmacist Registration Number INT 22538 and Original Pharmacist License Number RPH 68819 issued to respondent Gerardo Castillo, also known as Gerardo Castillo Rico, are revoked.

Intern Pharmacist Registration Number INT 22538 will remain cancelled.

The revocation of Original Pharmacist License Number RPH 68819, however, is stayed, and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Mental Health Examination. Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, but at least once every 12 months, respondent shall undergo, at his own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the Board's accusation and

decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the Board or its designee.

If the evaluator recommends, and the Board or its designee directs, respondent shall undergo psychotherapy. Within thirty (30) days of notification by the Board that a recommendation for psychotherapy has been accepted, respondent shall submit to the Board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof by the Board, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the Board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the Board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the Board, and the Board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the Board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate Board-appointed or Board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the Board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the Board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently as a pharmacist, the licensed mental health 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.

Commencing on the effective date of this decision, respondent shall not engage in the practice of pharmacy until notified in writing by the Board that respondent has been deemed psychologically fit to practice pharmacy safely, and the Board or its designee approves said recommendation.

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 or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

2. Pharmacists Recovery Program (PRP). 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 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 or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

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.

Respondent shall work in a pharmacy setting with access to controlled substances for six (6) consecutive months before successfully completing probation. If respondent fails to

do so, probation shall be automatically extended until this condition has been met. Failure to satisfy this condition within six (6) months beyond the original date of expiration of the term of probation shall be considered a violation of probation.

3. 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 the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she 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.

4. Random Drug Screening. Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. 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 the 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 or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

5. Prescription Coordination 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 alcohol, controlled substances, and/or dangerous drugs, and/or of mental illness, 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 or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

6. 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 seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

- a conviction of any crime, 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.

7. 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.

8. 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.

9. 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.

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

11. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4469 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (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 4469, and 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 4469 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 thirty (30) days of the effective date of this decision, and within fifteen (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 4469 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 respondent is an employee, independent contractor or volunteer.

12. 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.

13. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$6,000. Respondent shall make said payments in accordance with any installment payment plan worked out with the Board or its designee.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

14. 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.

15. 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.

16. 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 ten (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 payment of any outstanding costs.

17. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

18. 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 40 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 40 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 40 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 40 hours as a pharmacist as defined by Business and Professions Code section 4000, et seq.

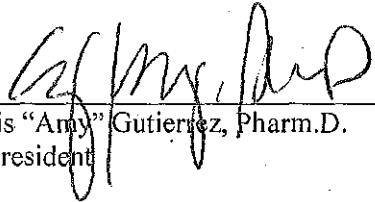
19. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as 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.

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

This Decision shall become effective August 31, 2015.

IT IS SO ORDERED this 30th day of July, 2015.



Amarylis "Amy" Gutierrez, Pharm.D.
Board President

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

In the Matter of the First Amended Accusation
Against:

Case No. 4469

OAH No. 2013070239

GERARDO CASTILLO
a.k.a **GERARDO CASTILLO RICO**
904 Elm Avenue
Modesto, CA 95351

Intern Pharmacist License No. INT 22538
Original Pharmacist License No. RPH 68819

Respondent.

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

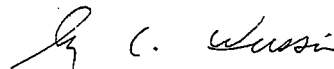
ORDER OF NONADOPTION OF PROPOSED DECISION

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the Proposed Decision in Administrative Case No. 4469. A copy of the Proposed Decision is attached hereto.

The Board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered a transcript and will notify the parties when the transcript has been prepared and the date set for the submission of written argument.

IT IS SO ORDERED this 23rd day of March, 2015.

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 First Amended Accusation
Against:

GERARDO CASTILLO
a.k.a. GERARDO CASTILLO RICO
Modesto, CA 95351

Intern Pharmacist License No. INT 22538
Original Pharmacist License No. RPH 68819

Respondent.

Case No. 4469

OAH No. 2013070239

PROPOSED DECISION

This matter was heard before the Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on January 7, 2015, in Modesto, California.

Anahita S. Crawford, Deputy Attorney General, appeared on behalf of complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Gerardo Castillo appeared on his own behalf.

Evidence and testimony were received. The record remained open pending submission of a Certification of Prosecution Costs, and opportunity for respondent to respond. Complainant submitted a Certification of Prosecution Costs on January 9, 2015, which was marked and received into evidence as Exhibit 9. Respondent filed no response. The record was thereafter closed, and the matter was submitted for decision on January 16, 2015.

FACTUAL FINDINGS

1. On May 9, 2013, complainant issued an Accusation against Gerardo Castillo (respondent) seeking to revoke or suspend his Intern Pharmacist Registration Number INT 22538. Complainant subsequently filed a First Amended Accusation on March 3, 2014,

seeking disciplinary action as well against respondent's Original Pharmacist License Number RPH 68819. Complainant alleges that respondent has: 1) engaged in dishonest acts; 2) violated statutes regulating dangerous drugs and controlled substances; 3) violated pharmacy laws; and 4) committed acts that would have warranted a denial of his Original Pharmacist License.

2. The Board first issued Intern Pharmacist Registration Number INT 22538 to respondent on August 22, 2008. On June 25, 2013, the Board issued Original Pharmacist License Number RPH 68819 to respondent. The Intern Pharmacist Registration and/or Original Pharmacist License were in full force and effect at all times pertinent to this case. The Original Pharmacist License will expire on February 28, 2015, unless renewed.

May 19, 2012 Incident

3. In May 2012, respondent was employed as a pharmacy intern at a CVS Pharmacy located at 300 Travis Boulevard, Fairfield, California. The Pharmacist-In-Charge (PIC) was Ala Mohempour. The two knew each other, having attended the same pharmacy school, Touro University College of Pharmacy, in Vallejo, California. Both were working at the CVS Pharmacy on May 19, 2012. It was the first time that they had worked together at CVS. Mr. Mohempour instructed respondent to perform specific tasks, specifically telephoning customers and doing consultations at the window. Respondent was asked not to dispense or fill medications that day. Other employees were available to do this. Respondent nevertheless disregarded Mr. Mohempour's instruction and engaged in other tasks such as ringing up customers at the register. Mr. Mohempour redirected respondent to assigned tasks on multiple occasions. He became increasingly irritated and impatient with respondent's failure follow his instructions and to stay on task.

4. Respondent took a late afternoon lunch break. He walked to the front of the CVS store and purchased a snack. He then returned to the enclosed pharmacy area in the back of the store. He stopped at the end of the first aisle of the shelving area. Mr. Mohempour observed him and walked back to this area and asked respondent, "What is going on?" Respondent started crying. Respondent held an open container of Alprazolam (2 mg)¹ in his hand which he was attempting to conceal underneath a can of Planters nuts. Mr. Mohempour grabbed respondent's wrist and forcibly opened the hand holding the medication container. Some pills fell to the floor. Mr. Mohempour demanded that respondent immediately leave the pharmacy. He paged the CVS store manager to escort respondent out of the store. Respondent was cooperative.

¹ "Alprazolam" (also known as Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

Mr. Mohempour determined that the medication container taken from respondent was a 100-count bottle of Alprazolam. The seal had been broken. Only 21 pills were recovered from respondent or found on the floor. The remaining 79 pills were never accounted for. Respondent was terminated from his employment with CVS based on this incident.

5. On May 23, 2012, the Board received a *CVS/Pharmacy Notification of Suspected Controlled Substance Theft or Significant Loss* report. Board Investigator Hilda Nip, Pharm.D. was assigned to investigate this case. She interviewed respondent on July 3, 2012. He reported that his behavior at CVS on May 19, 2012, was caused by several insensitive comments made by Mr. Mohempour. Respondent indicated that he did not attempt to take the Alprazolam container out of the pharmacy, and he repeatedly denied having taken any of the medications in the pharmacy, or to having any addiction to dangerous drugs or alcohol. He noted that he self-reported his actions to the CVS store manager and requested to be searched and tested for drugs. CVS denied his request. Respondent also indicated that he was legally prescribed Alprazolam, but never took the medication because he did not want to be medicated while working.

Respondent's Statements/Testimony

6. Respondent has admitted to opening the seal of the bottle of Alprazolam and attempting to remove the medication from the CVS Pharmacy without a valid prescription, and without an intention of paying for it. On May 22, 2012, he made a handwritten statement to CVS loss prevention. In answer to the question "Did you remove or attempt to remove Alprazolam 2 mg without a valid prescription from CVS # 9371 on 5/19/12?" he wrote: "Yes, I attempted to remove the medication. I was just standing there w/ the open bottle in deep thought about taking the medication when I was approached by Al." When asked if he intended to pay for the medication respondent wrote: "I knew I couldn't without a prescription, and had never wanted to take such a medication. But I was thinking irrationally..."

7. On July 9, 2012, respondent provided the following handwritten explanation to the Board for his actions on May 19, 2012:

... Not to mention from a very young age I was diagnosed with Panic Disorder, for which I see my Doctor and Therapist on a regular basis. Thus far I have been able to manage without a problem. However, this day was much more than I was prepared to handle. I had already initiated the day with some very disturbing news, and once again found myself being poked by Al's rude comments. I suddenly began to feel so discouraged, angry and demoralized that I quickly became overwhelmed with anxiety. I felt as if the room was spinning and my heart was gonna burst out of my chest. But my biggest concern and fear of all was having a panic attack in front of my coworkers. I did everything possible to redirect my thinking. I

remember buying a can of almonds and walking away and toward the aisle before even receiving my change. In this moment I briefly considered taking a Xanax tablet, which I had been prescribed, but chose to avoid. I even thought about calling my Physician in hopes of getting a prescription called in. But even then I was humiliated at the idea of Al knowing any of my medical history. When Al approached me the foil from the top had been removed by me, but the cotton still remained inside. He raised his voice and asked me to hand him whatever I had in my hands. I was very embarrassed and weeping when I handed him the bottle. He then very hastily grabbed it and yelled out "Leave now!" motioning with the same hand, I pleaded with him to see absolutely nothing had been removed. He then went on to threaten me twice, saying "Leave now! Before I make this worse for you!" I refused and immediately sought the Store manager and also requested a full check on myself to prove I had nothing. I also informed both management and the inspector that the bottle was new and full. I wanted to make it very clear that I had nothing to hide. I also agreed to any drug testing necessary.

8. At hearing, respondent assumed full responsibility for his actions. He explained that at that time he was close to taking the Board examination and that there were "so many distractions" in his personal life. These personal issues were straining him and he "broke down emotionally." He believes that this put him in a bad position, and that it was exacerbated by the fact that he did not have a good relationship with the PIC, Mr. Mohempour. He described that day as a "perfect storm" of cascading events. He and the PIC got off to a bad start. He felt he was being judged and "bullied" by Mr. Mohempour. He became very wrapped up in being angry and emotional. He now understands that he should not have been so temperamental. Respondent admitted to taking the bottle and breaking the seal, but is adamant that he did not ingest any Alprazolam.

Rehabilitation Evidence

9. Respondent has participated in numerous therapy/counseling sessions, both individual and group. He participated in up to 10 hours of group sessions through the Center for Intervention on goal directed behaviors. He initially went to individual therapy on a weekly basis, and is now in monthly sessions. He noted that he is now more in control of his emotions and the way he interacts with others. By letter to respondent dated February 20, 2014, Annette Campo, MFT, confirmed that respondent has been in treatment to reduce anxiety and anger since June 5, 2012, and that he had participated in cognitive behavioral therapy, talk therapy and bibliotherapy. The latter involves the use of books in a planned reading program designed to facilitate the recovery of patients suffering from mental illness or emotional disturbance. Ms. Campo wrote:

During our time together, you have shown great willingness to participate in your treatment and have made great strides toward reaching your goal of reducing your anger and anxiety. This clinician believes that your interest in reaching your goals, and your willingness to engage in bibliotherapy, you have decreased much of your anger and anxiety. As we agreed, we will spread your sessions out so and work on termination over the next few months.

10. Respondent's treating physician is Jose G. Limon-Olivares, M.D. He has diagnosed respondent with Post Traumatic Stress Disorder and Panic Disorder. By letter dated May 27, 2012, Dr. Limon-Olivares noted that clinical manifestations and physical symptoms of respondent's panic attacks include "intense pounding of the heart, an inability to move, dizziness, a feeling of being separated from reality, stomach sickness, numbing of the senses, tightening in the throat, an inability to breathe comfortably, hot or cold sensations, excessive perspiration, and shaking." Dr. Limon-Olivares elaborated further on respondent's condition:

Panic disorder is a problem characterized by extremely powerful feelings of fear and anxiety that quickly overwhelm a person. Most often, a panic attack will intensify over a ten to fifteen-minute period and will usually end within thirty minutes. They typically begin with hyperventilation that often accompanies fear and stress. People who struggle with other anxiety problems such as PTSD will also experience panic attacks when they're forced to do something that they're afraid of. However, people who have panic disorder experience multiple, unexpected panic attacks that seem to come out of nowhere. They also worry about the possibility of the attacks reoccurring and often change their behavior to try to prevent the attacks.

Dr. Limon-Olivares opined that in respondent's case the most effective treatment option will be a combination of psychotherapy and pharmacotherapy. He indicated that respondent was prescribed Xanax (Alprazolam) as needed for severe anxiety as of February 23, 2012. Dr. Limon-Olivares recommended that his medications also include Effexor (Venlafaxine) 75 mg daily, along with cognitive behavioral therapy. He believes all of these approaches will help respondent "gain control over his condition."

11. Respondent views the events of May 19, 2012, as a scar in his history from which he would like to redeem himself and move forward. Following his termination from employment with CVS, he continued employment as a pharmacist with Carranza Pharmacy in Modesto. He averred that he disclosed everything to the owner, and remained employed there through 2014. He subsequently moved to Merced and worked at Rite Aid pharmacies in Chowchilla and Mariposa. He stopped working in June 2014 after Rite Aid human

resources learned of this matter pending before the Board. He was terminated from employment after a short leave of absence. He has not worked as a pharmacist from that time forward. He remains unemployed.

Respondent is regularly involved with his family and church. He feels that he has a better understanding of the triggers that lead to his distress and anxiety, and that he is now better able to anticipate and manage such events. For example, if the events of May 19, 2012, were to recur, he would now ask to be excused and leave the premises. He believes that he has never felt so in control of his emotions as he is now. Respondent is not taking any prescription medications for his anxiety or panic disorder at this time.

Discussion

12. The Board certainly has legitimate and serious concerns in any case where a pharmacist obtains dangerous drugs or controlled substances by deceit or concealment of a material fact. Respondent admitted to opening the seal of the Alprazolam bottle and attempting to remove the medication from the pharmacy without a valid prescription, and without paying for it.

Pharmacists have regular access to dangerous drugs and controlled substances, as well access to confidential patient health and personal information. They hold positions of trust in our communities. The removal of medications for self-use or sale to the public may result in harm to the pharmacist or to the public. Pharmacists are further expected to exercise sound judgment in the performance of all their duties and responsibilities, and to do so at all times with self-control and alertness. They are also responsible for direct and careful supervision of ancillary pharmacy staff. Respondent's conduct on May 19, 2012, was in derogation of the very high standards governing his profession, and compromised his effectiveness and ability to perform pharmacist duties and responsibilities with competence and safety to the public.

13. Also considered in determining the degree of discipline to be imposed in this case is respondent's license history. On February 23, 2011, the Board issued a Letter of Admonishment to respondent pursuant to Business and Professions Code sections 4005 and 4315 for his failure to comply with the laws and regulations that govern the practice of pharmacy. The circumstances were that respondent was arrested and charged with driving under the influence of alcohol. He pled guilty to a violation of Vehicle Code section 23103; driving recklessly involving alcohol, a misdemeanor.

14. The events of May 19, 2012, are best understood and explained by respondent's underlying anxiety and panic disorder, conditions he has manifested throughout his life. He was feeling overwhelmed that day and his emotions were amplified to such degree that he was no longer in control. He perceived that his supervisor was both insensitive and bullying towards him. When approached by the PIC, he broke down emotionally and started weeping. There was no evidence that he ingested the Alprazolam.

Respondent has consistently indicated that he offered that day to be both searched and drug tested. There is no evidence that respondent had engaged in similar or drug diverting behavior in the past.

15. At hearing, respondent was contrite and apologetic. He accepted responsibility for his actions. He has engaged in individual and group therapy directed at gaining control of his emotions and condition, and learning how to identify and respond to trigger events. Respondent impressed as being both sincere and committed to addressing his condition. He continues in monthly therapy. His therapist, Ms. Campo, confirmed the progress he has made to date. And his physician, Dr. Limon-Olivares, confirmed and explained the nature and extent of his disorder.

Respondent has yet to demonstrate, however, that he is now in full control of his emotions. He manifested a heightened level of emotional response at hearing despite the fact that he has been in therapy for some time. It is further noted that he has not followed his physician's recommendation to take medications in tandem with cognitive behavioral therapy. For these reasons respondent has not demonstrated with requisite certainty that he will respond differently in the future when confronted with stressful circumstances as a pharmacist. It was not established that respondent can engage in unrestricted practice as a pharmacist at this time without risk of harm to the public.

16. Respondent is open to being placed on Board probation with any conditions that the Board deems appropriate to place on his license. Complainant is not opposed to respondent being placed on probation provided that as a condition precedent he undergo and pass a psychological evaluation to confirm that his mental condition is now well controlled, and that permitting him to practice under his license would not endanger the public health, safety or welfare. Complainant also recommends that any Board probation include participation in the Board's Pharmacist Recovery Program.

With such condition precedent and other probationary terms and conditions in place, it would not be contrary to the public interest to place respondent on probation at this time.

Cost Recovery

17. Complainant has requested that respondent be ordered to pay costs incurred for investigation and enforcement, and for the legal work performed by the Attorney General's Office in this matter.

The Department of Justice provided a billing summary of time spent working on this case on various items including pleading preparation, case management, analysis/strategy, document analysis, communication with other party, and witness-related preparation, settlement preparation/negotiation. Total costs that the Department of Justice billed to the Board through the commencement of hearing equaled \$8,900 (52 attorney hours @ \$170, and .5 paralegal hours @ \$120). Complainant seeks an additional \$2,601 associated with investigation and report preparation time by Hilda Nip (25.5 hours @ \$102/hour).

Total costs incurred in connection with the investigation and prosecution of this case equal \$11,501. Complainant's request for costs is addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] ... [¶]

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

[¶] ... [¶]

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

[¶] ... [¶]

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

(p) Actions or conduct that would have warranted denial of a license.

3. Pursuant to Business and Professions Code section 4300, subdivision (c), the Board may refuse a license to any individual guilty of unprofessional conduct. In addition, Business and Professions Code section 480, subdivision (a)(3)(A), provides in part that a board may deny a license on grounds that an applicant has done "any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

4. Business and Professions Code section 4022 provides:

“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.

5. Health and Safety Code section 11173, subdivision (a), provides in part: “No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact...”

6. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (f), by reason of the matters set forth in Findings 3 through 8. It was established through clear and convincing evidence that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when he opened a bottle of Alprazolam and attempted to remove the medication from the pharmacy without a valid prescription, and without intention of paying for it.

7. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (j), by reason of the matters set forth in Findings 3 through 8. It was established through clear and convincing evidence that respondent attempted to obtain a dangerous drug and controlled substance by deceit or concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022.

8. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (o), by reason of the matters set forth in Findings 3 through 8. Respondent violated provisions of the applicable federal and state laws and regulations governing pharmacy.

9. Cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (p); as defined in section 4300, subdivision (c), and section 480, subdivision (a)(3)(A), by reason of the matters set forth in Findings 3 through 8. Respondent committed acts that would have warranted a denial of his Original Pharmacist License.

10. The matters set forth in Findings 9 through 16 have been considered. When all the evidence is considered, in order to ensure that the public health, safety and welfare are adequately protected, respondent's license should be placed on probation for three years under standard terms and conditions. As a condition precedent to being allowed to practice as a pharmacist, respondent must first undergo and pass a psychological evaluation to confirm that his mental condition is now well controlled, and that permitting him to practice under his license would not endanger the public health, safety or welfare. In addition, as a condition of probation respondent must participate in the Board's Pharmacist Recovery Program.

11. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These 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 in light of the alleged misconduct.

12. Complainant seeks \$11,501 in costs. Respondent was successful in not having his licenses revoked. The scope of the investigation and prosecution was appropriate in light of the alleged misconduct. Respondent has been unemployed since June 2014. His brother has been assisting him financially. Paying full costs, however reasonable, would pose a significant financial hardship on respondent. When all the *Zuckerman* factors are considered, the reasonable costs of investigation and prosecution of this case are determined to be \$6,000. The Board may assess respondent's current financial circumstances in determining whether he should be allowed to pay these costs over time according to a payment plan acceptable to the Board.

ORDER

Intern Pharmacist Registration Number INT 22538 and Original Pharmacist License Number RPH 68819 issued to respondent Gerardo Castillo, also known as Gerardo Castillo Rico, are revoked. However, the revocations are stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Mental Health Examination. Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, respondent shall undergo, at his own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a

current diagnosis and a written report regarding respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the Board or its designee.

If the evaluator recommends, and the Board or its designee directs, respondent shall undergo psychotherapy. Within thirty (30) days of notification by the Board that a recommendation for psychotherapy has been accepted, respondent shall submit to the Board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof by the Board, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the Board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the Board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the Board, and the Board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the Board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate Board-appointed or Board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the Board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the Board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the Board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently as a pharmacist, the licensed mental health 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.

Commencing on the effective date of this decision, respondent shall not engage in the practice of pharmacy until notified in writing by the Board that respondent has been deemed psychologically fit to practice pharmacy safely, and the Board or its designee approves said recommendation.

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 or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

2. Pharmacists Recovery Program (PRP). 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 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 or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

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.

Respondent shall work in a pharmacy setting with access to controlled substances for six (6) consecutive months before successfully completing probation. If respondent

fails to do so, probation shall be automatically extended until this condition has been met. Failure to satisfy this condition within six (6) months beyond the original date of expiration of the term of probation shall be considered a violation of probation.

3. 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 seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime, 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.

4. 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.

5. 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.

6. 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.

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

8. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4469 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (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 4469, and 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 4469 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 thirty (30) days of the effective date of this decision, and within fifteen (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 4469 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 respondent is an employee, independent contractor or volunteer.

9. 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.

10. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$6,000. Respondent shall make said payments in accordance with any installment payment plan worked out with the Board.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

11. 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.

12. 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.

13. 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 ten (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.

14. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

15. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for the Board-determined minimum number of 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 the Board-determined minimum number of hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

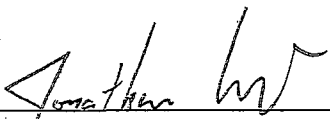
"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least the minimum hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist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

16. Violation of Probation. If a 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.

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

DATED: February 4, 2015



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
Against:

Case No. 4469

12 **GERARDO CASTILLO**
13 **A.K.A. GERARDO CASTILLO RICO**
14 **904 Elm Avenue**
Modesto, California 95351

FIRST AMENDED
ACCUSATION

15 **Intern Pharmacist License No. INT 22538**
16 **Original Pharmacist License No. RPH 68819**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about August 22, 2008, the Board of Pharmacy (Board), Department of
25 Consumer Affairs issued Intern Pharmacist Registration Number INT 22538 to Gerardo Castillo
26 also known as Gerardo Castillo Rico (Respondent). The Intern Pharmacist Registration was in
27 full force and effect at all times relevant to the charges brought herein and was cancelled on June
28 25, 2013.

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

6 ...

7 (p) Actions or conduct that would have warranted denial of a license.

8 8. Section 4300, subsection (c) states that the Board may refuse a license to any
9 individual guilty of unprofessional conduct.

10 9. Section 480 states in part that:

11 (a) A board may deny a license regulated by this code on the grounds
12 that the applicant has one of the following:

13 ...

14 (3)(A) Done any act that if done by a licentiate of the business or
15 profession in question, would be grounds for suspension or revocation of license.

16 10. Code section 4022 states:

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
18 self-use in humans or animals, and includes the following: (a) Any drug that bears the
19 legend: "Caution: federal law prohibits dispensing without prescription," "Rx only,"
20 or words of similar import. (b) Any device that bears the statement: "Caution: federal
21 law restricts this device to sale by or on the order of a _____," "Rx only," or words of
22 similar import, the blank to be filled in with the designation of the practitioner
23 licensed to use or order use of the device. (c) Any other drug or device that by federal
24 or state law can be lawfully dispensed only on prescription or furnished pursuant to
25 Section 4006.

26 11. Health and Safety Code section 11173, subdivision (a) states, in part:

27 No person shall obtain or attempt to obtain controlled substances, or procure or
28 attempt to procure the administration of or prescription for controlled substances, (1)
by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
material fact. . . .

DRUG

12. "Alprazolam" (also know as Xanax) is a Schedule IV controlled substance pursuant
to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to
Business and Professions Code section 4022.

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COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Dishonest Acts)

14. Respondent has subjected his license(s) to disciplinary action under Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:

15. On or about May 23, 2012, the Board received a *CVS/Pharmacy Notification of Suspected Controlled Substance Theft or Significant Lost* report. The report stated that on or about May 19, 2012, while working at a CVS Pharmacy, Respondent was apprehended with a bottle of alprazolam 2 mg. Respondent admitted to opening the seal of the bottle and attempting to remove the medication from the pharmacy without a valid prescription, without intention of paying for it and to use the medication to possibly harm himself. Respondent was terminated from his job at CVS Pharmacy on or about May 29, 2012, for the theft of alprazolam.

SECOND CAUSE FOR DISCIPLINE

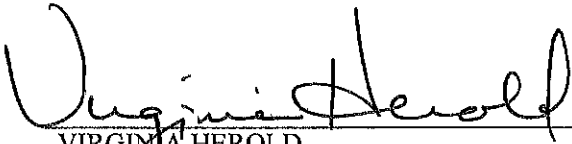
(Violation of Statute Regulating Dangerous Drug/Controlled Substance)

16. Respondent has subjected his license(s) to disciplinary action under section 4301, subdivision (j) on the grounds of unprofessional conduct, in that Respondent unlawfully obtained or attempted to obtain a dangerous drug and controlled substance by deceit or concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022, as more fully set forth in paragraphs 14-15, above.

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- 2. Revoking or suspending Original Pharmacist License Number RPH 68819, issued to Gerardo Castillo;
- 3. Ordering Gerardo Castillo also known as Gerardo Castillo Rico 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;
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 3/8/14 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SA2012108697

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

12 In the Matter of the Accusation Against:

Case No. 4469

13 **GERARDO CASTILLO**
14 **A.K.A. GERARDO CASTILLO RICO**
15 **904 Elm Avenue**
16 **Modesto, California 95351**

A C C U S A T I O N

17 **Intern Pharmacist Registration No. INT**
18 **22538**

Respondent.

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 22, 2008, the Board of Pharmacy (Board), Department of
24 Consumer Affairs issued Intern Pharmacist Registration Number INT 22538 to Gerardo Castillo
25 also known as Gerardo Castillo Rico (Respondent). The Intern Pharmacist Registration was in
26 full force and effect at all times relevant to the charges brought herein and will expire on August
27 31, 2013, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All sections references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 477 of the Code states:

6 As used in this division:

7 (a) "Board" includes "bureau," "commission," "committee," "department,"
8 "division," "examining committee," "program," and "agency."

9 (b) "License" includes certificate, registration or other means of engage in a
business or profession regulated by this code.

10 5. Section 4301 states in relevant part, that:

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

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15 (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
16 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

19 ...

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

23 6. Code section 4022 states:

24 "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
25 legend: "Caution: federal law prohibits dispensing without prescription," "Rx only,"
or words of similar import. (b) Any device that bears the statement: "Caution: federal
26 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
27 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
28 Section 4006.

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SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Dangerous Drug/Controlled Substance)

12. Respondent is subject to disciplinary action under section 4301, subdivision (j) on the grounds of unprofessional conduct, in that Respondent unlawfully possessed a dangerous drug and controlled substance, in violation of Health and Safety Code section 11173, subdivision (a), and Business and Professions Code section 4022, as more fully set forth in paragraph 11, above.

THIRD CAUSE FOR DISCIPLINE

(Violation of Statute Regulating Controlled Substance)

13. Respondent has subjected his license to disciplinary action under Code section 4301 subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and Safety Code section 11173, subdivision (a), (obtaining or attempt to obtain controlled substances without a prescription), as set forth in paragraph 11, above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Laws)

14. Respondent is subject to disciplinary action under section 4301, subsection (o) in that Respondent violated the laws and regulations regulating pharmacists, as more fully set forth in paragraphs 10-12, above.

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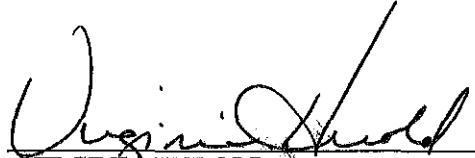
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PRAYER

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

1. Revoking or suspending Intern Pharmacist Registration Number INT 22538, issued to Gerardo Castillo also known as Gerardo Castillo Rico;
2. Ordering Gerardo Castillo also known as Gerardo Castillo Rico 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: 5/9/13


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

SA2012108697