

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

In the Matter of the Accusation Against:

Case No. 4494

STEPHEN DAVIS BOURQUE
2241 Regent Way
Castro Valley, CA 94546
Pharmacist License No. RPH 63701

OAH No. 2014070700

Respondent.

DECISION AND ORDER

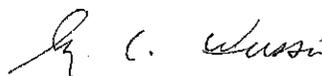
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 19, 2014.

It is so ORDERED on November 19, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

STEPHEN DAVIS BOURQUE,

Pharmacist License No. RPH 63701

Respondent.

Case No. 4494

OAH No. 2014070700

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 6, 2014.

Gregory Tuss, Deputy Attorney General, represented complainant.

Respondent was present and represented by Joseph Morehead, Attorney at Law.

The matter was submitted on October 6, 2014.

Preliminary Matter

This matter was consolidated for hearing with OAH Case No. 2014070702. A separate proposed decision will be submitted to the Board of Veterinary Medicine.

FACTUAL FINDINGS

1. Virginia Herold made the accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On February 11, 2010, the Board issued Pharmacist License Number RPH 63701 to Stephen Davis Bourque (respondent). The license was in full force and effect at all times relevant to the charges in the accusation and will expire on March 31, 2015, unless renewed.

Criminal Arrests and Conviction

3. On April 12, 2012, a San Francisco police officer found an illegally parked rental vehicle with the keys on the passenger seat. Two packages of ketamine¹ were inside: one unopened and one opened with two vials missing. Respondent's name was on the rental agreement in the vehicle. The police found respondent's unoccupied room in a nearby motel. Inside was a vial of ketamine with a syringe nearby. Respondent came to the room shortly thereafter. He said he had been drinking at a bar. He was renting a vehicle but did not know where it was. He stated that he was a veterinarian and had received the ketamine that was in the vehicle earlier that day but did not have time to secure it properly. He admitted to personally having used ketamine both in the past and on that day. He said he needed help and that what he was doing was wrong. At the hearing the respondent refused to answer questions about his ketamine possession and use pursuant to his rights against self-incrimination. However, it can be inferred that he was unlawfully in possession and using ketamine, a dangerous drug.

4. Respondent's conduct set forth in Finding 3, above, constitutes unprofessional conduct by using a dangerous drug to the extent as to be dangerous and injurious to a person and that the use impairs his ability to safely conduct the practice of pharmacy. Ketamine was found in his motel room and he admitted to personally using ketamine and to needing help with his drug abuse. He also illegally possessed ketamine, a controlled substance and dangerous drug.

5. On October 13, 2012, the San Mateo County Sheriff received two requests for a welfare check of a man who believed he was being followed. Deputies found respondent at 2:41 a.m. pulling a suitcase and carrying a gym bag down the street in Redwood City, California. When asked if he was being followed, respondent looked around nervously and said, "Sometimes." Respondent displayed symptoms of being under the influence of a stimulant. He appeared nervous; spoke rapidly and disjointedly; and would not stand still. He looked around like he was searching for someone. Respondent denied taking drugs but his pulse was elevated. Respondent's response to the deputies was odd and inappropriate. Respondent was nervous and attempted to flee. The deputy caught respondent after he had run about 150 yards and had fallen down. Methamphetamine and two 2000 mg. vials of testosterone cypionate were found in respondent's bags. He did not have a prescription for the testosterone which was labeled for prescription only. Respondent denied any knowledge of the controlled substances found in his bags.

6. On May 15, 2013, in San Mateo County Superior Court, respondent pled no contest to Penal Code section 148, subdivision (a)(1) (resisting, delaying, or obstructing an officer), a misdemeanor, which by its facts and circumstances is substantially related to the

¹ Ketamine is a Schedule III controlled substance under Health and Safety Code section 11056, subdivision (g), and a dangerous drug pursuant to Business and Professions Code section 4022.

duties, qualifications, and functions of a registered pharmacist. Imposition of sentence was suspended and respondent was placed on 18 months' supervised probation. As a condition of probation respondent was placed under the supervision of drug court.

7. Respondent's conduct as set forth in Finding 5, above, constitutes unprofessional conduct in that he violated laws regulating controlled substances and dangerous drugs. Respondent illegally possessed methamphetamine, a controlled substance, and testosterone, a dangerous drug.

8. Respondent became addicted to controlled substances in 2012. He had experienced some personal tragedies and became homeless. He was working on his recovery, when he relapsed in August of 2014. He was admitted to a drug treatment program, which consisted of five months in a residential program and three months as an out-patient. He was tested at least 10 times with negative results. He is not presently in any program.

9. Respondent last practiced as a pharmacist in 2011.

10. Respondent states that he is serious about his recovery, but he is still in the early stages. The Board is concerned about respondent's access to drugs. It would not be in the public interest to allow respondent to continue to be licensed as a registered pharmacist at this time.

11. Costs in the amount of \$4,952.50 have been requested by the Board. While this amount is reasonable, respondent is not able to pay the full amount at this time.

LEGAL CONCLUSIONS

Cause for Discipline

1. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. Complainant alleged that respondent's license is subject to discipline pursuant to Business and Professions Code sections 4301, subdivisions (h) (unprofessional conduct – use of controlled substance or dangerous drug), (j) (violation of laws regulating controlled substances and dangerous drugs), (l) (conviction), and 490, subdivision (a) (conviction of crime substantially related to qualifications, functions, or duties of profession).

Respondent's use of controlled substances and dangerous drugs and his violation of laws regulating controlled substances and dangerous drugs establish cause for discipline pursuant to Business and Professions Code section 4301, subdivisions (h) and (j).

Respondent's violation of the Penal Code is substantially related to the qualifications, functions, and duties of a registered pharmacist; his license is therefore subject to discipline pursuant to Business and Professions Code sections 490, and 4301, subdivision (l).

Penalty Determination

3. In determining the appropriate penalty, public safety is the board's paramount concern. Respondent's conduct demonstrates very poor judgment and he cannot be trusted at this time to work around controlled substances and dangerous drugs.

Costs

4. Complainant has requested that respondent be ordered to reimburse the Board for the costs of investigating and enforcing the accusation. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The board reasonably incurred costs of investigation and enforcement in the amount of \$4,952.50. (Factual Finding 11.)

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the guidelines for determining whether the costs should be assessed in the particular circumstances of each case. The respondent established a basis to reduce the costs. He does not have the ability to pay full costs at this time. The amount is reduced to \$500 and the Board may work out a payment schedule with respondent to commence when and if his license is reinstated.

ORDER

1. Pharmacist License Number RPH 63701 issued to Stephen Davis Bourque is hereby revoked.

2. When and if respondent is reinstated he shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$500. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of any probationary period.

DATED: 10/28/14

Ruth S. Astle
RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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 Number 4494

13 **STEPHEN DAVIS BOURQUE**
609 Ashbury Street, #7
San Francisco, California 94117

A C C U S A T I O N

14 **Pharmacist License Number RPH 63701,**

15 Respondent.

16
17 Complainant Virginia Herold alleges:

18 **PARTIES**

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

21 2. On or about February 11, 2010, the Board issued Pharmacist License Number RPH
22 63701 to respondent Stephen Davis Bourque. The pharmacist license was in full force and effect
23 at all times relevant to the charges brought in this accusation and will expire on March 31, 2015,
24 unless renewed.¹

25
26 ¹ On or about February 6, 2008, the Veterinary Medical Board issued Veterinary License
27 Number 17076 to respondent Stephen Bourque. The veterinary license was in full force and
28 effect at all times relevant to the charges brought in this accusation and will expire on March 31,
2015, unless renewed. The Veterinary Medical Board also has filed an accusation against
respondent's veterinary license.

1 the crime is substantially related to the qualifications, functions, or duties of the business or
2 profession for which the license was issued.”

3 8. Section 4301 states in part:

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

7 ...

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

13 ...

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

16 ...

17 “(l) The conviction of a crime substantially related to the qualifications, functions, and
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in order
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.”

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

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

13 COST RECOVERY

14 10. Section 125.3, subdivision (a), states:

15 “Except as otherwise provided by law, in any order issued in resolution of a disciplinary
16 proceeding before any board within the department or before the Osteopathic Medical Board,
17 upon request of the entity bringing the proceedings, the administrative law judge may direct a
18 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
19 to exceed the reasonable costs of the investigation and enforcement of the case.”

20 DRUGS

21 11. “Ketamine” is a Schedule III controlled substance under Health and Safety Code
22 section 11056, subdivision (g), and a dangerous drug within the meaning of Business and
23 Professions Code section 4022. It is used in human and veterinary medicine primarily as a
24 general anesthetic. It is also used as a recreational drug.

25 12. “Methamphetamine” is a Schedule II controlled substance under Health and Safety
26 Code section 11055, subdivision (d)(2). It is a recreational drug.

27 13. “Testosterone cypionate” is a Schedule III controlled substance under Health and
28 Safety Code section 11056, subdivision (f)(30), and a dangerous drug within the meaning of

1 Business and Professions Code section 4022. It is an anabolic steroid used for male replacement
2 therapy for conditions associated with symptoms of deficiency or absence of endogenous
3 testosterone. It also frequently is misused for its muscle-enhancing effects. It is taken by
4 injection into muscle tissue.

5 **FACTUAL BACKGROUNDS AND CAUSES FOR DISCIPLINE**

6 **APRIL 12, 2012, ARREST**

7 14. On April 12, 2012, a San Francisco police officer found an illegally parked rental
8 vehicle with the keys on the passenger seat. Two packages of ketamine were inside: one
9 unopened and one opened with two vials missing. Respondent's name was on the rental
10 agreement in the vehicle.

11 15. The police found respondent's unoccupied room in a nearby motel. Inside was a
12 vial of ketamine with syringe nearby. Respondent came to the room shortly thereafter. He said
13 that he had been drinking at a bar. He said that he was renting a vehicle but did not know where
14 it was. He said that he is a veterinarian and had received the ketamine that was in the vehicle
15 earlier that day but did not have time to secure it properly. He admitted to personally having used
16 ketamine both in the past and on that day -- he said that he needed help and that what he was
17 doing was wrong.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **Unprofessional Conduct -- Use of Controlled Substance or Dangerous Drug
20 Business and Professions Code section 4301, subdivision (h)**

21 16. The allegations of paragraphs 14-15 are realleged and incorporated by reference as if
22 fully set forth.

23 17. Respondent has subjected his pharmacist license to discipline for the unprofessional
24 conduct of using a dangerous drug to the extent as to be dangerous or injurious to a person, or that
25 the use impairs his ability to safely conduct the practice of pharmacy (Bus. & Prof. Code, § 4301,
26 subd. (h)). As set forth in paragraphs 14-15 above, ketamine, a dangerous drug, was found in
27 respondent's hotel room. Respondent admitted to personally using ketamine and to needing help
28 with his abuse of it.

///

1 for prescription only. Respondent denied knowledge of any of the controlled substances found in
2 his bags.

3 24. On May 15, 2013, in San Mateo County Superior Court, Case Number SF384548
4 entitled *People v. Stephen Bourque*, respondent pled no contest to resisting, delaying, or
5 obstructing an officer (Pen. Code, § 148, subd. (a)(1)), a misdemeanor. Imposition of sentence
6 was suspended and respondent was placed on 18 months' supervised probation. Terms and
7 conditions of probation included the first year of probation under supervision of drug court.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **Conviction**

10 **Business and Professions Code section 490, subdivision (a)**

11 25. The allegations of paragraphs 20-24 are realleged and incorporated by reference as if
12 fully set forth.

13 26. Respondent has subjected his pharmacist license to discipline for being convicted of a
14 crime (Bus. & Prof. Code, § 490, subd. (a)). As set forth in paragraphs 23-27 above, respondent
15 pled no contest to resisting, delaying, or obstructing an officer (Pen. Code, § 148, subd. (a)(1)), a
16 misdemeanor.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **Unprofessional Conduct – Conviction**

19 **Business and Professions Code section 4301, subdivision (I)**

20 27. The allegations of paragraphs 20-24 are realleged and incorporated by reference as if
21 fully set forth.

22 28. Respondent has subjected his pharmacist license to discipline for the unprofessional
23 conduct of being convicted of a crime (Bus. & Prof. Code, § 4301, subd. (I)). As set forth in
24 paragraphs 20-24 above, respondent pled no contest to resisting, delaying, or obstructing an
25 officer (Pen. Code, § 148, subd. (a)(1)), a misdemeanor.

26 ///

1 **FIFTH CAUSE FOR DISCIPLINE**
2 **Unprofessional Conduct – Violation of Laws Regulating Controlled Substances and**
3 **Dangerous Drugs**
4 **Business and Professions Code section 4301, subdivision (j)**

5 29. The allegations of paragraphs 20-24 are realleged and incorporated by reference as if
6 fully set forth.

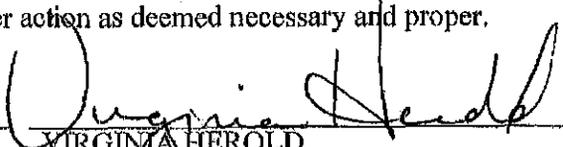
7 30. Respondent has subjected his pharmacist license to discipline for the unprofessional
8 conduct of violating laws regulating controlled substances and dangerous drugs (Bus. & Prof.
9 Code, § 4301, subd. (j)). As set forth in paragraphs 20-24 above, respondent illegally possessed
10 methamphetamine, a controlled substance, and testosterone, a controlled substance and dangerous
11 drug (Health & Saf. Code, § 11377, subd. (a)).

12 **PRAYER**

13 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
14 accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 15 1. Revoking or suspending Pharmacist License Number RPH 63701 issued to Stephen
16 Davis Bourque;
17 2. Ordering Stephen Davis Bourque to pay the Board of Pharmacy the reasonable costs
18 of the investigation and enforcement of this case under Business and Professions Code section
19 125.3; and
20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: 5/3/14


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

28 SF2012403179
90390608.doc