



**California State Board of Pharmacy**  
 1625 N. Market Blvd, N219, Sacramento, CA 95834  
 Phone: (916) 574-7900  
 Fax: (916) 574-8618  
 www.pharmacy.ca.gov

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
 DEPARTMENT OF CONSUMER AFFAIRS  
 GOVERNOR EDMUND G. BROWN JR.

2016 SEP -1 PM 2:21

**APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACIST / INTERN LICENSE**

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>MICHAEL T. MCKINLEY</u>	Case No. <u>4756</u>
Address of Record: <u>8081 HOLLAND DR. #F-7</u> <u>HUNTINGTON BEACH, CA 92647</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 4756, I hereby request to surrender my license. License No. 41071. 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license from the board for three (3) years from the effective date of the surrender. I further understand that I 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.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Michael T. McKinley  
 Applicant's Signature

9/1/16  
 Date

Virginia Heald  
 Executive Officer's Approval

9/2/16  
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

**MICHAEL T. MCKINLEY,**  
**RPH No. 41071**

Respondent.

Case No. 4756

OAH No. 2014120026

**DECISION AFTER REJECTION OF PROPOSED DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California, on October 13, 2015. Michael A. Cacciotti, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer, Board of Pharmacy (Board). Michael T. McKinley (Respondent) represented himself.

Oral and documentary evidence was received at the hearing. The matter was submitted for decision on November 17, 2015. On December 11, 2015, the ALJ issued a Proposed Decision.

On March 11, 2016, pursuant to section 11517 of the Government Code, the California State Board of Pharmacy ("Board") issued an Order rejecting the December 11, 2015, Proposed Decision in the above-entitled matter. On April 29, 2016, the parties were notified that the transcript had been received and the deadline for the parties to submit written argument was set for May 31, 2016. Written argument was timely received from complainant. Respondent did not file a written argument.

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

Complainant seeks to discipline Respondent's license on the basis of allegations that Respondent suffered a criminal conviction and that he took medications and other items from his employer. Respondent did not dispute many of the allegations, but provided evidence in mitigation and rehabilitation in support of continued licensure.

## FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity and not otherwise.
2.
  - a. On August 17, 1987, the Board issued Pharmacist License number RPH 41071 to Respondent. The license expires on August 31, 2017, unless renewed.
  - b. The license has been previously disciplined. On February 20, 2001, Respondent entered into a Stipulation for Settlement, in which he agreed that allegations in a then-pending accusation were true, that cause for discipline existed, and that the license would be subject to a public letter of reprimand. The Board had alleged that Respondent, who was the pharmacist-in-charge, and others had failed to provide consultations to some patients receiving new prescriptions. In another matter, on April 1, 2008, the Board issued a Citation and Fine to Respondent for failing to have in place written procedures for ensuring prescription security and for dispensing a prescription for the incorrect medication.
3. After graduating from pharmacy school in 1987, Respondent went to work for American Drug Stores, Inc. dba Sav-on until 1999, and was the pharmacist-in-charge of one or two of its stores for most of that time. From 1999 until October 6, 2011, Respondent worked for the Rite Aid Drug Store (Rite Aid) in Culver City, California, where he was the pharmacist-in-charge.
4. During the last two years of employment at Rite Aid, Respondent took five .5 milligram (mg) Xanax tablets from the pharmacy stock for his own use. At the hearing, Respondent explained that he suffers from a metabolic condition and that he has a prescription for Xanax to treat it, which he fills at Rite Aid. He took the tablets from the store on occasions in which he forgot his own medication at home and was experiencing symptoms of anxiety. Respondent replaced the medication upon re-filling his prescription.
5. During the last two years of employment at Rite Aid, Respondent took eight 100 mg tablets of Viagra from the pharmacy stock for his own use without paying for them.
6. During the last two years of employment at Rite Aid, Respondent took about three packs of gum and three packs of cigarettes from Rite Aid without paying for them.
7. Respondent admitted to the facts set forth in factual finding numbers 4, 5 and 6 during an investigation by Rite Aid. The company terminated his employment, effective October 6, 2011.
8. On September 27, 2013, in the Superior Court, County of Los Angeles, Airport Courthouse, in case number 3WA01070, Respondent was convicted, following his plea of no contest, of violating Vehicle Code section 23152, subdivision (a)(1) (driving a vehicle under the influence of alcoholic beverages), a misdemeanor. The court suspended imposition of sentence and placed Respondent on summary probation for three years on terms and conditions that

included payment of \$1,774 in fines and fees and completion of a nine-month first offender substance abuse counseling program.

9. The facts and circumstances surrounding the conviction are that on February 16, 2013, Respondent attended the engagement party of a friend and consumed, over several hours, seven to eight alcoholic beverages containing hard liquor. During the drive home, he hit a parked vehicle. His blood alcohol level was measured at .20 percent by the arresting officer.

10. The conviction is substantially related to the qualifications, functions, and duties of a pharmacist pursuant to California Code of Regulation (CCR), title 16, section 1770, in that it demonstrates poor judgment and disregard for the health and safety of others. Therefore, Respondent's conduct evidences present or potential unfitness to discharge the duties of a pharmacist.

11. Respondent is complying with the terms and conditions of his criminal probation. On July 19, 2014, he successfully completed the court-ordered substance abuse counseling program, offered by CLARE Foundation, Inc. (CLARE). A letter from the program manager attests to Respondent's completion of the program and to his acceptance of responsibility for his actions that led to the conviction.

12. Respondent attended meeting of Alcoholics Anonymous (AA) while enrolled in the CLARE program. Respondent testified that he gained insight into the dangers of alcohol and other substance abuse while attending the meetings and while participating in other components of the CLARE program. Although they are adults, respondent testified that he stopped attending AA meetings to spend more time with his children.

13. Respondent testified that he does not drink to excess and that he does not drive after consuming alcoholic beverages. His conviction was the result of an exception due to the engagement party for a friend. Except for the period he was attending the CLARE program, it has been his custom to drink two beers at the end of his workday and to have a glass of wine with dinner. Respondent also testified that he is willing to stop consuming alcoholic beverages to retain his license.

14. At hearing, respondent expressed regret about his misconduct, and vowed not to engage in similar conduct.

15. Respondent is 53 years old. Respondent lives with his ailing 90-year-old mother for whom he provides around-the-clock care. Respondent wanted to be a pharmacist since he was in the seventh grade in order to follow in the footsteps of his older brother. His three children are or may soon be in the pharmacy profession. His oldest son is a pharmacist. His middle son is in his second year of pharmacy school. His daughter, the youngest, is a senior in college and plans to go to pharmacy school.

16. After his discharge from Rite Aid, Respondent worked as a part-time pharmacist at two small local pharmacies, but has not worked as a pharmacist since February or March 2014.

He has always enjoyed his work as a pharmacist and would like to return to regular employment in his profession.

17. Inspector Katherine Sill (Sill) conducted the investigation for the Board. She contested two of Respondent's former coworkers at Rite Aid, Reginald Newton and Angelica Gutierrez, who had worked with Respondent for approximately ten years. They told Sill that Respondent was a good person to work for and neither suspected him of having consumed alcoholic beverages while at work.

18. The Board has incurred \$5,415 in the form of Attorney General charges, and \$3,316.50 in investigation charges, or a total of \$8731.50, in connection with its investigation and enforcement of this matter.

19. Respondent has been drawing on savings from the sale of his home to pay for his necessities, and has approximately \$26,000 left. His monthly expenses are approximately \$1,500, including \$500 in rent to his mother.

#### LEGAL CONCLUSIONS

1. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to Business and Profession Code<sup>1</sup> sections 490 and 4301, subdivision (l), and CCR, title 16, section 1770, in that he suffered a conviction substantially related to the qualifications, functions and duties of a pharmacist, by reason of factual finding numbers 8, 9, and 10.

2. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (h), in that he consumed alcoholic beverages in a manner dangerous to himself and others, by reason of factual finding number 9.

3. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4060 and 4301, subdivision (o), in that he violated a provision of State pharmacy law when he obtained tablets of a controlled substance, Xanax, from his employer without a valid prescription for those particular tablets, by reason of factual finding numbers 4 and 7.

4. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (j), and Health and Safety Code sections 11350, subdivision (a), and 11170 in that he violated provisions of State law governing controlled substances when he obtained tablets of a controlled substance, Xanax, from his employer without a valid prescription for those particular tablets, by reason of factual finding numbers 4 and 7.

---

<sup>1</sup> Unless otherwise stated, all further statutory references are to the Business and Professions Code.

5. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (f), in that he engaged in dishonest acts, by reason of factual finding numbers 4 through 7.

6. Cause exists, pursuant to Business and Professions Code section 125.3, to order Respondent to pay the Board's costs of investigation and enforcement in this matter, in the sum of \$8,731.50, by reason of factual finding number 18 and legal conclusion numbers 1 through 5.

In *Zukerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4<sup>th</sup> 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zukerman v. State Board of Chiropractic Examiner, supra* at p. 45.)

In this case, Respondent is unemployed and has not worked as a pharmacist since February or March 2014. He has limited and diminishing savings, which he has used to pay his modest expenses. Therefore, Respondent is unable to pay the Board's full costs of investigation and enforcement. Accordingly, the costs of investigation and enforcement will be reduced by one third, to \$5,821, which are the reasonable costs in this matter. Respondent will be permitted to make installment payments once he starts working as a pharmacist.

7. A. All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered in light of the Board's Disciplinary Guidelines (CCR, tit. 16, § 1760) and criteria for rehabilitation (CCR, tit. 16, § 1769). Respondent has engaged in serious misconduct. He has taken medication from his pharmacy employer for his own use, has engaged in other dishonest conduct by taking gum and cigarettes from his employer without paying for them, and has suffered a conviction for driving while intoxicated with a notably high alcohol content. Respondent has also been previously disciplined. Respondent claims to recognize his errors in judgment, but his actions will be the true test of his sincerity. He vows not to drive again after consumption of alcoholic beverages. He is complying with the terms of his criminal probation. Two coworkers still think highly of him. In these circumstances, actual revocation of Respondent's license is not necessary for the protection of the public. Nevertheless, given the conduct in which Respondent engaged, a period of probation and monitoring by the Board is warranted.

B. The Board is guided by principles and statutes that mandate that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public must be paramount. (Code, §§ 4001.1 and 4313.)

8. Based on all the facts and circumstances of the current misconduct, as well as respondent's history, significant deviation from the Disciplinary Guidelines is not appropriate. Terms related to Pharmacists Recovery Program and drug and alcohol abstinence and testing are important to protect the public. Actual suspension of the license is not necessary for the protection of the public given the terms and conditions of probations imposed in the order that follows.

## ORDER

License number RPH 41071, issued to Respondent Michael T. McKinley, is revoked; however, the revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions:

**1. Obey All Laws.** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence: (1) 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; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; and (4) discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.

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

**3. Interview with the Board.** Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

**4. Cooperate with Board Staff.** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

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

**6. Notice to Employers.** During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4756 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 4756, 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 or her supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 4756 in advance of the respondent commencing work at each licensed entity. A record of his 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 4756 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.

**7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant.** During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.



**8. Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$5,821. Once he starts employment as a pharmacist, Respondent shall make installment payments on a monthly or quarterly schedule approved by the Board. There shall be no deviation from the approved 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.

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

**10. Status of License.** Respondent shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

**11. License Surrender While on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her 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 the 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.

**12. 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.

**13. Tolling of Probation.** Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month, or for another minimum period designated by the Board. 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 80 hours per calendar month, or another period designated by the Board, 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, as defined by section 4000 *et seq.*, for at least 80 hours per calendar month, or another period designated by the Board. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist, as defined by section 4000 *et seq.*, for at least 80 hours per calendar month, or another period designated by the Board.

**14. Violation of Probation.** If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

**15. Completion of Probation.** Upon written notice by the board or its designee indicating successful completion of probation, Respondent's license will be fully restored.

**16. 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 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.

**17. 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/or of gambling addiction] 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 or petition to revoke probation] 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.

**18. 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.

**19. 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 the respondent.

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

**20. Supervised Practice.** During the period of probation, respondent shall practice only under the supervision of a licensed pharmacist not on probation with the board. Upon and after the effective date of this decision, respondent shall not practice pharmacy and his or her license shall be automatically suspended until a supervisor is approved by the board or its designee. The supervision shall be, as required by the board or its designee, one of the following:

- Continuous – At least 75% of a work week
- Substantial - At least 50% of a work week
- Partial - At least 25% of a work week
- Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within thirty (30) days of the effective date of this decision, respondent shall have his or her supervisor submit notification to the board in writing stating that the supervisor has read the decision in case number 4756 and is familiar with the required level of supervision as determined by the board or its designee. It shall be the respondent's responsibility to ensure that his or her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

If respondent changes employment, it shall be the respondent's responsibility to ensure that his or her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Respondent shall have his or her new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 4756 and is familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and his or her license shall be automatically suspended until the board or

its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

Within ten (10) days of leaving employment, respondent shall notify 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.

**19. No Ownership of Licensed Premises.** Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

**20. Ethics Course.** Within sixty (60) calendar days of the effective date of this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation. Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

This Decision shall become effective at 5:00 pm on August 29, 2016.

It is so ORDERED on July 29, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Amy Gutierrez", written in a cursive style.

By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President



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

In the Matter of the Accusation Against:

**MICHAEL T. MCKINLEY,**

Respondent.

Case No. 4756

OAH No. 2014120026

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

**ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT**

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated March 11, 2016. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: whether the proposed discipline is both appropriate to adequately protect the public and consistent with the board's disciplinary guidelines or a reasonable deviation from them.

Written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before May 31, 2016. **No new evidence may be submitted.**

IT IS SO ORDERED this 29<sup>th</sup> day of April, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

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

In the Matter of the Accusation Against:

MICHAEL T. MCKINLEY,

Respondent.

Case No. 4756

OAH No. 2014120026

**ORDER REJECTING PROPOSED DECISION**

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

Although the right to argue is not limited, the board is particularly interested in argument about whether the discipline is appropriate.

The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on March 11, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

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

In the Matter of the Accusation Against:

MICHAEL T. MCKINLEY,

Respondent.

Case No. 4756

OAH No. 2014120026

**PROPOSED DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on October 13, 2015.

Michael A. Cacciotti, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer, Board of Pharmacy (Board).

Michael T. McKinley (Respondent) represented himself.

Complainant seeks to discipline Respondent's license on the basis of allegations that Respondent suffered a criminal conviction and that he took medications and other items from his employer. Respondent did not dispute many of the allegations, but provided evidence in mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence was received at the hearing. The record was left open for Respondent to submit written closing argument and for Complainant to reply to the argument. On November 3, 2015, Respondent filed a Post-Hearing Brief. Complainant did not file any reply by the November 17, 2015 deadline. The matter was submitted for decision on November 17, 2015.

**FACTUAL FINDINGS**

1. Complainant filed the Accusation in her official capacity.
2. a. On August 17, 1987, the Board issued Pharmacist License number RPH 41071 to Respondent. The license expires on August 31, 2017, unless renewed.

b. The license has been previously disciplined. On February 20, 2001, Respondent entered into a Stipulation for Settlement, in which he agreed that allegations in a then-pending accusation were true, that cause for discipline existed, and that the license would be subject to a public letter of reprimand. The Board had alleged that Respondent, who was the pharmacist-in-charge, and others had failed to provide consultations to some patients receiving new prescriptions. In another matter, on April 1, 2008, the Board issued a Citation and Fine to Respondent for failing to have in place written procedures for ensuring prescription security and for dispensing a prescription for the incorrect medication.

3. After graduating from pharmacy school in 1987, Respondent went to work for American Drug Stores, Inc. dba Sav-on until 1999, and was the pharmacist-in-charge of one or two of its stores for most of that time. From 1999 until October 6, 2011, Respondent worked for the Rite Aid Drug Store (Rite Aid) in Culver City, California, where he was the pharmacist-in-charge.

4. During the last two years of employment at Rite Aid, Respondent took five 5 milligram (mg) Xanax tablets from the pharmacy stock for his own use. At the hearing, Respondent explained that he suffers from a metabolic condition and that he has a prescription for Xanax to treat it, which he fills at Rite Aid. He took the tablets from the store on occasions in which he forgot his own medication at home and was experiencing symptoms of anxiety. Respondent replaced the medication upon re-filling his prescription.

5. During the last two years of employment at Rite Aid, Respondent took eight 100 mg tablets of Viagra from the pharmacy stock for his own use without paying for them.

6. During the last two years of employment at Rite Aid, Respondent took about three packs of gum and three packs of cigarettes from Rite Aid without paying for them.

7. Respondent admitted to the facts set forth in factual finding numbers 4, 5 and 6 during an investigation by Rite Aid. The company terminated his employment, effective October 6, 2011.

8. On September 27, 2013, in the Superior Court, County of Los Angeles, Airport Courthouse, in case number 3WA01070, Respondent was convicted, following his plea of no contest, of violating Vehicle Code section 23152, subdivision (a)(1) (driving a vehicle under the influence of alcoholic beverages), a misdemeanor. The court suspended imposition of sentence and placed Respondent on summary probation for three years on terms and conditions that included payment of \$1,774 in fines and fees and completion of a nine-month first offender substance abuse counseling program.

9. The facts and circumstances surrounding the conviction are that on February 16, 2013, Respondent attended the engagement party of a friend and consumed, over several hours,

seven to eight alcoholic beverages containing hard liquor. During the drive home, he hit a parked vehicle. His blood alcohol level was measured at .20 percent by the arresting officer.

10. The conviction is substantially related to the qualifications, functions, and duties of a pharmacist pursuant to California Code of Regulations (CCR), title 16, section 1770, in that it demonstrates poor judgment and disregard for the health and safety of others. Therefore, Respondent's conduct evidences present or potential unfitness to discharge the duties of a pharmacist.

11. Respondent is complying with the terms and conditions of probation. On July 19, 2014, he successfully completed the court-ordered substance abuse counseling program, offered by CLARE Foundation, Inc. (CLARE). A letter from the program manager attests to Respondent's completion of the program and to his acceptance of responsibility for his actions that led to the conviction.

12. Respondent attended meetings of Alcoholics Anonymous (AA) while enrolled in the CLARE program. He gained insight into the dangers of alcohol and other substance abuse while attending the meetings and while participating in other components of the CLARE program. He stopped attending AA meetings to spend more time with his children.

13. Respondent testified that he does not drink to excess and that he does not drive after consuming alcoholic beverages. His conviction was the result of an exception due to the engagement party for a friend. Except for the period he was attending the CLARE program, it has been his custom to drink two beers at the end of his workday and to have a glass of wine with dinner. Respondent also testified that he is willing to stop consuming alcoholic beverages to retain his license.

14. Respondent expressed regret about his misconduct, and vowed not to engage in similar conduct.

15. Respondent is 53 years old. He is divorced and over the past few years had 50 percent custody of the couple's three children, who are now adults living on their own. Respondent lives with his ailing 90-year-old mother for whom he provides around-the-clock care. Respondent wanted to be a pharmacist since he was in the seventh grade in order to follow in the footsteps of his older brother. His three children are or may soon be in the profession. His oldest son is a pharmacist. His middle son is in his second year of pharmacy school. His daughter, the youngest, is a senior in college and plans to go to pharmacy school.

16. After his discharge from Rite Aid, Respondent worked as a part-time pharmacist at two small local pharmacies, but has not worked as a pharmacist since February or March 2014. He has always enjoyed his work as a pharmacist and would like to return to regular employment in his profession.

17. Inspector Katherine Sill (Sill) conducted the investigation for the Board. She contacted two of Respondent's former coworkers at Rite Aid, Reginald Newton and Angelica Gutierrez, who had worked with Respondent for approximately ten years. They told Sill that Respondent was a good person to work for and neither suspected him of having consumed alcoholic beverages while at work.

18. The Board has incurred \$5,415 in the form of Attorney General charges, and \$3,316.50 in investigation charges, or a total of \$8731.50, in connection with its investigation and enforcement of this matter.

19. Respondent has been drawing on savings from the sale of his home to pay for his necessities, and has approximately \$26,000 left. His monthly expenses are approximately \$1,500, including \$500 in rent to his mother.

### LEGAL CONCLUSIONS

1. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to Business and Professions Code<sup>1</sup> sections 490 and 4301, subdivision (l), and CCR, title 16, section 1770, in that he suffered a conviction substantially related to the qualifications, functions and duties of a pharmacist, by reason of factual finding numbers 8, 9, and 10.

2. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (h), in that he consumed alcoholic beverages in a manner dangerous to himself and others, by reason of factual finding number 9.

3. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to sections 4060 and 4301, subdivision (o), in that he violated a provision of State pharmacy law when he obtained tablets of a controlled substance, Xanax, from his employer without a valid prescription for those particular tablets, by reason of factual finding numbers 4 and 7.

4. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (j), and Health and Safety Code sections 11350, subdivision (a), and 11170 in that violated provisions of State law governing controlled substances when he obtained tablets of a controlled substance, Xanax, from his employer without a valid prescription for those particular tablets, by reason of factual finding numbers 4 and 7.

---

<sup>1</sup> Unless otherwise stated, all further statutory references are to the Business and Professions Code.

5. Grounds exist to discipline Respondent's license for unprofessional conduct pursuant to section 4301, subdivision (f), in that he engaged in dishonest acts, by reason of factual finding numbers 4 through 7.

6. Cause exists, pursuant to Business and Professions Code section 125.3, to order Respondent to pay the Board's costs of investigation and enforcement in this matter, in the sum of \$8,731.50, by reason of factual finding number 18 and legal conclusion numbers 1 through 5.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45.)

In this case, Respondent is unemployed and has not worked as a pharmacist since February or March 2014. He has limited and diminishing savings, which he has used to pay his modest expenses. Therefore, Respondent is unable to pay the Board's full costs of investigation and enforcement. Accordingly, the costs of investigation and enforcement will be reduced by one third, to \$5,821, which are the reasonable costs in this matter. Respondent will be permitted to make installment payments once he starts working as a pharmacist.

7. All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered in light of the Board's Disciplinary Guidelines (CCR, tit. 16, § 1760) and criteria for rehabilitation (CCR, tit. 16, § 1769). On the one hand, Respondent has engaged in serious misconduct. He has taken medication from his pharmacy employer for his own use, has engaged in other dishonest conduct by taking gum and cigarettes from his employer without paying for them, and has suffered a conviction for driving while intoxicated. However, these appear to be isolated instances, and Respondent recognizes his errors in judgment. He does not seem to have a problem with alcohol abuse, and vows not to drive again after consumption of alcoholic beverages. He is complying with the terms of probation. Except for the problems in the last two years of employment, Respondent was able to successfully discharge his duties as a pharmacist and two coworkers still think highly of him. Respondent has maintained a stable home environment, raising his children to have a chance to

work as professionals and more recently providing care to his ailing mother. In these circumstances, actual revocation of Respondent's license is not necessary for the protection of the public. Nevertheless, given the conduct in which Respondent engaged, a period of probation and monitoring by the Board is warranted.

8. Because it was not established that Respondent abuses alcoholic beverages, participation in the Pharmacists Recovery Program (PRC) will not be ordered. Initially, only abstinence and bodily fluid monitoring conditions will be imposed, but positive alcohol or drug test results will trigger the PRC condition. Because of Respondent's limited resources and obligations toward his mother, the bodily fluid monitoring will be ordered upon Respondent's employment as a pharmacist. Actual suspension of the license is not necessary for the protection of the public given the violations established and the terms and conditions of probations imposed in the order that follows.

#### ORDER

License number RPH 41071, issued to Respondent Michael T. McKinley, is revoked; however, the revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions:

**1. Obey All Laws.** Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence: (1) 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; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; and (4) discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.

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



3. **Interview with the Board.** Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff.** Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

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

6. **Notice to Employers.** During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4756 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 4756, 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 or her 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 4756 in advance of the 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 4756 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.

**7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant.** During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

**8. Reimbursement of Board Costs.** As a condition precedent to successful completion of probation, Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$5,821. Once he starts employment as a pharmacist, Respondent shall make installment payments on a monthly or quarterly schedule approved by the Board. There shall be no deviation from the approved 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.

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

**10. Status of License.** Respondent shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

**11. License Surrender While on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her 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 the 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.

**12. 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.

**13. Tolling of Probation.** Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month, or for another minimum period designated by the Board. 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 80 hours per calendar month, or another period designated by the Board, 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, as defined by section 4000 *et seq.*, for at least 80 hours per calendar month, or another period designated by the Board. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist, as defined by section 4000 *et seq.*, for at least 80 hours per calendar month, or another period designated by the Board.

**14. Violation of Probation.** If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

**15. Completion of Probation.** Upon written notice by the board or its designee indicating successful completion of probation, Respondent's license will be fully restored.

**16. 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 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.

**17. Random Drug Screening.** Once he starts working as a pharmacist, Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times, Respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of 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.

**18. Pharmacists Recovery Program (PRP).** Within thirty (30) days of a confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment, Respondent shall contact the PRP for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by the Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and as of the effective date of this decision is no longer considered a self-referral under section 4362, subdivision (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 while Respondent is in the PRP program shall result in the automatic suspension of practice by Respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until

notified by the Board in writing.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the Board.

During suspension, Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

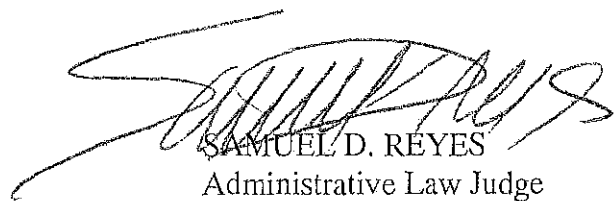
Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

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

**19. Ethics Course.** Within sixty (60) calendar days of the effective date of this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation. Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

DATED: 12/11/15

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 MICHAEL A. CACCIOTTI  
Deputy Attorney General  
4 State Bar No. 129533  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2932  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4756

11 **MICHAEL T. MCKINLEY**  
12 **10815 Molony Rd.**  
13 **Culver City, CA 90230**  
14 **Pharmacist License No. RPH 41071**

**ACCUSATION**

Respondent.

15  
16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 17, 1987, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 41071 to Michael T. McKinley ("Respondent"). The Pharmacist License was in  
23 full force and effect at all times relevant to the charges brought hereina and will expire on August  
24 31, 2015, unless renewed.

25 **JURISDICTION**

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





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

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
4 discipline a licensee for conviction of a crime that is independent of the authority granted under  
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere. An action that a board is permitted to take  
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
11 made suspending the imposition of sentence, irrespective of a subsequent order under Section

12 1203.4 of the Penal Code, . . ."

13 7. Section 4060 of the Code states:

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

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

28 ///

1           8. Section 4301 of the Code states, in pertinent part:

2           "The board shall take action against any holder of a license who is guilty of unprofessional  
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake,

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5           ....

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

9           ....

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

15           ....

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

18           ....

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

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
2 of this provision. The board may take action when the time for appeal has elapsed, or the  
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
7 indictment.

8 . . . .  
9 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
10 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
11 federal and state laws and regulations governing pharmacy, including regulations established by  
12 the board or by any other state or federal regulatory agency. . . ."

13 9. Health and Safety Code section 11170 states, "[n]o person shall prescribe, administer,  
14 or furnish a controlled substance for himself."

15 10. Health and Safety Code section 11350, subdivision (a) states:

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

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

25 "For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

3 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

4 12. Xanax, the brand name for alprazolam, which is used to treat anxiety, panic disorder,  
5 and insomnia, is a Schedule IV controlled substance pursuant to Health and Safety Code section  
6 11057, subdivision (d)(1) and is a dangerous drug pursuant to Business and Professions Code  
7 section 4022.

8 13. Viagra, the brand name for sildenafil citrate, which is used to treat erectile  
9 dysfunction, is a dangerous drug pursuant to Business and Professions Code section 4022.

10 **COST RECOVERY**

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Conviction of a Substantially Related Crime)**

17 15. Respondent is subject to disciplinary action under Code sections 490 and 4300,  
18 subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, on the  
19 grounds of unprofessional conduct in that Respondent was convicted of a crime substantially  
20 related to the qualifications, functions, and duties of a licensed pharmacist which evidences his  
21 present and/or potential unfitness to perform the functions of a licensed pharmacist in a manner  
22 consistent with the public health, safety, or welfare. The circumstances are as follows:

23 16. On or about September 27, 2013, after pleading *nolo contendere*, Respondent was  
24 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
25 [driving a vehicle under the influence of an alcoholic beverage] in the criminal proceeding  
26 entitled *The People of the State of California v. Michael Theodore McKinley* (Super. Ct. Los  
27 Angeles County, 2013, No. 3WA01070.) The Court sentenced Respondent to thirty six months  
28 probation, a nine month first offender alcohol/drug education and counseling program, and

1 ordered him to attend 104 alcoholics anonymous/narcotics anonymous meetings one time per  
2 week.

3 17. The circumstances surrounding the conviction are that on or about the early morning  
4 hours of February 16, 2013, Respondent struck a parked car while he was driving his vehicle.  
5 After officers arrived on the scene, they observed that Respondent had an unsteady gait, watery,  
6 bloodshot eyes, and slow, slurred speech. Respondent admitted that he had consumed alcoholic  
7 beverages. Respondent provided a breath sample and his blood alcohol content was 0.21% and  
8 0.20%.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol)**

11 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)  
12 on the grounds of unprofessional conduct in that on or about February 15 and/or 16, 2013,  
13 Respondent consumed alcoholic beverages in a manner dangerous or injurious to himself or the  
14 public. Complainant incorporates by reference Paragraph 17 as though fully set forth herein.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unlawful Possession of a Controlled Substance)**

17 19. Respondent is subject to disciplinary action under Code sections 4060 and 4301,  
18 subdivision (o) on the grounds of unprofessional conduct in that on or about September 30, 2011,  
19 Respondent admitted in writing that over the past two years, while working at Rite Aid as a  
20 pharmacist, he took five 0.5 mg tablets of Xanax for his personal use.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violation of State Statutes Regulating Controlled Substances)**

23 20. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)  
24 and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of  
25 unprofessional conduct in that on or about September 30, 2011, Respondent admitted in writing  
26 that over the past two years, while working at Rite Aid as a pharmacist, he took five 0.5 mg  
27 tablets of Xanax for his personal use.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Dishonest Acts)**

3 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)  
4 on the grounds of unprofessional conduct in that Respondent committed dishonest acts. On or  
5 about September 30, 2011, Respondent admitted in writing that over the past two years, while  
6 working at Rite Aid as a pharmacist, he took five 0.5 mg tablets of Xanax and eight 100 mg  
7 tablets of Viagra for his personal use. He also admitted to taking three packages of gum and three  
8 packages of cigarettes without paying for them.

9 **DISCIPLINE CONSIDERATIONS**

10 22. To determine the degree of discipline, if any, to be imposed on Respondent,  
11 Complainant alleges that on or about April 1, 2008, in a prior action, the Board of Pharmacy  
12 issued Citation Number CI 2007 35826 to Respondent in the amount of \$2,000.00 for violating  
13 California Code of Regulations, title 16, sections 1712, 1716, and 1717, subdivision (g). That  
14 Citation is now final and is incorporated by reference as though fully set forth herein.

15 23. To determine the degree of discipline, if any, to be imposed on Respondent,  
16 Complainant alleges that on or about July 28, 2001, in a prior action, case number 1778, the  
17 Board of Pharmacy adopted a Stipulation for Settlement in which Respondent received a letter of  
18 public reprimand for violating Business and Professions Code section 4350.5 and California Code  
19 of Regulations 1707.2. That Stipulation for Settlements is now final and is incorporated by  
20 reference as though fully set forth herein.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacist License Number RPH 41071, issued to Michael  
25 T. McKinley;

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

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

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

DATED: 8/12/14 Virginia Herold

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

LA2013510031  
51436149.doc