

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

In the Matter of the Accusation Against:

BRETT ROLAND BARTLETT,

Designated Representative Certificate
No. EXC 17211

Respondent.

Case No. 4779

OAH No. 2013110348

FINAL DECISION AFTER NON-ADOPTION OF PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 2, 2014, in Nevada City, California.

Kristina T. Jansen, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Brett Roland Bartlett (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on October 2, 2014.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("Board") on October 10, 2014. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on November 14, 2014 issued an Order of Non-adoption of Proposed Decision, and subsequently on December 26, 2014 issued an Order Fixing Date for Submission of Argument. Written argument having been timely received from complainant, and the time for filing written argument in this matter having been expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. On October 9, 2003, the Board issued Designated Representative Certificate No. EXC 17211 (certificate) to respondent. Respondent's certificate was in full force and effect at all times relevant to the allegations set forth in the Accusation, and will expire on October 1, 2015, unless renewed or revoked. Complainant seeks to discipline respondent's certificate based upon the convictions described below.

Respondent's Convictions

2. On April 15, 2013, in the Nevada County Superior Court, Case No. SF12-332, upon a plea of nolo contendere, respondent was convicted on two counts of violating Penal Code section 459, burglary, both misdemeanors. Respondent was placed on three years' probation. He was ordered to serve 30 days in jail, and was given credit for four days served. Respondent's jail time was converted to the Work Release Program. Respondent was also ordered to pay a fine in the total amount of \$455, payable at \$50 per month starting on August 10, 2013. Respondent was further ordered to attend three self-help meetings per week for one year, with quarterly reviews, and three individual counseling sessions with a licensed therapist.

3. The incidents underlying respondent's burglary convictions occurred on July 27, and August 1, 2012. On these two occasions, respondent took a total of six Oxycontin pills from a customer to whom he delivered oxygen. Because the customer had been burglarized in the past, he had installed a surveillance camera in his home. The video taken by the customer's camera showed respondent taking the six pills. Respondent readily admitted to the deputy sheriff who conducted the investigation that he took the six Oxycontin pills from the customer. He denied that he took any of the other pills or jewelry that had been stolen from the customer in the past. There was no evidence to establish that respondent was responsible for any of the other thefts suffered by the customer. Respondent has paid all court costs and fees. He has performed all the community service required under the Work Release Program. He has attended all the meetings and counseling sessions ordered by the court. His criminal probation is scheduled to end in 2016.

Evidence of Rehabilitation, Mitigation and Aggravation

4. Respondent testified that he did not have a good answer to why he took the six pills. He admitted that he was an alcoholic, but that he had quit drinking and was sober at the time of the incidents. In 2010, his wife was diagnosed with liver disease. She was quite ill at the time of incidents. She was on a list for a liver transplant. He was supporting his wife and two adult children, who were still living at home. He described the financial and emotional difficulties he was having as a result of his wife's illness. He testified that he was "looking for an avenue for relief" for his "inner problems."

5. Respondent has been clean and sober since 2012. He attends Alcoholics Anonymous (AA) meetings at least once a week. He speaks to his sponsor several times a week. He is working the 12-steps.

6. Respondent works for Northern Home Medical, a small medical equipment company that delivers durable medical equipment and oxygen to customers. He is required to have a designated representative certificate because his company repackages oxygen from liquid to gas. He has worked for Northern Home Medical and its predecessor for 24 years. He estimated that approximately 90 percent of his work time is spent in the warehouse, and 10 percent is spent delivering oxygen or other services to customers. Although he could perform most of his job duties if he did not have a designated representative certificate, he is the only employee with a certificate. If he loses his certificate, he will lose his job.

7. Kelly Bartlett, respondent's wife, testified on his behalf. She and respondent have been married for 28 years. She runs a small daycare in their home. Her income is variable. She stated that her illness has been hard on respondent. She sometimes blames herself for her husband's criminal conduct, because she was deathly ill and in the hospital for three days around the time he committed the thefts. She described her husband as compassionate with others, and patient with the children in her daycare. She also described instances where he helped a stranger who was in a car accident and a child with problems in her daycare. She testified that respondent has "always been there" for her.

8. In support of his rehabilitation, respondent submitted the following letters and documents, which were previously submitted to the court in respondent's criminal matter:

(a) Robert Dowrick, Deputy Probation Officer III, submitted a Probation Officer's Presentence Report to the court. In his report, Mr. Dowrick stated that the 87-year-old victim of respondent's crime had "very strong feelings" that respondent should be granted leniency. The victim believed that respondent was a "decent fellow" and he did not want to see respondent serve any jail time. Instead, the victim wanted respondent "to get some help with whatever problems he might have that would make him want to take those pills."

Mr. Dowrick's report noted that, during his interview, respondent "expressed remorse and apologized to the victim, his family and his employer." Respondent had no record of arrests or convictions. Respondent told Mr. Dowrick that he was "overwhelmed by [his] wife's liver disease." Mr. Dowrick noted that the "crime may have been committed because of the defendant's high level of emotional and/or financial duress. Given all of the

circumstances, future criminality appears unlikely to occur." But the report noted that respondent "took advantage of a position of trust as an in-home care provider/vendor to commit the crime."

Mr. Dowrick concluded that "[c]onsidering the 52-year-old defendant's strong family support, ties to the community and stable employment history, it appears he has the ability to comply with conditions of probation." Mr. Dowrick stated that he hoped that the criminal matter could be resolved in a manner that "would not result in the defendant's loss of employment." He suggested as options reducing the felony charges to misdemeanors or considering a deferred entry of judgment.

(b) J. Andy Buffington, LCSW, was respondent's drug counselor. In his July 1, 2013 letter to the court, he stated that respondent had "completed three sessions addressing his substance abuse issues." According to Mr. Buffington, respondent "actively participated in the sessions and indicated that he intends to continue his attendance at AA meetings." Respondent "demonstrated comprehension of the basic concepts of recovery and awareness of the consequences for failing to maintain his recovery program."

(c) Harold (Rudy) Antonucci is the owner and CEO of Northern Home Medical. Respondent has worked for Mr. Antonucci for over 20 years. Mr. Antonucci described respondent as an "exceptional and trustworthy employee." He has "never known [respondent] to be in any kind of trouble, not even a speeding ticket." Mr. Antonucci believes that respondent was "very remorseful, ashamed and embarrassed [by] what he has done."

(d) Dr. Brenda Clinite, an Organizational Psychologist, has known respondent and his family for over 12 years. Respondent's wife has been the primary daycare provider for Dr. Clinite's daughter for more than five years. Respondent has "always been sincere, kind and good" to Dr. Clinite's family. She has witnessed respondent "in multiple situations where he has always demonstrated honor and integrity." Dr. Clinite believes that respondent is "an outstanding individual with a great reputation for his honesty and kindness to all in [their] community" and that his criminal conduct was "an isolated incident and not reflective of [respondent's] overall character."

(e) Kristina Norvell has been respondent's co-worker for over 23 years. According to Ms. Norvell, respondent is an "honest, reliable and dependable man." He is "always kind" to their elderly

and disabled customers, and "always willing" to help them out. Ms. Norvell was aware of respondent's "chronic financial stress" and his concerns in "dealing with the life threatening illness that his wife has." She described respondent's criminal conduct as "completely out of character" with the person she has "known all these years."

(f) Serena Moore has known respondent and his family for more than 10 years. Ms. Moore is a single mother with four children. Respondent's family took Ms. Moore and her family into their home for a week when her heater was broken. According to Ms. Moore, respondent "possesses a great deal of integrity, and constantly strives to make sure he is doing the right thing."

(g) Paul Kelly has known respondent for over 15 years as Mr. Kelly's boss, mentor and friend. Respondent has been the "most loyal friend" Mr. Kelly has "ever known."

(h) Jennifer Nunnick has worked with respondent for 23 years. She described respondent as a "hardworking, dependable and kind-hearted person," who treats their clientele with "compassion and respect."

(i) Alan C. Teff is a retired Respiratory Care Practitioner, who has known and worked with respondent for 22 years. During the years they worked together, respondent "went into homes to help the sick and elderly – not only working with the patients' care but also maintaining their equipment in accordance with the State of California accreditation orders." According to Mr. Teff, respondent "would not take advantage of anyone – especially the elderly." Mr. Teff believes that respondent's financial difficulties and the severe illness of his wife "helped [respondent] make the error he made."

Discussion

9. In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth criteria for evaluating the rehabilitation of a licensee who has been convicted of a crime. These criteria include:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

10. In 2013, respondent was convicted of stealing six Oxycontin pills from an elderly customer to whom he delivered oxygen. Although respondent stole very few pills, his crime was serious. He took advantage of the trust the customer had vested in him. He engaged in the type of conduct that the Board was created to protect against. He is currently scheduled to be on criminal probation until 2016.

11. But at hearing, respondent submitted persuasive evidence of mitigation and rehabilitation. Respondent's testimony was very candid and humble. He expressed remorse and accepted full responsibility for his illegal conduct. He did not seek to use the financial and emotional stress he was experiencing at the time due to his wife's serious illness as an excuse for his wrongdoing. He apologized for the pain he has caused to his family. His shame and embarrassment for his criminal conduct was palpable. He is now clean and sober, and actively involved in AA. He has complied with all the terms and conditions of his criminal probation. His character references were strong and supportive. The evaluation set forth in his probation officer's presentence report that respondent would not pose a danger to the public if he were placed on probation was persuasive and applicable to this proceeding. When all the evidence is considered, the public health, safety and welfare would be adequately protected if respondent is placed on probation for five years under the terms and conditions set forth below.

Costs

12. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of \$1,760. These costs are for the services provided by the Attorney General's office in prosecuting this matter. They are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. Respondent did not object to the costs requested by complainant. Complainant established that the requested costs are reasonable in light of the allegations and issues in this matter.

13. Respondent and his wife testified that, given their difficult financial circumstances, they would like to pay these costs over time. Respondent's request is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides that the Board "shall take action against any holder of a license who is guilty of unprofessional conduct."¹ Subdivision (l) of that section defines "unprofessional conduct" to include the "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee." California Code of Regulations, title 16, section 1770 provides that, "a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

2. Respondent's burglary convictions evidence his present or potential unfitness to perform the functions authorized by his certificate in a manner consistent with the public health, safety, and welfare. Consequently, they are substantially related to the qualifications, functions, and duties of a designated representative and constitutes cause to discipline his certificate under Business and Professions Code section 4301, subdivision (l).

3. Business and Professions Code section 4301, subdivision (f), defines "unprofessional conduct" to include "commission of any act involving ... dishonesty." Respondent's burglary convictions establish that he engaged in an act involving dishonesty. Consequently, respondent's convictions constitute cause to discipline his certificate under Business and Professions Code section 4301, subdivision (f).

4. Business and Professions Code section 4301, subdivision (j), defines "unprofessional conduct" to include "violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs." Respondent's burglary convictions for stealing Oxycontin, a controlled substance, establish cause to discipline his certificate under Business and Professions Code section 4301, subdivision (j).

5. As set forth in Finding 11, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow him to retain his certificate on a probationary basis subject to the terms and conditions set forth below.

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

¹ Business and Professions Code section 4032 defines "license" to include "any license, permit, registration, certificate, or exemption" issued by the Board.

statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Finding 12, complainant seeks \$1,760 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Given respondent's financial inability to pay all these costs at this time, respondent should be permitted to pay them over the term of his probation according to a reasonable payment plan approved by the Board or its designee.

ORDER

Designated Representative Certificate No. EXC 17211 issued to respondent Brett Roland Bartlett is revoked. The revocation is stayed and respondent is placed on probation for five (5) 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:

- 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;
- an arrest or issuance of a criminal complaint for violation of any state or federal law;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's designated representative certificate or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance. Failure to timely report any 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, upon request at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case 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, designated representative-in-charge (including each new designated representative-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 this case and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, designated representative-in-

charge and owner at each entity licensed by the Board of the terms and conditions of the decision in this case 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 this case and the terms and conditions imposed thereby. It shall be the 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 acknowledgements 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 or relief service or pharmacy management service as a designated representative or in any position for which a designated representative license is a requirement or criterion for employment, whether the respondent is considered an employee or independent contractor or volunteer.

6. 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 \$1,760. Respondent shall make said payments over the term of probation in accordance with a reasonable payment plan approved by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

7. 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.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current designated representative 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 designated representative 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.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his designated representative 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 designated representative 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, permit, or registration 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.

10. 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 and the address of the new employer, supervisor and owner and work schedule, if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and 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.

11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a designated representative in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a designated representative for a minimum of 20 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of work. 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 work" means any calendar month during which respondent is not working as a designated representative for at least 20 hours as defined by Business and Professions Code section 4053. "Resumption of work" means any calendar month during which respondent is working as a designated representative for at least 20 hours as defined by Business and Professions Code section 4053.

12. 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.

13. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's designated representative license will be fully restored.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

16. Random Drug Screening

Respondent at his own expense shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its

designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of 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 work by respondent. Respondent may not resume work as a designated representative 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 licensed by the board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; 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 devices and controlled substances. Respondent shall not resume work until notified by the board.

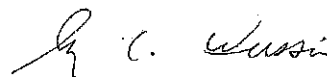
Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

This decision shall become effective on April 10, 2015.

It is so ORDERED on March 11, 2015.

By



STAN C. WEISSER
Board President

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
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OAH No. 2013110348

Designated Representative Certificate No.
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TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

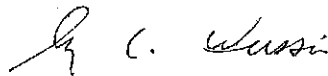
ORDER OF NONADOPTION OF PROPOSED DECISION

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the Proposed Decision in Administrative Case No. 4779. A copy of the Proposed Decision is attached hereto.

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

IT IS SO ORDERED this 14th day of November, 2014.

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



By

STAN C. WEISSER
Board President

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DEPARTMENT OF CONSUMER AFFAIRS
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3. The incidents underlying respondent's burglary convictions occurred on July 27, and August 1, 2012. On these two occasions, respondent took a total of six Oxycontin pills from a customer to whom he delivered oxygen. Because the customer had been burglarized in the past, he had installed a surveillance camera in his home. The video taken by the customer's camera showed respondent taking the six pills. Respondent readily admitted to the deputy sheriff who conducted the investigation that he took the six Oxycontin pills from the customer. He denied that he took any of the other pills or jewelry that had been stolen from the customer in the past. There was no evidence to establish that respondent was responsible for any of the other thefts suffered by the customer. Respondent has paid all court costs and fees. He has performed all the community service required under the Work Release Program. He has attended all the meetings and counseling sessions ordered by the court. His criminal probation is scheduled to end in 2016.

Evidence of Rehabilitation, Mitigation and Aggravation

4. Respondent testified that he did not have a good answer to why he took the six pills. He admitted that he was an alcoholic, but that he had quit drinking and was sober at the time of the incidents. In 2010, his wife was diagnosed with liver disease. She was quite ill at the time of incidents. She was on a list for a liver transplant. He was supporting his wife and two adult children, who were still living at home. He described the financial and emotional difficulties he was having as a result of his wife's illness. He testified that he was "looking for an avenue for relief" for his "inner problems."

5. Respondent has been clean and sober since 2012. He attends Alcoholics Anonymous (AA) meetings at least once a week. He speaks to his sponsor several times a week. He is working the 12-steps.

6. Respondent works for Northern Home Medical, a small medical equipment company that delivers durable medical equipment and oxygen to customers. He is required to have a designated representative certificate because his company repackages oxygen from liquid to gas. He has worked for Northern Home Medical and its predecessor for 24 years. He estimated that approximately 90 percent of his work time is spent in the warehouse, and 10 percent is spent delivering oxygen or other services to customers. Although he could perform most of his job duties if he did not have a designated representative certificate, he is the only employee with a certificate. If he loses his certificate, he will lose his job.

7. Kelly Bartlett, respondent's wife, testified on his behalf. She and respondent have been married for 28 years. She runs a small daycare in their home. Her income is variable. She stated that her illness has been hard on respondent. She sometimes blames herself for her husband's criminal conduct, because she was deathly ill and in the hospital for three days around the time he committed the thefts. She described her husband as compassionate with others, and patient with the children in her daycare. She also described instances where he helped a stranger who was in a car accident and a child with problems in her daycare. She testified that respondent has "always been there" for her.

8. In support of his rehabilitation, respondent submitted the following letters and documents, which were previously submitted to the court in respondent's criminal matter:

(a) Robert Dowrick, Deputy Probation Officer III, submitted a Probation Officer's Presentence Report to the court. In his report, Mr. Dowrick stated that the 87-year-old victim of respondent's crime had "very strong feelings" that respondent should be granted leniency. The victim believed that respondent was a "decent fellow" and he did not want to see respondent serve any jail time. Instead, the victim wanted respondent "to get some help with whatever problems he might have that would make him want to take those pills."

Mr. Dowrick's report noted that, during his interview, respondent "expressed remorse and apologized to the victim, his family and his employer." Respondent had no record of arrests or convictions. Respondent told Mr. Dowrick that he was "overwhelmed by [his] wife's liver disease." Mr. Dowrick noted that the "crime may have been committed because of the defendant's high level of emotional and/or financial duress. Given all of the circumstances, future criminality appears unlikely to occur." But the report noted that respondent "took advantage of a position of trust as an in-home care provider/vendor to commit the crime."

Mr. Dowrick concluded that "[c]onsidering the 52-year-old defendant's strong family support, ties to the community and stable employment history, it appears he has the ability to comply with conditions of probation." Mr. Dowrick stated that he hoped that the criminal matter could be resolved in a manner that "would not result in the defendant's loss of employment." He suggested as options reducing the felony charges to misdemeanors or considering a deferred entry of judgment.

(b) J. Andy Buffington, LCSW, was respondent's drug counselor. In his July 1, 2013 letter to the court, he stated that respondent had "completed three sessions addressing his substance abuse issues." According to Mr. Buffington, respondent "actively participated in the sessions and indicated that he intends to continue his attendance at AA meetings." Respondent "demonstrated comprehension of the basic concepts of recovery and awareness of the consequences for failing to maintain his recovery program."

(c) Harold (Rudy) Antonucci is the owner and CEO of Northern Home Medical. Respondent has worked for Mr. Antonucci for over 20 years. Mr. Antonucci described respondent as an "exceptional and trustworthy employee." He has "never known [respondent] to be in any kind of trouble, not even a speeding ticket." Mr. Antonucci believes that respondent was "very remorseful, ashamed and embarrassed [by] what he has done."

(d) Dr. Brenda Clinite, an Organizational Psychologist, has known respondent and his family for over 12 years. Respondent's wife has been the primary daycare provider for Dr. Clinite's daughter for more than five years. Respondent has "always been sincere, kind and good" to Dr. Clinite's family. She has witnessed respondent "in multiple situations where he has always demonstrated honor and integrity." Dr. Clinite believes that respondent is "an outstanding individual with a great reputation for his honesty and kindness to all in [their] community" and that his criminal conduct was "an isolated incident and not reflective of [respondent's] overall character."

(e) Kristina Norvell has been respondent's co-worker for over 23 years. According to Ms. Norvell, respondent is an "honest, reliable and dependable man." He is "always kind" to their elderly and disabled customers, and "always willing" to help them out. Ms. Norvell was aware of respondent's "chronic financial stress" and his concerns in "dealing with the life threatening illness that his wife has." She described respondent's criminal conduct as "completely out of character" with the person she has "known all these years."

(f) Serena Moore has known respondent and his family for more than 10 years. Ms. Moore is a single mother with four children. Respondent's family took Ms. Moore and her family into their home for a week when her heater was broken. According to Ms. Moore, respondent "possesses a great deal of integrity, and constantly strives to make sure he is doing the right thing."

(g) Paul Kelly has known respondent for over 15 years as Mr. Kelly's boss, mentor and friend. Respondent has been the "most loyal friend" Mr. Kelly has "ever known."

(h) Jennifer Nunnick has worked with respondent for 23 years. She described respondent as a "hardworking, dependable and kind-hearted person," who treats their clientele with "compassion and respect."

(i) Alan C. Teff is a retired Respiratory Care Practitioner, who has known and worked with respondent for 22 years. During the years they worked together, respondent "went into homes to help the sick and elderly – not only working with the patients' care but also maintaining their equipment in accordance with the State of California accreditation orders." According to Mr. Teff, respondent "would not take advantage of anyone – especially the elderly." Mr. Teff believes that respondent's

financial difficulties and the severe illness of his wife “helped [respondent] make the error he made.”

Discussion

9. In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth criteria for evaluating the rehabilitation of a licensee who has been convicted of a crime. These criteria include:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

10. In 2013, respondent was convicted of stealing six Oxycontin pills from an elderly customer to whom he delivered oxygen. Although respondent stole very few pills, his crime was serious. He took advantage of the trust the customer had vested in him. He engaged in the type of conduct that the Board was created to protect against. He is currently scheduled to be on criminal probation until 2016.

11. But at hearing, respondent submitted persuasive evidence of mitigation and rehabilitation. Respondent’s testimony was very candid and humble. He expressed remorse and accepted full responsibility for his illegal conduct. He did not seek to use the financial and emotional stress he was experiencing at the time due to his wife’s serious illness as an excuse for his wrongdoing. He apologized for the pain he has caused to his family. His shame and embarrassment for his criminal conduct was palpable. He is now clean and sober, and actively involved in AA. He has complied with all the terms and conditions of his criminal probation. His character references were strong and supportive. The evaluation set forth in his probation officer’s presentence report that respondent would not pose a danger to the public if he were placed on probation was persuasive and applicable to this proceeding. When all the evidence is considered, the public health, safety and welfare would be adequately protected if respondent is placed on probation for five years under the terms and conditions set forth below.

Costs

12. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of \$1,760. These costs are for the services provided by the Attorney General's office in prosecuting this matter. They are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. Respondent did not object to the costs requested by complainant. Complainant established that the requested costs are reasonable in light of the allegations and issues in this matter.

13. Respondent and his wife testified that, given their difficult financial circumstances, they would like to pay these costs over time. Respondent's request is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides that the Board "shall take action against any holder of a license who is guilty of unprofessional conduct."¹ Subdivision (l) of that section defines "unprofessional conduct" to include the "conviction of a crime substantially related to the qualifications, functions, and duties of a licensee." California Code of Regulations, title 16, section 1770 provides that, "a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

2. Respondent's burglary convictions evidence his present or potential unfitness to perform the functions authorized by his certificate in a manner consistent with the public health, safety, and welfare. Consequently, they are substantially related to the qualifications, functions, and duties of a designated representative and constitutes cause to discipline his certificate under Business and Professions Code section 4301, subdivision (l).

3. Business and Professions Code section 4301, subdivision (f), defines "unprofessional conduct" to include "commission of any act involving ... dishonesty." Respondent's burglary convictions establish that he engaged in an act involving dishonesty. Consequently, respondent's convictions constitute cause to discipline his certificate under Business and Professions Code section 4301, subdivision (f).

4. Business and Professions Code section 4301, subdivision (j), defines "unprofessional conduct" to include "violation of any of the statutes of this state, of any other

¹ Business and Professions Code section 4032 defines "license" to include "any license, permit, registration, certificate, or exemption" issued by the Board.

state, or of the United States regulating controlled substances and dangerous drugs.” Respondent’s burglary convictions for stealing Oxycontin, a controlled substance, establish cause to discipline his certificate under Business and Professions Code section 4301, subdivision (j).

5. As set forth in Finding 11, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow him to retain his certificate on a probationary basis subject to the terms and conditions set forth below.

6. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee’s subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

7. As set forth in Finding 12, complainant seeks \$1,760 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Given respondent’s financial inability to pay all these costs at this time, respondent should be permitted to pay them over the term of his probation according to a reasonable payment plan approved by the Board or its designee.

ORDER

Designated Representative Certificate No. EXC 17211 issued to respondent Brett Roland Bartlett is revoked. The revocation is stayed and respondent is placed on probation for five (5) 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:

- 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;

- an arrest or issuance of a criminal complaint for violation of any state or federal law;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's designated representative certificate or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

Failure to timely report any 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, upon request at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case 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, designated representative-in-charge (including each new designated representative-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 this case and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, designated representative-in-charge and owner at each entity licensed by the Board of the terms and conditions of the decision in this case 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 this case and the terms and conditions imposed thereby. It shall be the 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 acknowledgements 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 or relief service or pharmacy management service as a designated representative or in any position for which a designated representative license is a requirement or criterion for employment, whether the respondent is considered an employee or independent contractor or volunteer.

6. No Being Designated Representative-in-Charge

During the period of probation, respondent shall not be the designated representative-in-charge of any entity licensed by the Board unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

7. 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 \$1,760. Respondent shall make said payments over the term of probation in accordance with a reasonable

payment plan approved by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

8. 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.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current designated representative 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 designated representative 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.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his designated representative 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 designated representative 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, permit, or registration 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.

11. 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 and the address of the new employer, supervisor and owner and work schedule, if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and 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.

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a designated representative in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a designated representative for a minimum of 20 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of work. 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 work" means any calendar month during which respondent is not working as a designated representative for at least 20 hours as defined by Business and Professions Code section 4053. "Resumption of work" means any calendar month during which respondent is working as a designated representative for at least 20 hours as defined by Business and Professions Code section 4053.

13. 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.

14. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's designated representative license will be fully restored.

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

16. Abstain from Drugs and Alcohol Use

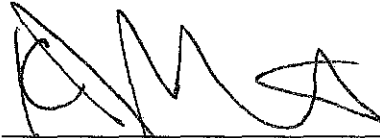
Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, 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 or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol,

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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.

DATED: October 10, 2014

A handwritten signature in black ink, appearing to read 'KJB', written over a horizontal line.

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4779

12 **BRETT ROLAND BARTLETT**
13 **930 Idaho Maryland Road**
Grass Valley, CA 95945

A C C U S A T I O N

14 **Designated Representative Certificate No.**
15 **EXC 17211**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 9, 2003, the Board of Pharmacy issued Designated
23 Representative Certificate Number EXC 17211 to Brett Roland Bartlett (Respondent). The
24 Designated Representative Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on October 1, 2013, unless renewed.

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1 JURISDICTION

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

5 4. Section 4300 of the Code states in pertinent part:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

16 5. Section 4300.1 of the Code states:

17 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
18 operation of law or by order or decision of the board or a court of law, the placement of a license
19 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
20 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
21 proceeding against, the licensee or to render a decision suspending or revoking the license."

22 6. Section 4301 of the Code states in pertinent part:

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

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

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

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

20 7. Section 4060 of the Code states in pertinent part:

21 "No person shall possess any controlled substance, except that furnished to a person upon
22 the prescription of an authorized prescriber.

23 8. Health and Safety Code section (a) provides in pertinent part that every person who
24 possesses any controlled substance specified in subdivision (b) or (c) of Section 11055, unless
25 upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice
26 in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the
27 Penal Code.

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1 stealing OxyContin from the victim, and stated he knew the location of the pills because he had
2 seen the victim put them there when he was previously in the residence delivering oxygen.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Acts Involving Dishonesty)**

5 14. Respondent is subject to disciplinary action for unprofessional conduct under Code
6 section 4301, subdivision (f), in that on or about July 27, 2012, and August 1, 2012, Respondent
7 committed burglary by entering a residence where he knew he was not lawfully entitled to be and
8 taking items that he was not lawfully entitled to possess. The circumstances are as described in
9 paragraph 13, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Violation of Statutes Regulating Controlled Substances)**

12 15. Respondent is subject to disciplinary action for unprofessional conduct under Code
13 section 4301, subdivision (j) in that on or about July 27, 2012, and August 1, 2012, Respondent
14 was in possession of OxyContin, a Schedule II controlled substance, without a valid prescription
15 in violation of Code section 4060 and Health and Safety Code section 11055. The circumstances
16 are as described in paragraph 13, above.

17 16. Respondent is subject to disciplinary action for unprofessional conduct under Code
18 section 4301, subdivision (j) in that on or about July 27, 2012, and August 1, 2012, Respondent
19 obtained OxyContin, a Schedule II controlled substance by fraud, deceit, misrepresentation, or
20 subterfuge. The circumstances are as described in paragraph 13, above.

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 Designated Representative Certificate Number EXC 17211,
25 issued to Brett R. Bartlett

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

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

DATED:

10/3/13



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

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