

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

In the Matter of the Accusation Against:

JEFFREY P. SIMONE

Pharmacist License No. RPH 62894,

Respondent.

Case No. 4885

OAH No. 2013120553

FINAL DECISION AFTER RECONSIDERATION

This matter came on regularly for hearing on July 24, 2014, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Sydney M. Merringer, Deputy Attorney General.

Jeffrey P. Simone (Respondent) was present and was represented by Herbert L. Weinberg, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

The Administrative Law Judge issued his Proposed Decision on August 5, 2014. The Proposed Decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("board"), and after due consideration thereof, the board adopted the proposed decision on September 9, 2014, to become effective on October 9, 2014. On September 26, 2014, Respondent filed a Petition for Reconsideration. On October 7, 2014, the board issued an Order Granting Petition for Reconsideration and Stay of Execution of the Effective Date of Decision and Order. On November 17, 2014, the board issued an Order Fixing Date for Submission of Argument.

Written argument having been timely received from both parties, and the time for filing written argument in this matter having expired, and the entire record, including

the transcript of said hearing having been read and considered, the board, pursuant to Government Code section 11517, hereby decides this matter as follows:

FACTUAL FINDINGS

1. Complainant is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On August 13, 2009, the Board issued Original Pharmacist License Number RPH 62894 to Respondent. The license was in full force and effect at all relevant times. It will expire on March 31, 2015, unless renewed.
3. On October 11, 2013, in the Superior Court of California, County of Los Angeles, in Case No. 3WA22154, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 503 (embezzlement), a misdemeanor substantially related to the qualifications, functions and duties of a pharmacist pursuant to California Code of Regulations, title 16, section 1770.
4. Finding a factual basis for the plea, the court placed Respondent on summary probation for 24 months under various terms and conditions including incarceration in the county jail for one day with credit for one day, payment of fines and assessments totaling \$210, completion of a one-year drug treatment program, and attendance at 60 Alcoholics/Narcotics Anonymous meetings at a rate of three meetings per week for the first 90 days of probation with credit for 13 meetings. Respondent was also required to work under supervised practice pursuant to the Board's Manual of Disciplinary Guidelines. Respondent has complied with the terms and conditions of his criminal probation thus far.
5. The facts and circumstances underlying the conviction are that, between July 2011 and May 2013, while employed as a pharmacist at CVS Pharmacy (CVS), Respondent embezzled approximately 2,400 oxycodone¹ tablets (both 30 mg and 20 mg)² from his employer by falsifying prescriptions and by cancelling prescriptions and converting the pills for his own use instead of returning them to stock. Respondent embezzled the tablets from both CVS stores to which he was assigned during the relevant period.
6. Respondent is 31 years old. He became addicted to oxycodone in 2005 after taking it first for dental pain secondary to oral surgery, and later for pain

¹ Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section 4022.

² The figure of 2,400 oxycodone tablets was Respondent's estimate at the time he admitted his theft to his employer. (Exhibit 6, page 3.) An audit of oxycodone stock at the two involved stores for the period between July 2011 and May 31, 2013, "identified 53 fraudulent oxycodone 30mg prescriptions assigned to 28 different patient names totaling 6,312 tablets." (Exhibit 5, page 12.) In the Accusation, Respondent is charged with the theft of only 2,400 oxycodone tablets.

secondary to a skin graft. At approximately the same time, he transferred from Penn State where he attended undergraduate school to Rutgers University for pharmacy school. Knowing no one at his new school, he used opiates to assuage the effects of anxiety and loneliness.

7. Prior to his arrest, Respondent was well-respected at his place of employment where he held the position of pharmacist-in-charge. In September 2012, he won the 2011 Paragon Award for exemplary service. To earn that award, he competed with pharmacists from 17 pharmacies in CVS Region 65 (West Los Angeles). However, at the time he was being considered for and was awarded that honor, he was secretly stealing drugs from his employer for his own use.

8. On June 1, 2013, Respondent voluntarily admitted himself to the inpatient program offered by Authentic Recovery Center (ARC). He successfully completed a three-month residential program and then, on September 2, 2013, entered ARC's full-time outpatient program. The programs involved daily and weekly therapy sessions, case management and drug testing. He has not tested positive on any test run by ARC. He is an active participant in the program, and he mentors new clients. On July 2, 2014, Joeline Knight, ARC's Director of Clinical Programming, wrote of Respondent's participation and progress:

Mr. Simone continues to be a willing participant in the treatment process. Mr. Simone asks relevant questions about recovery, appears to contribute to the group modality honestly, and participates in all program activities as well as attends each of his individual sessions. Mr. Simone has been an exceptional example of willingness and commitment to sobriety. Mr. Simone has acted [as] a peer mentor for our new clients and has always been available to share his experience with others. Mr. Simone readily comes and takes new clients to 12-step meetings. His story and progress inspire his peers and staff alike. Mr. Simone's prognosis is good based on current behavior and the maintenance of over 1 year of sobriety. From the onset of Mr. Simone's treatment he was transparent about the nature of his disease and addiction. At no point did Mr. Simone attempt to justify his actions or behaviors, in fact he humbly acknowledged the gravity of his choices and was willing to address his disease regardless of any court or martial outcomes. I have observed Mr. Simone embrace his sobriety and tackled [sic] the issues that have plagued him for a good part of his life. While I understand the severity of his accusations, I also have witnessed in my 23 year career in substance abuse treatment, transformations such as Mr. Simone's which can only be identified as profound.
(Exhibit D.)

9. In addition to his participation in the outpatient program at ARC, Respondent attends approximately six Alcoholics Anonymous meetings per week where he mentors other members, and he also regularly attends weekend recovery retreats.

10. Respondent stopped using oxycodone on the day of his arrest. As of the day of the administrative hearing, he had been sober for 417 days. He produced a number of letters from personnel at ARC as well as from professionals in recovery lauding Respondent's commitment to his sobriety.

11. Respondent is presently employed under direct supervision at RoxSan Pharmacy³ in Beverly Hills where he is involved primarily with fertility pharmaceuticals. He does not compound medications. He does not have access to Schedule II medications at his place of employment because they are kept locked in a safe. Respondent has received high marks from his superiors and supervisors for his strong work ethic, his excellent rapport with customers, and his commitment to sobriety.

12. In a written statement Respondent read into the record at the administrative hearing, he described himself as "humbled and ashamed" for wasting the hours his employer had invested in him and for causing himself to lose his "dream job." However, he is now confident he can and will maintain his sobriety.

13. The Board incurred costs, including attorney fees, in the total sum of \$9,113.50, in connection with the investigation and prosecution of this action. Those costs are found to be just and reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code sections 490 and 4300, in conjunction with California Code of Regulations, title 16, section 1770, for conviction of a substantially related crime, as set forth in Findings 3, 4, and 5.

2. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (h), for dangerous use of drugs, as set forth in Finding 5.

³ At the hearing, the Administrative Law Judge was asked to, and did, take official notice of an Accusation presently pending against RoxSan Pharmacy. (*In the Matter of the Accusation Against RoxSan Pharmacy, Inc.; Farbod Melamed; Shahla Keyvarfar Melamed et al.*, Case No. 4276, Office of Administrative Hearings No. 2014040961.) The evidence did not establish that Respondent was in any way involved in the acts/omissions alleged against the pharmacy in that case. No facts have been established in connection with the allegations in that case, and no finding or inference is drawn from the existence of an Accusation naming RoxSan Pharmacy as a respondent.

3. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code sections 4060 and 4301, subdivision (o), for unlawful possession of controlled substances, as set forth in Finding 5.

4. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (j), and Health and Safety Code sections 11350, subdivision (a) and 11170, for violating California rules regulating controlled substances by unlawfully possessing and administering controlled substances to himself, as set forth in Finding 5.

5. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (f), for dishonest acts, as set forth in Finding 3, 4, and 5.

6. Cause exists to order Respondent to pay the costs claimed under section 125.3, as set forth in Finding 13.

7. The Board has established criteria for assessing rehabilitation in connection with determining license discipline for a licensee. California Code of Regulations, title 16, section 1769, subdivision (b)⁴ states:

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

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

⁴ The Administrative Law Judge also considered the criteria set forth in the Board's Disciplinary Guidelines (rev. 10/2007), at page 3.

8. Respondent's criminal acts were both severe and ongoing, having lasted a period of almost two years while feeding an addiction between six and eight years old. One can scarcely think of an act more substantially related to the qualifications, functions, and duties of a pharmacist than a pharmacist-in-charge embezzling Schedule II controlled substances from his/her place of employment. A reasonable inference is drawn that Respondent would not have terminated his embezzlement on his own since he had not done so at the time of his arrest; he continued to do so while being considered for the Paragon Award; he continued to do so after he received the Paragon Award; and he continued to do so until he was caught and arrested. (Criterion 1.) Although his embezzlement conviction was Respondent's only brush with the criminal justice system (Criterion 2), and he has complied with all terms and conditions of his probation (Criterion 4), relatively little time has passed since the commission of his criminal acts (Criterion 3.) Respondent has made excellent strides toward rehabilitation. However, he remains on criminal probation, and he is scheduled to remain so until October 2015. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

9. According to the Board's Disciplinary Guidelines (rev. 10/2007) (Guidelines), Respondent has committed both Category II and Category III violations. The minimum penalty recommended for a Category III violation is a stayed revocation, 90-day suspension, and a three to five year probationary period subject to appropriate terms and conditions. Five years of probation is recommended in cases involving self-administration of controlled substances. The maximum recommended penalty is license revocation.

10. In this case, because Respondent has suffered no other criminal convictions or license discipline, and because he has demonstrated exemplary rehabilitation thus far, outright revocation would be overly harsh and punitive. However, the brief amount of time that has passed since his conviction, the substantial amount of time he has suffered with his addiction, the temerity he demonstrated in stealing drugs from his employer while he was pharmacist-in-charge, and his failure to stop doing so on his own, are all factors in aggravation which are deeply troubling. Those factors notwithstanding, Respondent will not be deprived of his license at this time. However, the terms of his probation must be lengthy and stringent in order to ensure the public health, safety, welfare and interest. The order will include a 45-day period of suspension⁵ to give Respondent the opportunity to contemplate both the seriousness of his actions and the continued steps he intends to take to ensure that this is the only time in his career that he will face Board discipline. He will also be prohibited access to Schedule II controlled substances during the period of probation.

⁵ The guidelines do not call for a suspension for a Category II violation, but they provide for a 90-day suspension for a Category III violation. Because Respondent committed both Category II and Category III violations, a 45-day suspension is warranted.

ORDER

License number RPH 62894, issued to Respondent Jeffrey P. Simone, is revoked. However, the revocation is stayed, and Respondent's license is placed on probation for five years on the following terms and conditions:

1. Suspension

As part of probation, Respondent is suspended from the practice of pharmacy for 45 days beginning the effective date of this decision.

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 devices or controlled substances.

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.

2. 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 72 hours of such occurrence:

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

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

A conviction of any crime;

Discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

3. 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.

4. 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 or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. 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.

6. Continuing Education

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

7. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4885 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 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 4885, and terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 4885 in advance of Respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 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 4885 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.

8. 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.

9. 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 \$9,113.50. Respondent shall make the payments in amounts and according to terms acceptable to 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.

10. 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.

11. 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.

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of 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 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three 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.

13. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within 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 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.

14. 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. 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 in California, Respondent must notify the Board in writing within 10 days of the cessation of practice, and must further notify the Board in writing within 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 36 months.

"Cessation of practice" means any calendar month during which Respondent is not practicing as a pharmacist for at least 80 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which Respondent is practicing as a pharmacist for at least 80 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

15. 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.

16. Mental Health Examination

Within 30 days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo, at his own expense, psychiatric evaluation(s) by a Board-appointed or Board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding Respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the Board or its designee.

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

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

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

If at any time the approved evaluator or therapist determines that Respondent is unable to practice safely or independently as a pharmacist, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three 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.

17. Pharmacists Recovery Program (PRP)

Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by Respondent.

If Respondent is currently enrolled in the PRP, that 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, 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 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.

18. 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 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 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. 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 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.

20. Prescription Coordination and Monitoring of Prescription Use

Within 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 Respondent's history with the use of controlled substances, and/or dangerous drugs, and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the Board's accusation and decision. A record of this notification must be provided to the Board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of probation regarding Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease supervision by the approved practitioner, Respondent shall notify the Board immediately and, within 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 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 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.

21. 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 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, either:

Continuous – At least 75 percent of a work week

Substantial -At least 50 percent of a work week

Partial -At least 25 percent of a work week

Daily Review – Supervisor's review of probationer's daily activities within 24 hours.

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the Board in writing stating that the supervisor has read the decision in case number 4885 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 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 Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board. Respondent shall have his new supervisor, within

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 4885 and is familiar with the level of supervision as determined by the Board. Respondent shall not practice pharmacy and his 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 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 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.

22. No Access to Controlled Substances

During the period of probation and as directed by the Board or its designee, Respondent shall not order, possess, dispense or otherwise have access to any controlled substance(s) in Schedule II (Health and Safety Code section 11055). Respondent shall not order, receive or retain any security prescription forms. Failure to comply with this restriction shall be considered a violation of probation. However, if an evaluator from the Pharmacists Recovery Program (PRP) provides written notification to the board that in his or her opinion respondent is deemed clinically safe to have access to controlled substances, then at such time, respondent will no longer be required to adhere to this term and condition of probation.

23. Criminal Probation/Parole Reports

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after Respondent receives a copy of such a report. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

24. Ethics Course

Within 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.

25. Completion of Probation

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

26. Community Service

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 30 hours per year, for the entire duration of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

27. 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.

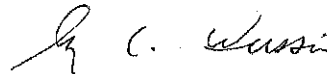
28. Tolling of Suspension

During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of the ten (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not resume the practice of pharmacy until notified by the board that the period of suspension has been satisfactorily completed.

This Decision shall become effective on March 16, 2015.

IT IS SO ORDERED this 13th day of February, 2015.



By _____

STAN C. WEISSER

Board President

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

In the Matter of the Accusation Against:

JEFFREY P. SIMONE
1920 6th Street, #333
Santa Monica, CA 90405

Pharmacist License No. RPH 62894

Respondent.

Case No. 4885

OAH No. 2013120553

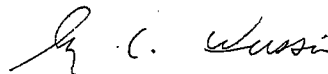
DECISION AND ORDER

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

This decision shall become effective on October 9, 2014.

It is so ORDERED on September 9, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

JEFFREY P. SIMONE

Pharmacist License No. RPH 62894,

Respondent.

Case No. 4885

OAH No. 2013120553

PROPOSED DECISION

This matter came on regularly for hearing on July 24, 2014, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Sydney M. Merringer, Deputy Attorney General.

Jeffrey P. Simone (Respondent) was present and was represented by Herbert L. Weinberg, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On August 13, 2009, the Board issued Original Pharmacist License Number RPH 62894 to Respondent. The license was in full force and effect at all relevant times. It will expire on March 31, 2015, unless renewed.

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3. On October 11, 2013, in the Superior Court of California, County of Los Angeles, in Case No. 3WA22154, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 503 (embezzlement), a misdemeanor substantially related to the qualifications, functions and duties of a pharmacist pursuant to California Code of Regulations, title 16, section 1770.

4. Finding a factual basis for the plea, the court placed Respondent on summary probation for 24 months under various terms and conditions including incarceration in the county jail for one day with credit for one day, payment of fines and assessments totaling \$210, completion of a one-year drug treatment program, and attendance at 60 Alcoholics/Narcotics Anonymous meetings at a rate of three meetings per week for the first 90 days of probation with credit for 13 meetings. Respondent was also required to work under supervised practice pursuant to the Board's Manual of Disciplinary Guidelines. Respondent has complied with the terms and conditions of his criminal probation thus far.

5. The facts and circumstances underlying the conviction are that, between July 2011 and May 2013, while employed as a pharmacist at CVS Pharmacy (CVS), Respondent embezzled approximately 2,400 oxycodone¹ tablets (both 30 mg and 20 mg)² from his employer by falsifying prescriptions and by cancelling prescriptions and converting the pills for his own use instead of returning them to stock. Respondent embezzled the tablets from both CVS stores to which he was assigned during the relevant period.

6. Respondent is 31 years old. He became addicted to oxycodone in 2005 after taking it first for dental pain secondary to oral surgery, and later for pain secondary to a skin graft. At approximately the same time, he transferred from Penn State where he attended undergraduate school to Rutgers University for pharmacy school. Knowing no one at his new school, he used opiates to assuage the effects of anxiety and loneliness.

7. Prior to his arrest, Respondent was well-respected at his place of employment where he held the position of pharmacist-in-charge. In September 2012, he won the 2011 Paragon Award for exemplary service. To earn that award, he competed with pharmacists from 17 pharmacies in CVS Region 65 (West Los Angeles). However, at the time he was being considered for and was awarded that honor, he was secretly stealing drugs from his employer for his own use.

¹ Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section 4022.

² The figure of 2,400 oxycodone tablets was Respondent's estimate at the time he admitted his theft to his employer. (Exhibit 6, page 3.) An audit of oxycodone stock at the two involved stores for the period between July 2011 and May 31, 2013, "identified 53 fraudulent oxycodone 30mg prescriptions assigned to 28 different patient names totaling 6,312 tablets." (Exhibit 5, page 12.) In the Accusation, Respondent is charged with the theft of only 2,400 oxycodone tablets.

8. On June 1, 2013, Respondent voluntarily admitted himself to the inpatient program offered by Authentic Recovery Center (ARC). He successfully completed a three-month residential program and then, on September 2, 2013, entered ARC's full-time outpatient program. The programs involved daily and weekly therapy sessions, case management and drug testing. He has not tested positive on any test run by ARC. He is an active participant in the program, and he mentors new clients. On July 2, 2014, Joelene Knight, ARC's Director of Clinical Programming, wrote of Respondent's participation and progress:

Mr. Simone continues to be a willing participant in the treatment process. Mr. Simone asks relevant questions about recovery, appears to contribute to the group modality honestly, and participates in all program activities as well as attends each of his individual sessions. Mr. Simone has been an exceptional example of willingness and commitment to sobriety. Mr. Simone has acted [as] a peer mentor for our new clients and has always been available to share his experience with others. Mr. Simone readily comes and takes new clients to 12-step meetings. His story and progress inspire his peers and staff alike. Mr. Simone's prognosis is good based on current behavior and the maintenance of over 1 year of sobriety. From the onset of Mr. Simone's treatment he was transparent about the nature of his disease and addiction. At no point did Mr. Simone attempt to justify his actions or behaviors, in fact he humbly acknowledged the gravity of his choices and was willing to address his disease regardless of any court or martial outcomes. I have observed Mr. Simone embrace his sobriety and tackled [sic] the issues that have plagued him for a good part of his life. While I understand the severity of his accusations, I also have witnessed in my 23 year career in substance abuse treatment, transformations such as Mr. Simone's which can only be identified as profound.

(Exhibit D.)

9. In addition to his participation in the outpatient program at ARC, Respondent attends approximately six Alcoholics Anonymous meetings per week where he mentors other members, and he also regularly attends weekend recovery retreats.

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10. Respondent stopped using oxycodone on the day of his arrest. As of the day of the administrative hearing, he had been sober for 417 days. He produced a number of letters from personnel at ARC as well as from professionals in recovery lauding Respondent's commitment to his sobriety.

11. Respondent is presently employed under direct supervision at RoxSan Pharmacy³ in Beverly Hills where he is involved primarily with fertility pharmaceuticals. He does not compound medications. He does not have access to Schedule II medications at his place of employment because they are kept locked in a safe. Respondent has received high marks from his superiors and supervisors for his strong work ethic, his excellent rapport with customers, and his commitment to sobriety.

12. In a written statement Respondent read into the record at the administrative hearing, he described himself as "humbled and ashamed" for wasting the hours his employer had invested in him and for causing himself to lose his "dream job." However, he is now confident he can and will maintain his sobriety.

13. The Board incurred costs, including attorney fees, in the total sum of \$9,113.50, in connection with the investigation and prosecution of this action. Those costs are found to be just and reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code sections 490 and 4300, in conjunction with California Code of Regulations, title 16, section 1770, for conviction of a substantially related crime, as set forth in Findings 3, 4, and 5.

2. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (h), for dangerous use of drugs, as set forth in Finding 5.

3. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code sections 4060 and 4301, subdivision (o), for unlawful possession of controlled substances, as set forth in Finding 5.

³ At the hearing, the Administrative Law Judge was asked to, and did, take official notice of an Accusation presently pending against RoxSan Pharmacy. (*In the Matter of the Accusation Against RoxSan Pharmacy, Inc.; Farbod Melamed; Shahla Keyvanfar Melamed et al.*, Case No. 4276, Office of Administrative Hearings No. 2014040961.) The evidence did not establish that Respondent was in any way involved in the acts/omissions alleged against the pharmacy in that case. No facts have been established in connection with the allegations in that case, and no finding or inference is drawn from the existence of an Accusation naming RoxSan Pharmacy as a respondent.

4. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (j), and Health and Safety Code sections 11350, subdivision (a) and 11170, for violating California rules regulating controlled substances by unlawfully possessing and administering controlled substances to himself, as set forth in Finding 5.

5. Cause exists to discipline Respondent's pharmacist license pursuant to Business and Professions Code section 4301, subdivision (f), for dishonest acts, as set forth in Finding 3, 4, and 5.

6. Cause exists to order Respondent to pay the costs claimed under section 125.3, as set forth in Finding 13.

7. The Board has established criteria for assessing rehabilitation in connection with determining license discipline for a licensee. California Code of Regulations, title 16, section 1769, subdivision (b)⁴ states:

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

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

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⁴ The Administrative Law Judge also considered the criteria set forth in the Board's Disciplinary Guidelines (rev. 10/2007), at page 3.

8. Respondent's criminal acts were both severe and ongoing, having lasted a period of almost two years while feeding an addiction between six and eight years old. One can scarcely think of an act more substantially related to the qualifications, functions, and duties of a pharmacist than a pharmacist-in-charge embezzling Schedule II controlled substances from his/her place of employment. A reasonable inference is drawn that Respondent would not have terminated his embezzlement on his own since he had not done so at the time of his arrest; he continued to do so while being considered for the Paragon Award; he continued to do so after he received the Paragon Award; and he continued to do so until he was caught and arrested. (Criterion 1.) Although his embezzlement conviction was Respondent's only brush with the criminal justice system (Criterion 2), and he has complied with all terms and conditions of his probation (Criterion 4), relatively little time has passed since the commission of his criminal acts (Criterion 3.) Respondent has made excellent strides toward rehabilitation. However, he remains on criminal probation, and he is scheduled to remain so until October 2015. Since people have a strong incentive to obey the law while under the supervision of the criminal justice system, little weight is generally placed on the fact that an applicant has engaged in good behavior while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

9. According to the Board's Disciplinary Guidelines (rev. 10/2007) (Guidelines), Respondent has committed both Category II and Category III violations. The minimum penalty recommended for a Category III violation is a stayed revocation, 90-day suspension, and a three to five year probationary period subject to appropriate terms and conditions. Five years of probation is recommended in cases involving self-administration of controlled substances. The maximum recommended penalty is license revocation.

10. In this case, because Respondent has suffered no other criminal convictions or license discipline, and because he has demonstrated exemplary rehabilitation thus far, outright revocation would be overly harsh and punitive. However, the brief amount of time that has passed since his conviction, the substantial amount of time he has suffered with his addiction, the temerity he demonstrated in stealing drugs from his employer while he was pharmacist-in-charge, and his failure to stop doing so on his own, are all factors in aggravation which are deeply troubling. Those factors notwithstanding, Respondent will not be deprived of his license at this time. However, the terms of his probation must be lengthy and stringent in order to ensure the public health, safety, welfare and interest. The order will include a 45-day period of suspension⁵ to give Respondent the opportunity to contemplate both the seriousness of his actions and the continued steps he intends to take to ensure that this is the only time in his career that he will face Board discipline. He will also be prohibited access to Schedule II controlled substances during the period of probation.

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⁵ The guidelines do not call for a suspension for a Category II violation, but they provide for a 90-day suspension for a Category III violation. Because Respondent committed both Category II and Category III violations, a 45-day suspension is warranted.

ORDER

License number RPH 62894, issued to Respondent Jeffrey P. Simone, is revoked. However, the revocation is stayed, and Respondent is placed on probation for five years on the following terms and conditions:

1. Suspension

As part of probation, Respondent is suspended from the practice of pharmacy for 45 days beginning the effective date of this decision.

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 devices or controlled substances.

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.

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2. 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 72 hours of such occurrence:

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

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

A conviction of any crime;

Discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

3. 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.

4. 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 or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

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5. 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.

6. Continuing Education

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

7. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4885 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 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 4885, and terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 4885 in advance of Respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 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 4885 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.

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“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.

8. 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.

9. 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 \$9,113.50. Respondent shall make the payments in amounts and according to terms acceptable to 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.

10. 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.

11. 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.

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of 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 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three 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.

13. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within 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 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.

14. 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. 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 in California, Respondent must notify the Board in writing within 10 days of the cessation of practice, and must further notify the Board in writing within 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 36 months.

"Cessation of practice" means any calendar month during which Respondent is not practicing as a pharmacist for at least 80 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which Respondent is practicing as a pharmacist for at least 80 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

15. 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.

16. Mental Health Examination

Within 30 days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo, at his own expense, psychiatric evaluation(s) by a Board-appointed or Board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the Board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with a current diagnosis and a written report regarding Respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the Board or its designee.

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

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

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

If at any time the approved evaluator or therapist determines that Respondent is unable to practice safely or independently as a pharmacist, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three 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.

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17. Pharmacists Recovery Program (PRP)

Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, successfully participate in, and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board or its designee. The costs for PRP participation shall be borne by Respondent.

If Respondent is currently enrolled in the PRP, that 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, 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 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.

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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.

18. 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 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 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. 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 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.

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20. Prescription Coordination and Monitoring of Prescription Use

Within 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 Respondent's history with the use of controlled substances, and/or dangerous drugs, and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the Board's accusation and decision. A record of this notification must be provided to the Board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for the duration of probation regarding Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The Board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease supervision by the approved practitioner, Respondent shall notify the Board immediately and, within 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 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.

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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.

21. 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 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, either:

Continuous – At least 75 percent of a work week

Substantial - At least 50 percent of a work week

Partial - At least 25 percent of a work week

Daily Review – Supervisor's review of probationer's daily activities within 24 hours.

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the Board in writing stating that the supervisor has read the decision in case number 4885 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 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 Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board. Respondent shall have his new supervisor, within 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 4885 and is familiar with the level of supervision as determined by the Board. Respondent shall not practice pharmacy and his 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 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 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.

22. No Supervision of Ancillary Personnel

During the period of probation, Respondent shall not supervise any ancillary personnel, including, but not limited to, pharmacy technicians or designated representatives in any entity licensed by the Board.

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

23. No Access to Controlled Substances

During the period of probation and as directed by the Board or its designee, Respondent shall not order, possess, dispense or otherwise have access to any controlled substance(s) in Schedule II (Health and Safety Code section 11055). Respondent shall not order, receive or retain any security prescription forms. Failure to comply with this restriction shall be considered a violation of probation.

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24. Criminal Probation/Parole Reports

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after Respondent receives a copy of such a report. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

25. Ethics Course

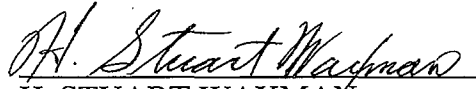
Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, 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.

26. Completion of Probation

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

Dated: August 5, 2014


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4885

13 **JEFFREY P. SIMONE**
2000 Main Street #136
Santa Monica, CA 90405

ACCUSATION

14 **Pharmacist License No. RPH 62894**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 13, 2009, the Board of Pharmacy issued Pharmacist License
22 Number RPH 62894 to Jeffrey P. Simone ("Respondent"). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on March 31,
24 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 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
2 conviction following a plea of nolo contendere. An action that a board is permitted to take
3 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
4 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under Section
6 1203.4 of the Penal Code. . . ."

7 7. Section 4060 of the Code states:

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

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

22 8. Section 4301 of the Code states:

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:

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

4

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

10

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

13

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3

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

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

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

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

19 **REGULATIONS**

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

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

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1 **CONTROLLED SUBSTANCES**

2 12. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
3 section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section
4 4022.

5 **COST RECOVERY**

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

10 **FIRST CAUSE FOR DISCIPLINE**

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

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

18 (a) On or about October 11, 2013, after pleading *nolo contendere*, Respondent was
19 convicted of one misdemeanor count of violating Penal Code section 503 [embezzlement] in the
20 criminal proceeding entitled *The People of the State of California v. Jeffrey Philip Simone* (Super.
21 Ct. Los Angeles County, 2013, No. 3WA22154.) The Court sentenced Respondent to serve 1 day
22 in jail and placed him on 24 months probation with terms and conditions, including attending 60
23 Alcoholic's Anonymous/Narcotic's Anonymous meetings in the first 90 days of probation,
24 continuous supervised practice pursuant to the California Board of Pharmacy's Manual of
25 Disciplinary Guidelines, and attendance for one year at an outpatient drug treatment program.
26 The circumstances surrounding the conviction are that between approximately July 2011 and May
27 2013, Respondent, who was a pharmacist at CVS, fraudulently obtained 2400 pills of oxycodone
28 by either: (1) creating fraudulent prescriptions or (2) not returning canceled prescriptions to the

1 pharmacy's inventory. Respondent did not pay for approximately 600 of the pills resulting in a
2 \$500.00 loss to CVS.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Drugs)**

5 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
6 on the grounds of unprofessional conduct in that between approximately July 2011 and May 2013,
7 Respondent, who was a pharmacist at CVS, used 2400 pills of fraudulently obtained oxycodone in
8 a manner dangerous or injurious to himself or the public.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unlawful Possession of Controlled Substances)**

11 16. Respondent is subject to disciplinary action under Code sections 4060 and 4301,
12 subdivision (o) on the grounds of unprofessional conduct in that between approximately July
13 2011 and May 2013, Respondent, who was a pharmacist at CVS, violated the Pharmacy Law by
14 unlawfully possessing 2400 pills of oxycodone. Respondent obtained 2400 pills of oxycodone by
15 either: (1) creating fraudulent prescriptions or (2) not returning canceled prescriptions to the
16 pharmacy's inventory.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Violating Drug Statutes)**

19 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (j)
20 and Health and Safety Code sections 11350, subdivision (a) and 11170 on the grounds of
21 unprofessional conduct in that between approximately July 2011 and May 2013, Respondent, who
22 was a pharmacist at CVS, violated California rules regulating controlled substances when he
23 unlawfully possessed and unlawfully administered to himself controlled substances, to wit, 2400
24 oxycodone pills.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Dishonest Acts)**

27 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)
28 on the grounds of unprofessional conduct in that Respondent committed dishonest acts.

1 Complainant incorporates by reference Paragraph 14, subparagraph (a), as though fully set forth
2 herein.

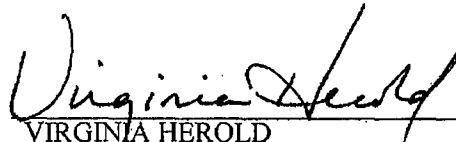
3 PRAYER

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

- 6 1. Revoking or suspending Pharmacist License Number RPH 62894, issued to Jeffrey P.
7 Simone;
8 2. Ordering Jeffrey P. Simone to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3; and
11 3. Taking such other and further action as deemed necessary and proper.

12
13 DATED: _____

10/31/13


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

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